

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )      **EMPLOYMENT AGREEMENT**

This Employment Agreement (this "Agreement") is made this 1st day of December 2008 (the "Effective Date"), by and between Clemson University, an educational institution and agency of the State of South Carolina, hereinafter referred to as "University" and **William Swinney**, hereinafter referred to as "Coach."

**WITNESSETH:**

WHEREAS, University and Coach desire to enter into an agreement of employment:

NOW THEREFORE, in contemplation of the relationship between the parties and in consideration of the mutual covenants contained herein, the parties mutually agree as follows.

**SECTION ONE  
EMPLOYMENT STATUS**

Coach shall be an unclassified state employee with the terms of his employment restricted solely to this Agreement. It is understood and agreed that Coach hereby waives any and all grievance rights under the University's grievance procedure and the South Carolina State Employee Grievance Procedure Act. Furthermore, Coach understands and acknowledges that his employment with the University is not a tenure-track position and will not lead to tenure.

**SECTION TWO  
DUTIES OF COACH**

In consideration of the salary and other benefits which may become due and payable under provisions of this contract, during the Term (as defined in SECTION FOUR) of this Agreement, Coach agrees to:

- A. Provide the University with his most dedicated and conscientious service in carrying out the duties and responsibilities as set forth herein or as may be assigned by the Athletics Director and perform his duties and responsibilities with personal integrity and in a manner consistent with State and University rules, regulations and policies.

- B. Perform the duties specified herein and operate the University's intercollegiate football program in a manner which is consistent with and in compliance with the constitution, bylaws, rules, regulations and interpretations (collectively, "Legislation") of the National Collegiate Athletic Association ("NCAA") and the Atlantic Coast Conference ("ACC") relating to the conduct and administration of the University's intercollegiate football program, including recruiting and eligibility rules, as now constituted or as any of the same may be amended during the Term hereof. In the event that Coach becomes aware or has reasonable cause to believe that any violations of NCAA or ACC Legislation may have been committed by him, a member of his coaching staff, a representative of the University's athletics interests or any other person, he shall report the same immediately to the Athletics Director's Office and the Director of Compliance's Office.
- C. Recognize that as part of the University's administration and its publicly visible representative, Coach has an affirmative duty to support the policies and academic priorities of the University in his actions and in public discourse, while building the University's intercollegiate football program.
- D. Use his best efforts, in conjunction with the University, to ensure that all academic standards, requirements and policies of the University, including, but not limited to those for the Student Athletic Enrichment Program, are observed by him and by members of his coaching staff at all times, including those in connection with the recruiting and eligibility of prospective and current student athletes for the University's intercollegiate football program.
- E. Use his best efforts to ensure that all student athletes recruited for the University's intercollegiate football program receive Coach's guidance in the importance of academic performance, are provided proper academic counseling and are encouraged to and given every opportunity to meet the degree requirements necessary to graduate from the University.
- F. Recruit, coach and train student athletes with good character, talent and academic ability to compete successfully against major college competition in a quality football program and demonstrate concern for their welfare.
- G. Use his best efforts to ensure that his student athletes conduct themselves in a manner that will reflect a positive image for the University both on and off the football field.
- H. Effectively adhere to and enforce all University and athletic department policies related to admission practices of the University, to academic discipline, to the effective administration of drug testing, education and use prevention, and all other student discipline policies

- I. Keep public comments about University policies or actions taken by University administrators in a positive tone recognizing that any statements he makes about the University and its administrators are often publicized.
- J. Use his best efforts to establish and maintain a frequent and systematic program of personal communication with the University's student body, faculty and staff.
- K. Perform all duties and responsibilities normally attendant to the position of Head Football Coach including, but not limited to, recommending the employment of assistant coaches and recommending their annual salary amounts to the Athletics Director in accordance with University guidelines for unclassified employees by January 1 of each Contract Year.
- L. Supervise assistant coaches, student athletes and other individuals under his supervision so as to maintain strict compliance with the rules and regulations of the University and NCAA and ACC Legislation.
- M. Have primary responsibility for developing and administering the budget for the University's intercollegiate football program, subject to the approval of the Athletics Director.
- N. Report immediately to the Athletics Director and the Director of Compliance any information he receives informing him that a violation of NCAA Legislation may occur.
- O. Attend up to fifteen (15) IPTAY Club meetings, as needed, each Contract Year, throughout the State of South Carolina and other states as scheduled by the Athletics Department and represent the University from time to time in public relations duties which relate to various University programs, including appearances before civic and alumni groups.
- P. Submit to the Athletics Director an annual evaluation of the University's intercollegiate football program to include an evaluation of his coaching staff and such additional information as may be requested by the Athletics Director. This evaluation is to be submitted each Contract Year within three (3) weeks of the completion of the football season, including post-season competition, if any.
- Q. Assist the Athletics Director in a departmental leadership role by insuring his sport's representation in meetings of the Athletics Department Coaches' Council, monthly departmental staff meetings, as well as supporting the success of other University sports through selected appearances.

### **SECTION THREE REPORTING RELATIONSHIP**

Coach shall report directly to the Athletics Director.

#### **SECTION FOUR TERM OF EMPLOYMENT**

The term of this Agreement shall be for a period commencing on the Effective Date and expiring on November 30, 2013 (the "Term"), subject to earlier termination in accordance with the provisions of SECTION EIGHT, SECTION NINE, SECTION TEN and SECTION ELEVEN herein. When used throughout this Agreement, a "Contract Year", other than in the first year of this Agreement, is defined as a period of time starting on the first day in December and lasting until the last day in November of the following calendar year. In the first year of this Agreement, the "Contract Year" is defined as a period of time starting on the Effective Date and lasting until the last day in November of the following calendar year.

#### **SECTION FIVE COMPENSATION AND BENEFITS**

In consideration for the promises Coach has made in entering into this Agreement, he shall be entitled to the compensation and benefits stated in the following paragraphs. Compensation and benefits provided directly by the University are subject to all necessary state and federal withholdings by the University, except as payments may be legally directed to alternate payees in behalf of Coach.

**A. Base Salary**

(i) During the Term of this Agreement, University shall pay to Coach and Coach shall accept from University, in payment for his services hereunder, a base salary at the rate of Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000.00) per Contract Year, prorated as required for the first Contract Year (the "Base Salary"), payable in twenty-six (26) installments per Contract Year, but in any case, in accordance with University's standard payroll procedures and no less frequently than monthly.

(ii) Should the football team participate in the ACC Championship Game at any time during the term of this Agreement, University agrees that Coach's total compensation (base salary plus guaranteed outside income, as defined in Paragraph L, below) for the contract year in which the football team participated in the ACC Championship Game shall be increased to an amount not less than the median total compensation for all Head Football Coaches at Atlantic Coast Conference member institutions. Alternatively, should the football team win the ACC Championship Game at any time during the term of this Agreement, University agrees that Coach's total compensation (base salary plus guaranteed outside income, as defined in Paragraph L, below) for the contract year in which such ACC Championship was won, shall be increased to an amount not less than the average total compensation for the seven (7) most highly compensated Head

Football Coaches at Atlantic Coast Conference member institutions. University and Coach may, upon mutual written agreement, elect to pay a portion of any increase to total compensation earned by Coach pursuant to this Paragraph B, into a deferred compensation plan. It is further agreed by Coach that University may reduce the amount of any increase in total compensation made pursuant to this Subparagraph (ii) by a sum not to exceed the aggregate amount of any increases to the compensation of members of the staff of the Football Team, provided that any such aggregate increases to the compensation of members of the staff of the Football Team, including any new positions to the staff of the Football Team which are added after the effective date of this Agreement, have been approved by Coach.

(iii) Coach and University agree that at such time as either of the events set forth in Subparagraph (ii), above shall occur and upon the University's implementation of the appropriate increase in total compensation as specified in Subparagraph (ii), above, University shall no longer be required to pay to Coach any amounts described in Attachment 1 "Performance Incentive Supplement" and Coach shall then be entitled to be paid in accordance with the "Performance Incentive Supplement" as set forth in Attachment 2.

B. Longevity Fund

Clemson agrees that upon the expiration of the initial term of this Agreement on November 30, 2013, it shall pay to Coach the amount of Seven Hundred and Fifty Thousand and No/100 Dollars (\$750,000.00). Such payment shall be in a lump sum, payable to Coach. It is further agreed that in the event that Coach is terminated without cause (as specified in Section EIGHT, Paragraph A or Paragraph ELEVEN of this Agreement) at any time prior to and including November 30, 2013, the University shall pay to Coach the amount of Seven Hundred and Fifty Thousand and No/100 Dollars (\$750,000.00). Coach shall have the option to receive payment in a lump sum within 30 days of termination or annually over, and in proportion with, the remaining years of this agreement. In the event that University terminates this Agreement for cause, as stated in Section EIGHT, Paragraph A, or should Coach terminate this Agreement for any reason prior to November 30, 2013, Coach shall not be entitled to any payment pursuant to the terms of this Paragraph B.

C. Standard Fringe Benefits

During the Term of this Agreement, Coach shall be entitled to participate in the same fringe benefit programs which are afforded to all unclassified University Athletics Department personnel including annual leave, sick leave, group health insurance, group life insurance, and the State's retirement program. If any benefits are based in whole or in part upon salary paid to Coach, such consideration shall be made based exclusively upon the Base Salary, including any merit increases, as set forth in Paragraph A of this Section.



D. Automobiles

During the Term of this Agreement, University shall furnish to Coach two (2) new, full-size automobiles and shall reimburse Coach, or pay directly, for automobile liability and comprehensive insurance and taxes, if applicable, upon said vehicles, to be paid within sixty (60) days of Coach's written notice to University of such expenses. The two (2) automobiles will be replaced at least every twelve (12) months with two (2) new automobiles.

E. Athletics Tickets

During the Term of this Agreement, University will provide to Coach, at no charge, ten (10) tickets to each of the University's home and away football games and twenty (20) tickets to any post season football game in which the University's football team shall participate. During the Term of this Agreement, University will also provide, upon request by Coach and at no charge, six (6) tickets to each University basketball event, and 5 baseball tickets. *[Handwritten signature]*

F. Executive Suite

Coach shall be entitled to use one twenty-two (22) seat executive suite in the football stadium during all home football games.

G. Performance Incentive Supplement

During the Term of this Agreement, Coach shall be entitled to receive performance incentive supplements as further detailed in Attachment 1, provided that Coach shall not be entitled to receive performance incentive supplements when and if such time as Coach's total compensation is increased as set forth in Section FIVE, Paragraph A, Subparagraph (iii). Any payments to be made in a given Contract Year under this paragraph will be processed through the University's payroll system, in accordance with the University's standard payroll procedures, and will be subject to federal and state income tax withholdings and any other necessary federal or state withholdings. Any such payments to be made by the University will be paid as soon as practicable.

H. Air Transportation

During the Term of this Agreement, the Athletics Department airplane or such other transportation as deemed necessary and appropriate will be available for reasonable use by Coach in connection with his official duties as Head Football Coach of the University's intercollegiate football program, subject to prior approval of the Athletics Director.

I. Expenses

During the Term of this Agreement, University will reimburse Coach, in accordance with Athletics Department policy and procedure, for approved travel and out-of-pocket expenses incurred by him in connection with the performance of his official duties under this Agreement. Such reimbursement shall be paid within sixty (60) days of Coach's written notice to University of such expenses, but only upon Coach's presentation to the University of appropriate documentation, vouchers or other statements as required by the Athletics Department.

J. Country Club Membership

University shall pay Coach's membership dues in a country club, approved by University, up to an amount not to exceed Ten Thousand Dollars (\$10,000.00) per year.

K. Outside Income

1. General - While Coach is employed as Head Football Coach at the University, he shall have the opportunity to earn outside income from the activities outlined in subparagraphs (2) through (6) below, but only upon the following terms and conditions:
  - a.. Coach's outside income activities shall not in any manner interfere with the full and complete performance of his duties and obligations as an employee of the University, recognizing always that his primary obligations lie with the University and its student athletes.
  - b. Coach shall not accept or receive directly or indirectly any monies, benefits or any other gratuities whatsoever from any person, corporation, or other benefactor if such action would be in violation of NCAA or ACC Legislation, University rules and regulations, or South Carolina law, including the South Carolina Ethics Act. Changes to such Legislation, rules, regulations or laws after the Effective Date shall automatically apply to this Agreement.
  - c. Coach shall discuss with the Athletics Director and obtain annually (prior to August 1 of each Contract Year or at such time as they become known thereafter) written approval from the President and Athletics Director before entering into any agreement under which he will receive athletically-related income and benefits during the next twelve (12) months (August 1 through July 31) from sources outside the University, including, but not limited to, income from annuities, sports camps, housing benefits, country club memberships,

complimentary ticket sales, television and radio programs, speeches/appearances and written materials, commercial endorsements or consulting contracts with athletics apparel, equipment or shoe manufacturers or sellers. Coach's request for approval shall be in writing and shall include the amount and the source of the income. Coach agrees to provide to the University, upon request, copies of all financial records and contracts disclosing his athletically-related income.

- d. Coach shall provide to the President, through the Athletics Director, on or before September 1 of each Contract Year, a written report of all athletically-related income and benefits received by Coach from sources outside the University during the previous twelve (12) month period (from August 1 through July 31).
  - e. The use of any registered University marks in any of Coach's outside income activities shall be subject to the University's trademark licensing program.
2. Television and Radio Shows - Coach is entitled to receive additional compensation from sources outside the University through an arrangement for regular appearances on television and radio programs in connection with the University's intercollegiate football program. Coach shall use his best efforts to promote these shows in a positive manner and will also use his best efforts to create goodwill with the outside sponsors of these shows. The format and content for any such programs are subject to the approval of the University. The parties agree that the University shall own all rights in and to the master game tapes and highlight tapes produced in connection with Coach's television show.
  3. Apparel, Equipment and Shoe Endorsements - Coach understands that the University has entered into one (1) or more endorsement agreements with apparel, equipment and shoe providers and may enter into agreements with such providers and other product providers in the future. Coach agrees to abide by and perform the roles required by the providers in all such existing agreements and in all such future agreements and agrees to accept the benefits as established thereunder by the providers.
  4. Other Endorsements - Coach may enter into endorsement agreements not covered by subparagraph (3) above and may retain all income derived there from; provided, however, that all such endorsements must be in writing, must not conflict with existing Athletics Department or University agreements, must not discredit or embarrass the University, must not extend beyond the Term of this Agreement, must be coterminous with Coach's termination of employment as Head Football Coach at the University, must be subject to the University's trademark licensing



program, and must be subject to the prior approval of the Athletics Director.

5. On-Campus Summer Camp - Coach may conduct and run summer youth football camps for up to four (4) weeks each summer. Coach shall have the opportunity to use University facilities in the conduct of the camps. For the use of University facilities, Coach shall be charged the standard rate charged to others for similar services furnished by the University. Coach shall be responsible for all costs incidental thereto, including uniform charges, and shall comply with policies and rules established by the University for the conduct of such events.
6. Income from Speeches, Appearances and Written Materials - Coach shall be entitled to deliver, make and grant speeches, appearances, and media interviews and to write and release books and magazines and newspaper articles or columns and to retain any and all income derived there from. Any speech given pursuant to this subparagraph must be given by Coach in his individual capacity, not in his official capacity as a University employee. Furthermore, it is expressly understood and agreed that this subparagraph does not pertain to any speech or appearance at a University-sponsored function, including IPTAY events or any other function that Coach attends pursuant to Paragraph O of SECTION TWO above.

L. Guaranteed Outside Income

1. During the Term of this Agreement, if Coach does not generate a total of Five Hundred and Fifty Thousand and No/100 Dollars (\$550,000.00) in gross income from the combined activities described in SECTION FIVE, Paragraph K(2) and Paragraph K (3) above in any Contract Year (the "Guaranteed Outside Income Amount"), the University will pay to Coach's designated corporation, KATBO, LLC, the difference between the Guaranteed Outside Income Amount and the gross amount Coach or KATBO earned from the combined activities described in SECTION FIVE, Paragraph K (2) and Paragraph K (3) above in any Contract Year. Coach agrees to provide the Athletic Director a quarterly report for each contract year quarter which contains a written accounting of all monetary and non-monetary income he has earned during the most recent quarter completed from activities described in Paragraphs K (2) and Paragraph K (3) in SECTION FIVE. University and Coach agree that amounts due Coach under this section for services rendered during one contract year (December 1 – November 30) may be delayed and paid during the following contract year. For example, if payment is contracted from a third party for a specific amount for radio/television and endorsement services and such payments are scheduled after November 30, the amounts may be paid in

arrears. Prior to the end of each contract year (before November 30) Coach and the University shall agree to the amount, timing and frequency of such payments due under this section for the next contract year.

2. Coach understands that the University's guarantee of outside income from certain activities as stated in SECTION FIVE, Paragraph L should not diminish in any way his efforts to earn outside income from those activities. Accordingly Coach agrees that during each fiscal year he will make a good faith effort to maximize his outside income under SECTION FIVE in order to reduce the financial obligation of the University under SECTION FIVE, Paragraph L.
3. Coach agrees that he will perform all services for which he is entitled to earn outside income (pursuant to SECTION FIVE, Paragraph K.) and Coach requests that any monies due to him from the University for outside income shall be paid directly to him or to his designated corporation, KATBO, LLC. University agrees that it will pay any monies due to Coach from University for outside income. It is understood and agreed that no taxes or other withholdings shall be deducted from the monies paid to Coach pursuant to this paragraph. Coach shall be responsible for the payment of taxes, if any, associated with the payment of such monies. Coach hereby agrees to indemnify, defend and hold harmless the University, its trustees, officers and employees from and against any and all liability for taxes and any other withholdings, including but not limited to, penalties and interest, determined to be due and payable from the University.
4. During the Term of this Agreement, Coach shall be eligible for merit increases to the guaranteed compensation for each Contract Year under the following terms and conditions: Coach's performance of his job duties and responsibilities will be evaluated by the Athletics Director on an annual basis on or about thirty (30) days after the completion of the football season, including post-season competition, if any. These evaluations will take into account prior evaluations and the expectations and goals set forth for Coach

## **SECTION SIX INDEMNIFICATION FOR OUTSIDE INCOME**

Coach understands and agrees that all his outside income activities, including, but not limited to, the activities set forth in SECTION FIVE, Paragraphs K (2) - (6) above, are independent of his employment at the University, and, with the exception of the Guaranteed Outside Income Amount, the University shall have no responsibility or liability for any claims whatsoever arising from such activities, including, but not limited to, claims by third parties. Furthermore, the University shall have no responsibility or liability for any claims by Coach for loss of income.

business opportunities, perquisites, or any form of consequential damages, in the event that this Agreement with Coach is terminated for any reason. Coach agrees to indemnify and hold harmless the University, its Board of Trustees and its employees from any and all suits, claims, demands, damages, liabilities, costs and expenses, including reasonable attorney fees ("Claims"), arising from any such outside income activity; provided, however, that any of Coach's indemnification obligations for Claims arising from his outside income activities as described in SECTION FIVE, Paragraphs K (2) and (3), are limited to Claims arising from Coach's personal conduct.

## **SECTION SEVEN CONTACT WITH UNIVERSITY OFFICIALS**

Coach shall follow the protocol established by the President and the Athletics Director in contacting University officials about matters of concern relating to the University's intercollegiate football program. Generally, such protocol would require permission to speak to certain University officials if the discussion is about University or Athletics Department policies or practices.

## **SECTION EIGHT TERMINATION BY THE UNIVERSITY**

Coach recognizes that his promise to remain as a University employee throughout the entire Term of this Agreement, including any extensions hereto, is of the essence of this Agreement to the University. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of the Term. Termination of this Agreement, except a termination resulting from the University and Coach entering into another Agreement superseding this Agreement, shall be considered a complete termination of Coach as an employee, independent contractor or otherwise by the University.

### **A. Termination by University For Cause**

The University shall have the right to terminate this Agreement prior to the completion of the Term if there is cause for terminating Coach's employment. Termination for cause may be based on any one (1) or more of the following:

1. deliberate violation by Coach of any one of the duties outlined in SECTION TWO of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of Coach's ability;
2. violation by Coach of any of the other material terms and conditions of this Agreement not remedied by Coach within five (5) days following receipt of notification of such violation from University, or failure to take immediate and reasonable action to remedy, within a reasonable period of time, any such violation which is incapable of correction within five (5) days after notification from University;

3. Coach's conviction of (or entry into pre-trial intervention as a result of) any criminal statute that constitutes a felony or constitutes a misdemeanor involving moral turpitude;
4. fraud or dishonesty by Coach in the performance of his University duties and responsibilities;
5. the committing of a major violation of NCAA Legislation by Coach while at the University or while previously employed at another NCAA member institution or the committing by Coach of a series or pattern of secondary violations of NCAA Legislation while at the University;
6. the committing of a major violation of NCAA Legislation or the committing of a series or pattern of secondary violations of NCAA Legislation by a member of Coach's coaching staff while at the University of which Coach had prior knowledge of, should have had knowledge, or acted with reckless disregard for such conduct; or the failure of Coach to operate the football program in adherence with the NCAA Principles for Institutional Control and such failure results in a finding by the NCAA for same.
7. the committing of a major violation of NCAA Legislation while Coach is at the University by any representative of the University's athletics interest with Coach's actual knowledge;
8. Coach's failure to immediately report to the Athletics Director's Office and the Compliance Director's Office any known conduct by anyone that could reasonably be construed to be a violation of NCAA Legislation affecting intercollegiate athletics at the University. Coach shall use his best efforts to report this information on the same day he becomes aware of the potential violation;
9. Coach's substantial physical or mental incapacity lasting in excess of ninety (90) days which cannot reasonably be accommodated by the University and which interferes with Coach's ability to perform essential functions of the duties and responsibilities set forth herein; or
10. any other cause adequate to sustain the termination of any other unclassified non-faculty employee pursuant to the University's Progressive Discipline Policy.

Coach may be terminated for any of the "causes" listed in subparagraphs (1) - (10) above that occurred on or before December 1, 2008, the date of the beginning of his employment as Head Football Coach at the University. Coach may also be

terminated for cause for previous employment conduct as stated in subparagraph (5) above so long as he has had notice and an opportunity to defend himself.

The decision of whether a major violation of NCAA Legislation has been committed rests solely with the University. However, if Coach is terminated for cause under subparagraphs (5), (6) or (7) above and the NCAA body rendering the final decision on this issue determines that the NCAA violation resulting in the termination for cause was not a major violation, the termination shall be treated as a termination without cause under Paragraph C below and the provision set forth in Section FIVE, Paragraph C of this Section shall apply and shall be Coach's sole remedy for any cause of action based on the contract.

**B. University's Obligations Upon Termination for Cause**

In the event this Agreement, including extensions hereto, is terminated by the University for cause, all obligations of the University to make further payments and/or to provide any other consideration hereunder shall cease upon the effective date of the termination, except that any payments that Coach has earned but have not yet been paid as of the effective date of termination will be paid thirty (30) calendar days after the effective date of termination. Provided, however, for purposes of this Paragraph, the calculation of any and all amounts due Coach under SECTION FIVE, Paragraph L, shall proceed as follows - the Guaranteed Outside Income Amount shall be prorated using the number of whole months completed in the Contract Year up to the date of termination of this Agreement and from this amount shall be subtracted the gross amount Coach earned from the combined activities described in SECTION FIVE, Paragraph K (2) and Paragraph K (3) in the Contract Year up to the date of termination of this Agreement and further subtracting the total amount of equal monthly installments of the Net Guaranteed Outside Income Amount already paid by University to Coach in the Contract Year up to the date of termination of this Agreement. In no case shall the University be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or incomes resulting from activities such as, but not limited to, camps, media appearances (including television and radio shows), commercial endorsements, apparel, equipment or shoe contracts, consulting relations or from any other sources.

**C. Termination by University Without Cause**

After delivery of a Notice of Termination to Coach which shall specify a fifteen (15) day notice period, the University shall have the right to terminate this Agreement, including any extensions hereto, prior to the completion of the Term



without cause. If the University exercises its right under this Paragraph C to terminate this Agreement without cause, Coach shall be entitled to payment only as provided for in Section FIVE, Paragraph B.

## **SECTION NINE DISCIPLINARY ACTION NOTICE REQUIRED BY NCAA**

In accordance with NCAA Bylaw 11.2.1, both the University and Coach agree that if Coach is found in violation of any NCAA Legislation, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedure. Also, in accordance with NCAA Bylaw 11.2.1.1, notice is provided to Coach that he may be suspended for a period of time, without pay, or his employment may be terminated if Coach is found to be involved in deliberate and serious violations of NCAA Legislation. If this right is exercised and Coach's employment is terminated, the determination of whether the termination is "for cause" or "without cause" shall be in accordance with Paragraphs A and C of SECTION EIGHT.

## **SECTION TEN TERMINATION BY COACH**

Coach recognizes that his promise to work for the University for the entire Term of this Agreement, including any extensions hereto, is of the essence of this Agreement to the University, especially with regard to the establishment of a stable intercollegiate men's football program. Coach also recognizes that the University is making a highly valuable investment in his continued employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University prior to the completion of the Term of this Agreement. Upon delivery of a Notice of Termination from Coach to the University, all compensation and other obligations owed by the University to Coach under this Agreement will be terminated on the effective date of Coach's notice of termination, and in no case shall the University be liable for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, camps, media appearances (including television and radio shows), commercial endorsements, apparel, equipment or shoe contracts, consulting relationships or from any other source that may ensue as a result of Coach's termination of this Agreement. In addition, Coach shall forfeit any Longevity Funds, as specified in Section FIVE, Paragraph B. Nonetheless, Coach may terminate this Employment Agreement prior to its expiration upon a minimum of fifteen (15) days written notice to the University. The written notice shall state the effective date of the termination.

## **SECTION ELEVEN AUTOMATIC TERMINATION UPON DEATH**

This Agreement shall terminate automatically if Coach dies during the Term. In such event, Coach's salary and all other benefits shall terminate as of the date of death, except that Coach's

personal representative or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force or hereafter adopted by the University and due there under. Any payments that Coach has earned but have not yet been paid as of the date of his death will be paid thirty (30) calendar days after the effective date of termination. For purposes of this Section, the calculation of any and all amounts due Coach under SECTION FIVE, Paragraph L, shall proceed as follows - the Guaranteed Outside Income Amount shall be prorated using the number of whole months completed in the Contract Year up to the date of termination of this Agreement and from this amount shall be subtracted the gross amount Coach earned from the combined activities described in SECTION FIVE, Paragraph L (2) and Paragraph L (3) in the Contract Year up to the date of termination of this Agreement and further subtracting the total amount of equal monthly installments of the Net Guaranteed Outside Income Amount already paid by University to Coach in the Contract Year up to the date of termination of this Agreement.

## **SECTION TWELVE UNIVERSITY APPROVAL REQUIRED PRIOR TO NEGOTIATION WITH OTHER SCHOOLS**

The parties agree that should another coaching opportunity be presented to Coach or should Coach be interested in another coaching position during the Term of this Agreement, Coach must notify the Athletics Director of such opportunity or interest, and obtain permission from the Athletics Director before any discussions can be held by Coach with anticipated coaching position principals, provided that the Athletic Director's permission for said discussions shall not be unreasonably withheld.

## **SECTION THIRTEEN AMENDMENTS TO THIS AGREEMENT**

The parties hereby agree to the full and complete performance of the mutual covenants contained herein and that no amendments, changes, additions, deletions or modifications to or of this Agreement shall be valid unless reduced to writing, signed by the parties and attached hereto except that the foregoing shall not apply to increases in compensation and benefits which will increase automatically as stated in SECTION FIVE, Paragraph A without the necessity for written modification or amendment to this Agreement.

## **SECTION FOURTEEN SAVING CLAUSE**

In the event one (1) or more clauses of this Agreement are declared illegal, void or unenforceable, that shall not affect the validity of the remaining portions of this Agreement.

## **SECTION FIFTEEN**

## **NO WAIVER OF DEFAULT**

No waiver by the parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein or shall in any way otherwise affect the validity of this Agreement.

## **SECTION SIXTEEN LAW APPLICABLE**

This Agreement is entered into in the County of Pickens, State of South Carolina, and is governed and construed in accordance with the laws of the State of South Carolina, without giving effect to the conflict of laws principles thereof. Any action brought by any party to this Agreement shall be brought and maintained in a court of competent jurisdiction in South Carolina.

## **SECTION SEVENTEEN NOTICES**

Any notice required or permitted to be given under this Agreement shall be sufficient if given in writing and either personally delivered or sent by registered or certified mail to the Athletics Director's Office if to the University or to Coach's residence, as such is on file in the Athletics Director's Office, if to Coach.

## **SECTION EIGHTEEN COUNTERPARTS**

This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one (1) and the same Agreement.

IN TESTIMONY WHEREOF, the hands and seals of the parties are affixed hereto as of the Effective Date.

CLEMSON UNIVERSITY

BY: Terry Don Phillips

Terry Don Phillips  
Athletics Director

Brett Dalton

Brett Dalton  
Chief Financial Officer

James F. Barker

James F. Barker  
President

BY: William C. Swinney

William Swinney  
Head Football Coach

insider  
THE FILE

# ATTACHMENT 1 PERFORMANCE INCENTIVE SUPPLEMENT

**Academic Success** shall be defined as a Football Team *Graduation Success Rate* (as defined by NCAA) and *Academic Progress Rate* (as defined by NCAA), both that are equal to or greater than the median ranking of those measures for ACC and SEC public universities combined. The *Rates* will be those most recently published by the NCAA. Academic Success Bonus Supplement \$50,000 and additional amounts identified below with Competitive Performance Bonus

## **Competitive Success:**

**Regular Season Wins** bonus supplement will be that amount for the greatest number of wins. These awards are not cumulative and Coach shall be entitled to receive only one bonus supplement based upon the Number of Regular Season Wins, with or without Academic Success, as follows:

<u>Number of Regular Season Wins</u>		<u>With Academic Success</u>			<u>Total</u>
Eight Wins	\$10,000	plus	\$25,000	equal	\$35,000 or
Nine Wins	\$20,000	plus	\$25,000	equal	\$45,000 or
Ten Wins	\$30,000	plus	\$25,000	equal	\$55,000 or
Eleven Wins	\$40,000	plus	\$25,000	equal	\$65,000 or
Twelve Wins	\$50,000	plus	\$25,000	equal	\$75,000

**Post Season Competition and Awards** bonus supplements are cumulative and Coach is entitled to receive multiple bonus supplements from this category, as follows:

Non-BCS Bowl	1/12 Base Salary	
		<u>With Academic Success</u>
ACC Championship Participant	\$75,000 or	\$100,000 and
ACC Champion	\$75,000 or	\$100,000 and
BCS Bowl Participant	\$75,000 or	\$100,000 and
BCS Bowl Winner	\$75,000 or	\$100,000 and
National Champion	\$150,000 or	\$200,000
ACC Coach of the Year	\$ 50,000 and	
National Coach of the Year		
By Associated Press or American College Football Association	\$100,000	



**ATTACHMENT 2**  
**PERFORMANCE INCENTIVE SUPPLEMENTAL PAYMENT**  
**FOLLOWING TO PARTICIPATION IN ACC CHAMPIONSHIP GAME**

**Academic Success** shall be defined as a Football Team *Graduation Success Rate* (as defined by NCAA) and *Academic Progress Rate* (as defined by NCAA), both that are equal to or greater than the median ranking of those measures for ACC and SEC public universities combined. The *Rates* will be those most recently published by the NCAA.

Academic Success Bonus Supplement \$50,000

**Post Season Competition**

Non-BCS Bowl 1/12 Base Salary

With Academic Success

ACC Championship Participant	\$37,500 or	\$ 50,000 and
ACC Champion	\$75,000 or	\$100,000 and
BCS Bowl Participant	\$56,250 or	\$ 75,000 and
BCS Bowl Winner	\$75,000 or	\$100,000 and
National Champion	\$150,000 or	\$200,000

ACC Coach of the Year \$ 50,000 and

National Coach of the Year

By Associated Press or American

College Football Association \$100,000

**Clemson University Athletics Department**  
**Request for Advanced and Actual Income Approval - Athletically Related Income**

All full-time athletic department employees are required to seek advance approval for all forms of compensation they plan to receive from sources outside the University that are athletically related. In addition, employees are required to report annually what they actually earned from third-party sources. Examples of compensation include gifts, free or discounted entertainment, travel, or services, as well as direct monetary awards.

Please complete this form with the requested information identified and return it to Pam Powell not later than September 1, 2008.

EMPLOYEE NAME: Dabo Swinney DATE OF INITIAL EMPLOYMENT: Mar. 2003

POSITION: \_\_\_\_\_

Source	Name of Company or Organization Providing Benefit	Actual Income from 9-1-7 until 8/31/08	Request to earn Income for the Period of: 9-1-08 until 8-31-09
Gifts: <u>peaches, Berries, Donuts, Pizza, misc. items</u>	<u>NFL SCOUTS / Misc. CU Fans</u>	<u>\$50</u>	<u>\$100</u>
Entertainment: <u>Golf</u>	<u>Reserve Country Club</u>	<u>\$0</u>	<u>\$10,000 per contract</u>
Free or Discounted Lodging:	<u>Harry Frampton - Beaver Creek, Co</u>	<u>\$2,000</u>	<u>\$2,000</u>
Free or Discounted Goods or Services <u>shoes/clothing</u>	<u>Nike Contract</u>	<u>\$1,000</u>	<u>\$1,800</u>
Free or Discounted Travel:	Do you have a courtesy vehicle? <u>Yes</u> or No (Please circle)	<u>—</u>	<u>—</u>
Endorsements: (List each company or manufacturer and fees provided)		<u>N/A</u>	<u>?</u>
Sport Camps/Clinics: (List Locations)	<u>Dabo Swinney FIBALL Camp May 30-Jun 31</u> <u>LADIES Clinic July 25th Jun 5-13</u> <u>FANTASY CAMP APR 17th-19th</u>	<u>\$13,700</u>	<u>\$5,000</u>
Consulting:	<u>N/A</u>		
Speaking Appearances:	List probable locations and estimate number of appearances and fees. <u>QB clubs, misc speaking engagements, Boy Scouts</u>	<u>\$100</u>	<u>\$3 - \$5,000</u>
Other Sources of Income:	Examples: teaching assignments, books, films, housing benefits and/or annuities. <u>N/A</u>	<u>—</u>	<u>—</u>
TOTAL		<u>\$16,850</u>	<u>\$ Approx. \$23,000</u>

By my signature, I confirm that this is a complete listing of outside income received during 2007-08 and an estimate of outside income for 2008-09.

Signature: Dabo Swinney

Date: 2/12/09

This request is approved [Signature]  
 Dr. Terry Don Phillips Date

[Signature] 3/15/09  
 President James F. Barker Date