

**ECU Board of Trustees
March 29, 2019**

MINUTES

The Board of Trustees met in special session on March 29, 2019 in Spilman 105.

Chair Kieran Shanahan called the meeting to order and read the conflict of interest statement. Chair Shanahan called on Asst. Secretary Megan Ayers to call the roll. A quorum was established.

Chair Shanahan asked for a motion to go into closed session. Jordan Koonts made the motion and it was seconded and approved unanimously.

Following closed session, the board moved back into open session. Chairman Shanahan called for any motions originating in closed session.

Mr. Fielding Miller moved that the board approve the memorandum of understanding with ECU Women's Basketball Coach Kim McNeil as presented in board materials. The motion was seconded and approved unanimously. This item is attached as "Attachment A."

Hearing no further business, the meeting was adjourned.

ADJOURN

####

Respectfully Submitted,

Megan Ayers

Office of the Assistant Secretary to the Board of Trustees

MEMORANDUM OF UNDERSTANDING

TO: Kim McNeill

FROM: Cecil P. Staton
Chancellor

DATE: March 28, 2019

SUBJECT: ECU Head Women's Basketball Coach Memorandum of Understanding ("MOU" or "Agreement")

East Carolina University ("ECU" or "UNIVERSITY") and its Athletic Department (the "Department") are enthusiastic about the opportunity for you ("COACH") to become the UNIVERSITY'S next Head Women's Basketball Coach. On behalf of East Carolina University, and subject to approval by the Board of Trustees of East Carolina University and a satisfactory background check, we extend an offer of employment to you as the Head Women's Basketball Coach of our NCAA Division I Women's Basketball Team (the "Team") and the UNIVERSITY's women's basketball program (the "Basketball Program"). Upon your acceptance below, the terms of this offer will be incorporated into our Head Women's Basketball Coach Employment Agreement that will be negotiated by the parties in good faith. The material business terms of our offer, which are binding upon both parties once approved by the ECU Board of Trustees and this MOU is signed, include:

1. Term of Employment:

- (a) ECU employs COACH as Head Women's Basketball Coach for a term of five (5) years beginning on April 1, 2019 and ending on March 31, 2024. COACH accepts employment in this position and agrees to faithfully, diligently, and competently perform the duties of COACH, as set forth herein. COACH's employment under this Agreement shall continue until the ending date set forth above, unless terminated earlier as provided herein or extended beyond the date as the parties shall agree in writing and as approved by ECU's Chancellor (the "Chancellor") and, if required by applicable policy, by UNIVERSITY'S Board of Trustees.
- (b) COACH shall be considered a non-faculty Senior Academic and Administrative Officer-Tier II ("SAAO Tier II") employee exempt from the North Carolina State Human Resources Act ("EHRA"), such positions being known as EHRA Non-Faculty (or EPA Non-Faculty) at ECU. COACH'S employment is subject to the East Carolina University "Employment Policy for Employees Exempt from the State Human Resources Act" as adopted by the Board of Trustees, and as revised from time to time (the "Policy"). The Policy and other policies and rules to which COACH is subject and shall abide are contained in the Code of the UNC Board of Governors and ECU's policies, regulations and rules. Such policies may be accessed at: <http://www.ecu.edu/PRR> and <https://www.northcarolina.edu/apps/policy/index.php?pg=toc&id=12&added=&retu>

[rn url=%2 Fapps%2Fpolicy%2Findex.php%3Fpg%3Dtoc%26id%3D](#) and are incorporated herein by reference. COACH accepts and shall abide by the Code of the UNC Board of Governors and ECU's policies, regulations and rules.

- (c) The Director of Athletics for the UNIVERSITY ("Director" or "Director of Athletics") shall provide a written evaluation of the COACH's performance on an annual basis.
- (d) It is expressly understood and agreed by the parties that this Agreement is not effective until COACH has satisfied ECU's background check requirements and, should COACH not satisfy said requirements, this Agreement is null and void and without legal consequence to the Parties.

2. COACH's Duties:

- (a) ECU hereby employs COACH as the Head Women's Basketball Coach of the Team with all the duties, responsibilities, and obligations normally associated with the position of Head Women's Basketball Coach at a major university. Duties include, but are not limited to, the following:
 - i. COACH will serve as the Head Women's Basketball Coach of the Team and devote her full time, energy, and abilities for the exclusive benefit of ECU as specifically set forth herein. COACH will be responsible for performing all the duties, responsibilities, and obligations normally associated with the position of Head Women's Basketball Coach at a major university.
 - ii. The COACH shall perform all duties specified herein in strict compliance with the constitution, by-laws, rules, and regulations of the NCAA, and the American Athletic Conference (the "AAC") and any other association, conference, or like organization approved by the NCAA with which ECU is or may become affiliated (the "Conference"), including recruiting rules, and with the policies of East Carolina University and its Athletics Department and of the Board of Governors of The University of North Carolina (the "BOG") and any applicable State or federal law, rule or regulation, as, collectively, the same are now constituted or as any of the same may be amended during the term hereof.
 - iii. The Basketball Program under the direction of the COACH must comply with all policies, rules, and regulations of ECU and the BOG and the constitutions, bylaws, policies, rules and regulations of the NCAA and the Conference. Each time "Athletic Program Personnel" or "Basketball Program Personnel" is used throughout this Agreement, the phrase shall refer to all assistant basketball coaches and other ECU employees, contractors, student athletes and volunteers under the supervisory responsibility, both direct and indirect, of the COACH, as well as all functions and responsibilities assigned to persons in those positions. The COACH shall be responsible for instructing, supervising, and monitoring the conduct of Basketball Program Personnel with the goal of assuring full compliance with the constitution, by-laws, rules, and regulations of the NCAA and the Conference, including recruiting rules, and with the

policies of East Carolina University and its Athletics Department and of the BOG and any applicable State or federal law, rule or regulation, as, collectively, the same are now constituted or as any of the same may be amended during the term hereof. In the event the Coach becomes aware of or has reasonable cause to believe that any violation of the constitution, bylaws, rules or regulations of the NCAA or the Conference or other applicable policies or laws may have taken place, he/she shall report the same promptly to the Director of Athletics or the Chancellor.

- iv. The COACH shall make all reasonable efforts to promote and encourage sportsmanship in her coaches, players, and fans in attendance at intercollegiate Basketball contests.
- v. Devote her best efforts full time in leadership, supervision, and promotion of ECU's Team and Basketball Program that supports said Team, including, but not limited to, with regard to ensuring compliance with applicable laws, rules, and requirements, and the promotion of the mission of ECU and its intercollegiate athletics program, ECU's high standard of academic excellence, and the general health and welfare of student-athletes;
- vi. The parties agree that the policies regarding the athletic program at ECU shall be determined by ECU; however, the implementation of the daily routine and administration as they pertain to the Basketball Program shall be the primary responsibility of the COACH in compliance with all policies, rules, and regulations of the NCAA, Conference, ECU, and the BOG;
- vii. Use best efforts to ensure that the Basketball Program is and/or operates in compliance with the Constitution and Bylaws of the Conference and also with the Constitution, Bylaws, rules and regulations of the NCAA; all State and Federal laws, and policies and procedures of The University of North Carolina and ECU;
- viii. Understand, observe and uphold all standards, including but not limited to academic standards and requirements, policies, rules and regulations of ECU as well as the Constitution and Bylaws of the Conference and of the NCAA, all applicable State and Federal laws, and all policies and procedures of The University of North Carolina and ECU as may be amended from time to time, and use best efforts to ensure compliance with all of the same standards, requirements, policies, rules, regulations, Constitution, Bylaws, laws and procedures by all coaches and other athletic department personnel under the supervisory responsibility of COACH, both direct and indirect, as well as the Basketball Program and all functions and responsibilities assigned to those persons;
- ix. Use best efforts to foster academic values, maintain program integrity, and encourage and contribute to the academic progress of all Team members under her supervision and to use best efforts to ensure that all academic

standards, requirements, and policies of ECU are observed including those in connection with the recruiting and eligibility of perspective and current student athletes, and specifically with regard to the recruiting of student athletes who are academically qualified;

- x. Use best efforts to ensure the safety and welfare of student-athletes under COACH's supervision; use best efforts to ensure that coaching and administrative staff actively support the Basketball Program and ECU's joint commitment to academic achievement for each student-athlete under COACH's supervision, to include promoting academic advising and counseling services; promote an environment that encourages student-athletes to achieve the best grades possible and to make progress toward a degree in a defined academic program;
- xi. Interview, screen, and recommend to the Director of Athletics for employment all assistant Basketball coaches. The hiring of assistants and all personnel within the Basketball Program shall comply with all applicable ECU policies and regulations. The COACH shall recommend to the Director of Athletics the salaries of the assistant coaches and each year shall provide written annual evaluations of their performances to the Director. The COACH shall recommend to the Athletic Director that an assistant coach be terminated if the assistant's services are not satisfactory to the COACH;
- xii. Maintain and enforce any and all disciplinary policies and drug/alcohol policies of ECU;
- xiii. Maintain effective relations with governing boards, associations, conferences, committees, alumni, students, faculty, and staff;
- xiv. Each Agreement Year make appearances/speeches at Pirate Club fundraising socials and events. COACH agrees to make reasonable efforts to accommodate any such requests based upon her other outstanding commitments. Only those appearances made at the request of ECU shall count toward satisfaction of the obligations of COACH under this paragraph;
- xv. Promptly advise the Director of Athletics or the Chancellor if the COACH has any reason to believe that any violation of NCAA or Conference constitutional provisions, bylaws, rules, or regulations has occurred or will occur and shall cooperate fully in any investigation of possible violations conducted or authorized by the UNIVERSITY, the Conference, or the NCAA at any time, including but not limited to the NCAA infractions process, including the investigation and adjudication of a case;
- xvi. Promptly advise the Chancellor, Director of Athletics, and the Senior Associate Athletic Director for Compliance if the COACH has any reason to believe that ECU's Basketball Program may be at risk of being deemed ineligible to

compete in any NCAA or Conference competition due to academic, conduct related or other compliance concerns; and

- xvii. Perform such other duties as assigned from time to time by the Director of Athletics.
- (b) The COACH shall not attempt to raise money to support the Basketball Program budget without the prior written approval of the Director of Athletics. All requests of financial support from the Pirate Club for the Basketball Program will be channeled through the Director of Athletics to the Executive Committee of the Pirate Club.
- (c) The COACH shall not instruct or knowingly permit her assistants or anyone under her direct or indirect supervision (including, but not limited to, volunteers) to do anything that this Agreement prohibits COACH from doing.
- (d) If COACH is found to have committed violations of NCAA rules or regulations, whether while employed by ECU or during prior employment at another NCAA member institution, COACH shall be subject to disciplinary action as set forth in the provisions of the NCAA infractions process and applicable ECU policies, regulations or rules, including the Policy. Such disciplinary action may include, but is not limited to, suspension without pay or termination for cause.
- (e) COACH agrees to faithfully, diligently, and competently perform the duties of Head Women's Basketball Coach, and to devote such time, attention, and skills to the performance of said duties as necessary to meet the responsibilities of the position of Head Women's Basketball Coach. COACH shall report to and be under the immediate supervision of the Director of Athletics. COACH agrees that the failure to discharge any of the duties of Head Women's Basketball Coach constitutes a breach of this Agreement that would allow ECU to terminate COACH for cause.

If COACH is found to have committed violations of NCAA rules or regulations, whether while employed by ECU or during prior employment at another NCAA member institution, COACH shall be subject to disciplinary action as set forth in the provisions of the NCAA infractions process and applicable ECU policies, regulations or rules, including the Policy. Such disciplinary action may include suspension without pay or termination for cause. In the event that any future or amended NCAA or Conference rule, regulation, bylaw, or constitutional provision should render ineffectual this Article 2 as a basis for protecting the institutional integrity of ECU, then COACH and ECU will, to the extent possible, engage in good faith negotiations to revise this Article 2 or to substitute an alternative provision that would allow for a materially similar duty to be imposed upon the COACH with materially similar consequences for failure to perform said duty while preserving for ECU as much of the bargained for institutional benefit as reasonably possible.

- (f) The parties mutually agree that major public announcements (e.g. suspension of players from the team, schedule modifications) made through any medium concerning the Basketball program at ECU will be discussed with each other, including specifically the Director of Athletics (or his designee) and COACH, prior to said announcements being

made public. COACH agrees that she shall not establish a website weblog, or online presence, Facebook or Twitter account or other social media program or presence in any form, including any social networking site, that in any way relates to the Basketball Program or her position as COACH at ECU without the written consent of the Director of Athletics.

- (g) Both parties agree to give full and faithful allegiance to the other as concerns the athletic program.
3. Annual Salary and Benefits: The Annual Salary for the position of COACH is Two-Hundred Thousand Dollars (\$200,000) ("Annual Salary"), based on a twelve (12) month employment period. The salary will be paid in semi-monthly installments with the first installment paid no later than May 1, 2019 and continuing through the term of COACH's employment relationship with the UNIVERSITY under this Agreement. For purposes of clarification, through the described installment payments, COACH will receive a pro-rata amount of the Annual Salary for each Agreement calendar year. Such installment payment may be in addition to any pro-rata monthly payment amount accrued of any supplemental compensation or bonus due and payable as described in, and in accordance with Appendix A. COACH will receive any and all other regular employment benefits provided by the State of North Carolina to similarly situated employees, plus benefits provided to University EHRA Non-Faculty employees based upon the Annual Salary.
4. Additional Compensation and Benefits: ECU shall provide COACH all benefits and other non-salary compensation included and as specified in Appendix A, attached hereto and incorporated by reference.
5. Outside Compensation:
- (a) COACH may earn other compensation from sources outside of ECU while employed by ECU with prior approval by the Chancellor. Any outside compensation is subject to compliance with ECU's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay" and the "Policy on External Professional Activities for Pay" of the UNC Board of Governors, both of which are herein incorporated by reference, and is subject to all other relevant State and Federal policies and laws concerning conflict of interest. Such activities are independent of COACH's employment with ECU, ECU shall have no responsibility for any claims arising therefrom, and the COACH shall indemnify and hold harmless ECU from any and all claims and/or losses as a result of COACH's participation in such activities. Activities for outside compensation shall include, but not be limited to, engaging in any radio, television, motion picture, Internet, stage, writing or any similar activity, personal appearances, commercial endorsements, and sport camps. Subject to specific reporting requirements established by ECU, no outside activities will be allowed without having on file with ECU, a signed approval of the "Notice of Intent to Engage in External Professional Activities for Pay" prior to engaging in those activities. Request forms, disclosures and reports related to external activities for pay as described in the section are currently submitted electronically utilizing ECU's online Activities, Interests, and Relationships Management System ("AIR"), and in the future may be submitted using a different system or process as is designated by ECU. The AIR system may be accessed at <https://ecu.myresearchonline.org/air/>.

- (b) SUMMER CAMPS: The COACH may conduct Basketball clinics/camps in/at ECU facilities at the discretion of the Athletic Director provided that COACH and COACH'S operation of any such camp must comply with all applicable laws, NCAA and ECU regulations and policies, including ECU's "Youth Camps and Programs" Regulation. At a minimum, COACH will be allowed to operate two weeks of Basketball summer camps on the campus of ECU each summer while she is employed as Head Women's Basketball Coach, under the terms provided by University policy. The COACH may not solicit sponsorships for said camps without the approval of the Director of Athletics. Said camps and camp sponsorship solicitations must comply with all applicable laws and the policies of ECU, the NCAA, and AAC. Nothing herein shall prohibit COACH from conducting additional Basketball camps and clinics so long as such activities are approved in advance by the Director of Athletics and comply with all applicable University, Conference, and NCAA guidelines and policies, including without limitation the University's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay"
 - (c) In accordance with ECU policy and NCAA Bylaw 11.3.2, which are incorporated herein by reference, COACH shall report annually on July 1 to the Director of Athletics and the Chancellor all athletically-related income from sources outside ECU, including but not limited to, income from sports camps and clinics, television and radio programs, commercial endorsements, consulting agreements, and all other athletically-related income from whatever outside source. COACH shall ensure that upon request ECU has reasonable and prompt access to all records of COACH to verify this report.
 - (d) COACH agrees that ECU may use, without payment of additional compensation to COACH, COACH's name, picture, likeness and voice in connection with any such programs and endorsements that promote ECU. This provision shall survive expiration or termination of this Agreement.
 - (e) For the duration of this Agreement, the COACH shall not enter into or be a party to any shoe, apparel, or equipment agreement, including any agreement that obligates the COACH to wear, promote, endorse, or consult with a manufacturer or seller concerning the design and/or marketing of shoes, apparel, or equipment. This notwithstanding, ECU may require the COACH to comply and COACH shall cooperate with the terms of any shoe, apparel, and equipment agreements entered into by ECU, including but not limited to, requiring the COACH to wear or use a particular brand of shoe, apparel or equipment while performing her duties as the Head Women's Basketball Coach. ECU is entitled to all revenue and/or proceeds derived from any shoe, apparel, or equipment contract entered into by ECU.
6. BOT Approval and Future Amendments:
- (a) This MOU shall not be effective until signed by the Chancellor and approved by the Board of Trustees of East Carolina University, and following consultation with the BOG if required. No amendments, changes, additions, deletions, or modifications to or of this MOU shall be valid unless reduced to writing, signed by the parties and approved by the Board of Trustees of ECU.

- (b) This instrument contains the entire Agreement of the parties and fully supersedes any and all prior offers, discussions, agreements or understandings between the parties hereto. The Agreement may not be changed or amended orally, but only by an Agreement in writing signed by the party against whom enforcement of any waiver, amendment, change, modification, extension or discharge is sought. COACH may not assign this MOU.
7. Buy Out Payment: To the extent permitted by applicable law and University of North Carolina and ECU policy, ECU agrees to be responsible for COACH's obligation under her previous employment agreement with the University of Hartford ("Hartford") to pay a "Buyout" payment to Hartford in an amount not to exceed \$64,500 and, in no event, exceeding the actual amount of the buyout amount to be paid by COACH to Hartford (the "Buyout Amount"). ECU shall pay COACH an amount equal to any tax liability incurred by COACH due to the payment of the Buyout Amount to Hartford. The COACH shall use these funds in compliance with NCAA, Conference, and UNIVERISTY regulations, rules and policies.
8. Taxes: COACH acknowledges that, in addition to the salary provided for in this Agreement, certain benefits and other non-salary compensation she receives incident to her employment relationship with ECU may give rise to taxable income. COACH agrees to be responsible for the payment of any taxes (including federal, state and local taxes) due on such income. COACH also understands that ECU shall withhold taxes on amounts paid or due to COACH and the value of benefits and other non-salary compensation provided to COACH, to the extent required by applicable law and regulation.
9. Coach Subject to Reassignment: Throughout the term of this Agreement, COACH shall use her best full-time energies and abilities for the exclusive benefit of ECU. It is understood by the parties, however, that during the term of this Agreement, ECU retains the right to reassign the COACH to other positions, for a period not to exceed ninety (90) days and as agreed upon in good faith by COACH, the Director of Athletics, and the Chancellor, with different duties that ECU deems to be reasonably consistent with COACH's education and experience, with no diminution in Annual Salary. In the event COACH, the Director of Athletics, and the Chancellor cannot come to a mutual agreement regarding reassignment, the Chancellor, in consultation with the Director of Athletics shall have the final authority. Such ninety (90) day period may be extended in the Chancellor's sole discretion to the extent the Chancellor determines, in good faith, that such extension is necessary. ECU's obligation to provide non-salary or deferred compensation under Appendix A will terminate upon reassignment at ECU's sole discretion, except that ECU shall pay, subject to the conditions in Appendix A, any bonuses earned under Appendix A prior to reassignment and any supplemental compensation earned under Appendix A on a pro-rata basis up to the date of the reassignment. Upon cessation of Head Women's Basketball Coach duties and responsibilities, COACH shall voluntarily relinquish all appointments on NCAA or athletic conference committees, subcommittees and/or councils of any nature. If ECU makes such a decision to reassign COACH and COACH refuses to accept such reassignment, then ECU may terminate this Agreement for cause.
10. Termination By COACH Prior To Expiration:

- (a) COACH agrees that the promise to work for ECU for the entire term of the Agreement is essential to ECU. The parties agree that the COACH has special, exceptional, and unique knowledge, skill and ability as a COACH, which, in addition to the continuing acquisition of experience at ECU, as well as ECU's special need for continuity in its intercollegiate sports program, render the COACH's services unique. COACH therefore agrees, and hereby specifically promises, not to actively seek, negotiate for or accept employment, under any circumstances, without first informing or obtaining permission from the Chancellor, such employment including athletic related-employment requiring performance of duties prior to the expiration date of the term of this Agreement or any extension thereof.
- (b) In the event COACH terminates her employment or this Agreement without cause or commits any breach of this Agreement, including but not limited to accepting other employment without first obtaining the permission of the Chancellor, COACH shall pay ECU liquidated damages in lieu of any and all other legal remedies or equitable relief that ECU would be entitled to solely as a direct result of the early termination of this Agreement, equal to the following amounts in each year of this Agreement, respectively:

<u>AGREEMENT YEAR:</u>	<u>LIQUIDATED DAMAGES OWED:</u>
i. April 1, 2019-March 31, 2020	\$1,000,000
ii. April 1, 2020-March 31, 2021	\$800,000
iii. April 1, 2021-March 31, 2022	\$600,000
iv. April 1, 2022-March 31, 2023	\$400,000
v. April 1, 2023-March 31, 2024	\$200,000

- (c) COACH, or COACH's designee, shall pay the total of any amounts owed to ECU by COACH under this Article 12 within ninety (90) days following termination of COACH's employment or this Agreement. In the event COACH designates a third party to pay ECU on COACH's behalf, COACH shall remain ultimately responsible to ensure that such third party designee fully satisfy any and all financial obligations as specified herein.
- (d) This is an Agreement for personal services. The parties recognize and agree that a termination of this Agreement by COACH prior to its natural expiration could cause ECU to lose its valuable investment in COACH's continued employment at ECU and could cause ECU additional damages beyond its lost investment, including but not limited to a possible adverse effect on the intercollegiate sports program. The parties further agree that it is difficult or impossible to determine with certainty the damages that may result from such termination by COACH and that the liquidated damages provisions of this paragraph are not to be construed as a penalty, but as an attempt by COACH and ECU to establish adequate and reasonable compensation to the University in the event COACH terminates this Agreement. Notwithstanding the foregoing, nothing in this Article 12 shall be construed to, in any way, limit or preclude any claim or legal remedy which ECU may have against COACH that is the result of any other action, inaction or malfeasance

of COACH, including any breach of this Agreement not related to COACH's early termination.

11. Termination By Ecu Without Cause:

- (a) This Agreement may be terminated by ECU at any time without cause.
- (b) In the event ECU exercises its right to terminate COACH's employment or this Agreement without cause, ECU's sole financial obligation shall be limited to paying COACH the remaining and unpaid amount of Annual Salary that would have been due and payable to her under Article 3 of this Agreement had COACH remained employed by ECU for the remaining term of the Agreement and, if applicable, any bonuses earned as of the effective date of termination. In the event ECU exercises its right to terminate COACH's employment or the Agreement without cause, ECU shall not be obligated to pay COACH any other compensation described in the Agreement or be responsible for consequential damages, including but not limited to any loss of business opportunities or loss of other income, benefits, or perquisites from any sources, that might occur as a result of such termination. Payment of the total amount determined shall occur over the remaining term of the Agreement as follows: 1) Within thirty (30) days of the effective date of termination without cause, payment shall be made of amounts due with respect to the remainder of that contract year, and 2) payments due hereunder with respect to each subsequent year shall be made in equal semi-monthly installments during such subsequent contract year, until all amounts due under this Article 13 have been paid in full. As a precondition for COACH's receipt of the amounts payable under this Section 13(b), ECU may, in its sole discretion, require COACH to execute a release in favor of ECU, and any affiliated entities, releasing them and their agents, trustees, directors, officers, representatives and employees from any and all federal or state law claims that COACH may have against them at the time of the release, including, but not limited to, claims resulting from the breach or termination of this Agreement or the severance of COACH's relationship with ECU.
- (c) COACH acknowledges her obligation to minimize the payments due to her under section 13(b) and agrees to make every reasonable effort to obtain other employment as long as ECU has the obligation to make payments under section 13(b). If the COACH obtains new employment, ECU's financial obligations under section 13(b) shall be reduced by the total compensation that is expected to be received by COACH in her new position, including employee benefits, whether in cash, deferred payments, or in kind if COACH were to fully perform under COACH's new employment relationship. COACH shall immediately, upon acceptance of other employment, notify the Chancellor in writing of such employment and the total compensation to be paid to COACH for the employment. In addition, COACH agrees to provide ECU with a copy of her W-2 form for each calendar year as long as ECU has the obligation to make payments under Section 13(b). Any diminution of compensation in COACH's new position or COACH ceasing to be employed in her new position shall have no effect on the reduced financial obligations of ECU.
- (d) If COACH's total expected compensation in the new position exceeds that which COACH would have been paid at ECU as set forth in Article 3, then ECU's financial obligations

under section 13(b) shall terminate and ECU shall have no additional or future financial obligations to COACH.

- (e) In the event that ECU provides written notice to COACH of documented evidence that, during COACH's term of employment would have been grounds for termination by ECU with cause pursuant to the Policy or this Agreement, ECU's financial obligations under 13(b) shall terminate upon thirty (30) days of such written notice.
- (f) COACH acknowledges and agrees that ECU's sole financial obligation in the event that COACH is terminated without cause is governed by section 13(b) of this Agreement, and any prior agreements or promises in regard to ECU's payments to COACH due to termination without cause, if any, are null and void.

12. Coach Representation and Warranties; Termination By ECU For Cause

- (a) COACH represents and warrants that she has disclosed to ECU: (a) any known previous material breach or alleged material breach by COACH of her duties or her employment agreement or other agreement at any other NCAA member institution; (b) any known material violation or alleged violation of any law or rule applicable to intercollegiate athletics by COACH or any person under her direct or indirect supervision; (c) any known major violation or alleged violation by any athletic program under the direction of COACH, including, but not limited to, a member of the coaching staff, a player, or any other person affiliated with the intercollegiate athletics program who reported directly or indirectly to COACH, of rules or regulations of the NCAA or any other association, conference or like organization associated with another NCAA member institution, any violation of state or federal laws, rules or regulations, or any rules or policies of another NCAA member institution; (d) other known material misconduct or alleged misconduct, including without limitation fraud, dishonesty, acts of violence, or other conduct that is contrary to the mission of another NCAA member institution or an educational institution; and (e) all convictions and guilty pleas of COACH, including an Alford Plea, to (i) a felony or (ii) a criminal offense which constitutes fraud, dishonesty or moral turpitude, the underlying offense or activity, but not the conviction or guilty plea, having occurred prior to the date of COACH's signature below. COACH understands and agrees that this representation and warranty is a material inducement for ECU to enter into this Agreement, and that ECU has relied upon this representation and warranty in entering into this Agreement with COACH. For the purpose of clarity, the term "alleged" as used in this Section 12(a) means a claim or assertion of which COACH is aware.
- (b) This Agreement may be terminated by ECU for cause. "Cause" shall include, but not be limited to, the following:
 - i. Failure to satisfactorily carry out the duties of COACH as defined in Article 2 of this Agreement [DUTIES] and, where applicable, failure to cure same within thirty (30) calendar days of receiving written notice of such failure from ECU, or within such additional timeframe as reasonably necessary and as approved by the Director of Athletics;

- ii. A major or willful violation or multiple minor or secondary violations by COACH, or knowing participation by COACH in a violation by an assistant/associate COACH or coach or other staff member of which COACH had reason to know, or should have known through the exercise of reasonable diligence or which COACH condoned of an NCAA regulation or bylaw or a Conference regulation or bylaw, whether while employed by ECU or during prior employment at another NCAA member institution;
- iii. Any act or omission that constitutes a violation by COACH of any policy or regulation of ECU or of the Board of Governors of the University of North Carolina, of the constitution, or any bylaw, rule or regulation of the NCAA, AAC, or any other association, conference or like organization with which ECU is or may become affiliated, to the extent such violation is deemed in the sole discretion of ECU to be grounds for termination of the Agreement for cause. ECU will deem a violation to be grounds for termination under this Section 14(b)(iii), if it is serious or intentional or negligently committed, including with regard to NCAA provisions any major or serious violation (e.g., repeated violations or any violation that the University determines could reasonably be expected to result in sanctions such as probation, forfeiture of athletic contests, loss of one or more scholarships, prohibitions against conference or championship or telecast appearances, restrictions on a coach's right to recruit, etc.).
- iv. Failure of COACH to appropriately monitor and report any compliance or NCAA eligibility issues of which COACH is aware, or with the appropriate and reasonable monitoring of ECU's Basketball Program, COACH should have been aware;
- v. Failure of the COACH to appropriately monitor, manage, and report to the Director of Athletics, the Chancellor and other appropriate ECU personnel, any issues or conditions within the COACH's purview that adversely affect the safety and welfare of student athletes, including, but not limited to, failing to ensure that coaching staff of the Basketball Program are directed to comply with, and are complying with, best practices with regard to the management of suspected concussions, heat stroke, and other serious medical conditions known to affect student athletes.
- vi. Conviction of, or a guilty plea, including an Alford Plea, to (i) a felony or (ii) a criminal offense which constitutes fraud, dishonesty or moral turpitude;
- vii. Misconduct of the COACH, or misconduct of any assistant or associate coach or of a coach or of his/her staff of which the COACH knew, had reason to know, or should have known through the exercise of reasonable diligence or knowledge or which COACH condoned, of such a nature, as reasonably determined in the discretion of ECU, that would tend to bring disrespect, contempt or ridicule upon ECU, or which brings discredit to ECU, or which harms ECU's reputation, or which reasonably brings into question the integrity

of the COACH or that, as determined in the sole discretion of the Chancellor, would render COACH unfit to serve in the position of Head Women's Basketball Coach;

- viii. Failure by COACH to use best efforts to ensure that academically qualified student athletes are recruited and that student athletes are making adequate progress in a defined degree program;
- ix. Refusal of COACH to carry out reasonable directives from the Director of Athletics and/or the Chancellor;
- x. Seeking, interviewing for or negotiating terms for, whether directly or through any agent or representative (acting with or without COACH's knowledge), employment with another sports-related business or program without the express approval of the Director of Athletics or the Chancellor, which approval shall not be unreasonably withheld;
- xi. A breach of any representation and/or warranty made by COACH in Section 12(a) or any other act, whether occurring prior to or during the Term, which brings serious discredit to the Basketball Program or would be likely to cause prospective student-athletes to elect not to attend ECU; or
- xii. Any of those causes specified in the Employment Policies for EHRA employees of the University of North Carolina or ECU, as adopted and revised from time to time.

(c) In the event of a termination under this section, ECU's sole obligation to COACH shall be to pay COACH that portion of the Annual Salary as set forth in Article 3 earned, accrued and owing to COACH as of the date of such termination, but not beyond that date, and any supplemental compensation earned under Appendix A on a pro-rata basis up to the date of termination. In the event ECU exercises its right to terminate the Agreement with cause, ECU shall not be obligated to pay COACH any other compensation or benefits described in the Agreement, including but not limited to any loss of business opportunities or loss of other compensation, income, benefits, or perquisites from any sources, that might occur as a result of such termination.

(d) Any process to terminate COACH for cause shall be conducted in compliance with the Policy and all other applicable policies and regulations.

13. Compensation Conditional: The payment of all forms of compensation set forth in this Agreement is subject to the approval of the annual operating budget by ECU and The University of North Carolina Board of Governors, and the sufficiency of appropriations or the availability of sufficient funds within the Athletic Department's budget to pay such compensation.

14. Public record: The parties agree that, upon execution, this MOU is a Public Record subject to disclosure pursuant to North Carolina's Public Records Law.

15. Immunity Not Waived: It is expressly agreed and understood between the parties that ECU is an agency of the State of North Carolina and that nothing contained herein shall be construed to constitute a waiver or relinquishment by ECU of its right to claim such exemptions, privileges, and immunities as may be provided by law.
16. Interpretation and Applicable Law: This Agreement is made under and shall be interpreted according to the laws of the State of North Carolina and venue for any action relating to or arising from this Agreement shall be a court of competent jurisdiction located in North Carolina. Any rule to the effect that an agreement shall be construed against the party drafting shall have no application to this Agreement.
17. Acknowledgment of Terms: By signing below, COACH is agreeing to the terms outlined in this document, which is effective only upon execution of the Chancellor and approval of the ECU Board of Trustees. COACH also agrees and understands that these terms will be incorporated into the UNIVERSITY'S Head Women's Basketball Coach Employment Agreement that the parties will promptly negotiate in good faith and intend to execute as soon as practicable. Once fully executed and effective this MOU will continue in effect as the employment agreement for COACH with ECU until this MOU is terminated by the earlier of the following:
- (a) This MOU is terminated or amended at any time upon mutual written Agreement of all parties; or
 - (b) COACH's employment with ECU is terminated.

We are providing four (4) duplicate originals of this MOU for your signature, one of which will be returned to you when fully executed.

We look forward to a long and fruitful relationship.

Sincerely,

Cecil P. Staton
Chancellor

Date

Accepted by:

Kim McNeill

Date

APPROVED BY THE BOARD OF TRUSTEES OF EAST CAROLINA UNIVERSITY ON THE 29th DAY OF MARCH, 2019.

Kieran Shanahan
Chair

Date

Attest:

Assistant Secretary

Date

APPENDIX A

BENEFITS AND OTHER NON-SALARY COMPENSATION

- A. STATE BENEFITS As an EHRA Non-Faculty Employee, COACH shall be entitled to receive any and all employee-related benefits that are normally available to other twelve-month EHRA Non-Faculty Employees, unless and except as may be expressly stated herein. As an EHRA Non-Faculty Employee, COACH is currently entitled to twenty-four (24) annual leave days per year. COACH acknowledges and agrees that benefits or classifications provided by ECU are subject to change from time to time by the North Carolina General Assembly, the University of North Carolina, or ECU.
- B. MOVING EXPENSES UNIVERSITY shall reimburse COACH for documented personal moving expenses of up to \$15,000 reasonably incurred by COACH within twelve months of the effective date of this Agreement, in accordance with standard procedures and applicable policies of the UNIVERSITY.
- C. HOUSING AND HOUSING ALLOWANCE UNIVERSITY shall make temporary housing available for COACH for a period of up to 60 days from the effective date of this Agreement. At UNIVERSITY's election, and with reasonable notice to COACH, UNIVERSITY may, in its sole discretion, choose to pay COACH a housing allowance not to exceed \$2,000 per month instead of making housing directly available to her.
- D. AUTOMOBILE ECU shall make arrangements for and provide one (1) courtesy or leased vehicle for the COACH to use, contingent upon and while performing her duties under this Agreement. ECU shall be responsible for maintaining collision and comprehensive liability insurance on the vehicle. Alternatively, ECU may provide an annual automobile allowance in the amount of \$9,071, which amount may be adjusted annually consistent with UNIVERSITY policy. COACH shall be responsible for providing maintenance on any vehicle.
- E. CELL PHONE ECU shall pay COACH a cell phone allowance in an amount of \$130/month for a total of \$1560 per twelve (12) months.
- F. INCENTIVE BONUSES For so long as COACH is employed as Head Women's Basketball Coach, COACH shall be eligible for additional incentive bonuses, in the amounts and under the conditions as follows, subject to such other contingencies as may be stated in this Agreement:
- i. POST-SEASON PLAY For Team achievement payments under one of the following scenarios each year:
 - (i) If the Women's Basketball Team is seeded third or higher in the American Athletic Conference or Conference (post-regular season) championship tournament, COACH will be paid \$10,000;
 - (ii) If the Women's Basketball Team wins the American Athletic Conference or Conference championship tournament, COACH will be paid \$10,000;
 - (iii) If the Women's Basketball Team is the American Athletic Conference or Conference Regular Season Champion, COACH will be paid \$15,000;

- (iv) If the Women's Basketball Team plays in the NCAA Women's Division I Basketball Championship Tournament, COACH will be paid \$25,000;
- (v) If the Women's Basketball Team plays in the regional semifinals game of the NCAA Women's Division I Basketball Championship Tournament (i.e., reaches the "Sweet Sixteen"), COACH will be paid \$25,000;
- (vi) If the Women's Basketball Team plays in the national semifinals game of the NCAA Women's Division I Basketball Championship Tournament (i.e., reaches the "Final Four"), COACH will be paid \$50,000;
- (vii) If the Women's Basketball Team wins the (final) national championship game of the NCAA Women's Division I Basketball Championship Tournament, COACH will be paid \$25,000;
- (viii) If the Women's Basketball Team advances to the Women's National Invitation Tournament ("WNIT"), COACH will be paid \$5,000; and
- (ix) If the Women's Basketball Team wins the WNIT, COACH will be paid \$10,000.

Payment of any bonus to COACH under this Part F(i) shall be made within thirty (30) days following the final tournament game in which the Women's Basketball Team plays that relates to said bonus. Eligibility for bonuses is cumulative (e.g., COACH may earn a total of up to \$125,000.00 if the Basketball Team wins the NCAA Women's Division I Basketball Championship Tournament (i.e., Coach achieves the milestones stated in Sections F(iv-vii)). Eligibility of COACH for bonuses in connection with each of the games listed in this Part (F)(i) is contingent upon COACH's actual participation, as Head Women's Basketball Coach, coaching ECU's Team for and during its participation in the particular game identified (i.e., COACH is ineligible while reassigned, suspended or on leave). ECU has sole discretion to determine whether to seek and whether to accept an invitation for the Team to participate in any Tournament relevant to this Part I and failure to seek or to accept an invitation shall not be a breach of this Agreement.

ii. Team Performance

- (i) Top 25. If the Team is ranked by the Associated Press or USA Today or Women's Basketball Coaches Association (WBCA) immediately following the NCAA Tournament Championship Game as one of the top 25 teams in the nation, \$5,000.00.
- (ii) Twenty or more wins. In any regular basketball season in which the Team has twenty (20) or more wins, COACH shall be paid as a bonus \$5,000.

iii. Academic Award. If the Women's Basketball Team earns the American Athletic Conference or Conference academic award as determined by the American Athletic Conference or Conference (given to the team in each conference-

sponsored sport with the highest GPA for the academic year) then, to the extent permitted by law, COACH will be paid a bonus of \$10,000.

- iv. NATIONAL OR WBCA OR NAISMITH or USBW COACH OF THE YEAR If COACH is named "national coach of the year" in NCAA Division I Basketball by one or more of the nationally recognized organizations designated in writing by UNIVERSITY, such as Sporting News and Associated Press, or the Women's Basketball Coaches Association (the "WBCA"), or the Naismith or United States Basketball Writers (USBW), one payment of \$10,000, regardless of the number of national awards.
- v. AAC COACH OR WBCA REGIONAL COACH OF THE YEAR If COACH is named as "Women's Basketball coach of the year" in the American Athletic Conference ("AAC") or Conference as tallied by the AAC or Conference, or as the WBCA's Regional Basketball Coach of the Year, one payment of \$5,000.
- vi. ACADEMIC PERFORMANCE For annual Team academic performance, calculated according to NCAA requirements, as reported in the Spring 2020 semester and each year thereafter while COACH is employed as Head Women's Basketball Coach, as follows:
 - (A) With regard to single-year Academic Progress Rate ("APR") for the Team, an APR equal to 985 or greater, \$2,000; or, for an APR of 950 or more up to 974, \$1,000; and
 - (B) For a Team single-year Graduation Success Rate ("GSR") greater than 80%, \$1,000.
 - (C) Any amount earned will be paid within sixty (60) days of when the APR and GSR is reported publicly. In order to receive payment under this Part F(vi), the COACH must be employed by and performing substantial services for ECU on the date the APR or GSR or Academic Award is reported publicly.
- vii. COACH agrees that in addition to the salary provided under this Agreement, some benefits and non-salary compensation she receives incident to her employment relationship with ECU may give rise to taxable income. COACH agrees to be responsible for the payment of any taxes (including federal, state and local taxes) due on such income. COACH also acknowledges that ECU shall withhold tax, including FICA withholding, on amounts paid or due to COACH and the value of benefits of other non-salary compensation provided to COACH, to the extent ECU determines it is required by applicable law and regulation.

- G. The parties understand and agree that the right to any bonus, supplemental pay, or non-salary compensation (for purposes of this Part G, the "Bonus") described in this Appendix A vests when any such Bonus is earned, not when any such Bonus is paid. In no event shall the payment of any Bonus be considered part of Annual Salary. In the event that any future or amended state or federal law, rule or regulation, or NCAA or Conference rule or regulation should a) prohibit the payment of any Bonus; b) render any Bonus illegal or ineffectual; or c) subject ECU to a penalty or assessment or violation of law if such Bonus were to be paid, ECU will, to the extent possible,

revise such bonus or substitute an alternative incentive payment that would allow for a similar economic benefit to be provided to the COACH while preserving for ECU as much of the bargained for institutional benefit as reasonably possible.

- H. BROADCAST PROGRAM PAYMENT ECU and COACH will produce and market television, radio and Internet programs during the entire competitive intercollegiate women's basketball season, including "regular season" games, any conference championship game and any "post-season" game(s). For the work of COACH in connection with the Broadcast Programs and all other public appearances and events, UNIVERSITY will pay COACH as follows:

<u>AGREEMENT YEAR</u>	<u>PAYMENT</u>
<u>I.</u> April 1, 2019-March 31, 2020	\$135,000
<u>II.</u> April 1, 2020-March 31, 2021	\$135,000
<u>III.</u> April 1, 2021-March 31, 2022	\$135,000
<u>IV.</u> April 1, 2022-March 31, 2023	\$135,000
<u>V.</u> April 1, 2023-March 31, 2024	\$135,000

UNIVERSITY's obligation under this Part H (Broadcast Program Payment) shall be paid in semi-monthly payments to COACH. The COACH shall have no ownership interest in the Broadcast Programs or any part thereof, including but not limited to copyright. ECU will be responsible for payment of expenses incurred in marketing and producing the Broadcast Programs and COACH and ECU will mutually define the role of the COACH in the Broadcast Programs. All rights, title and interests in the Broadcast Programs, whether in whole or any part thereof, and all copies thereof, and all copyrights shall be and remain the sole property of ECU, which may use, assign, convey and otherwise use and dispose of the Broadcast Programs, and any parts thereof, as ECU determines appropriate in its sole discretion and without further consent or participation of the COACH, including, but not limited to, revising, editing, reproducing, broadcasting and transmitting as often and whenever ECU desires. COACH shall be entitled to no consideration for her participation in or contribution to any aspect of production, broadcast, rebroadcast, or reproduction of the Broadcast Programs, in whole or part, other than the amount of consideration provided under this Part H. Notwithstanding the foregoing provisions of this Part H, ECU may, in its sole discretion, reduce the frequency of or eliminate entirely production and/or marketing of any or all of the Broadcast Programs at any time and, in such event, ECU's sole obligation to the COACH shall be to pay COACH, while she remains employed as Head Women's Basketball Coach and performing the duties thereof, the compensation that COACH would have earned under this Part H had production and marketing continued and had the COACH participated cooperatively with ECU in said production and marketing. ECU's obligation to pay COACH any compensation under this Part H shall terminate immediately in the event that COACH is no longer employed by ECU as and with the duties of Head Football Coach.

- I. LONGEVITY BONUS If COACH has been employed by ECU in the position of Head Women's Basketball Coach and with all duties of that position continuously until March 31 of the following Agreement year she will receive the following payment:

	<u>DATE</u>	<u>BONUS</u>
I.	March 31, 2024	\$50,000

Any amount earned will be paid within sixty (60) days of the date specified above.

J. The payment of the bonuses and other compensation described in this Appendix A (for the purpose of this Section I only, individually, the "Bonus" and, collectively, the "Bonuses") is subject to the availability of non-State appropriated funds in the Department's budget and contingent upon a satisfactory performance review of the COACH by the Athletic Director. A Bonus is deemed "earned":

- (i) on the date that the milestone tied to the applicable Bonus has been fully completed and/or achieved; or
- (ii) where the milestone for a Bonus is based on performance over an entire season, on the date of the last day of the regular season for the Basketball Program; and
- (iii) provided further, on the date specified in (i) or (ii), where:
 - (a) the Women's Basketball Program is in compliance with all NCAA, Conference, and UNC and ECU policies, regulations, bylaws, and constitutional provisions;
 - (b) the COACH is actively employed as Head Women's Basketball Coach at ECU; and
 - (c) there are no pending or active NCAA or Conference or ECU investigations of violations relating to the Basketball Program.

No bonus will be deemed earned where a condition specified in this Section I is not satisfied.

K. SIGNING BONUS COACH shall be entitled to a one-time bonus upon execution of the Head Women's Basketball Coach Employment Agreement in accordance with the following milestone:

- I. \$2500 if the Head Women's Basketball Coach Employment Agreement is fully executed by the Parties on or before April 30, 2019.