



SUN BELT CONFERENCE ATHLETIC AGREEMENT



THIS AGREEMENT ("Agreement") is made and entered into as of the 29th day of February, 2016 by and between the athletic authorities representing Gardner-Webb University (the "Visiting Team") and the athletic authorities representing Appalachian State University (the "Home Team") (each a "Party" and collectively the "Parties"). The Parties agree as follows:

FIRST: The football teams representing the above named institutions shall compete:

At Appalachian State University (Boone, N.C.) on – September 22, 2018 Time- TBA (the "Event")

SECOND: The financial considerations shall be as specified:

The Home Team shall pay Visiting Team the sum of Two Hundred Eighty Thousand Dollars (\$280,000.00). Payment shall be made on or before February 15, 2019. The Home Team shall also provide the Visiting Team with three (3) buses to transport the visiting team from Boiling Springs, N.C. to Boone, N.C. for the game.

THIRD: In the event either Party fails to produce its team and compete in the Event on the date and at the place agreed, it shall pay to the other Party not at fault the sum of Two Hundred Eighty Thousand Dollars (\$280,000) as liquidated damages within thirty (30) calendar days following receipt of an invoice therefor. The Parties agree that the amount to be paid hereunder as liquidated damages is intended as compensation for damages that would be suffered upon breach of this Agreement and is not intended as a penalty.

FOURTH: The officials for the Event shall be selected by the applicable conference of the Home Team and expenses of the officials shall be paid by the Home Team.

FIFTH: All players representing either Party in the Event shall be eligible under the rules and regulations of National Collegiate Athletic Association (NCAA) Division I and the Parties' applicable conferences. If the Visiting Team is classified as Football Championship Subdivision (FCS), the Visiting Team must satisfy NCAA Bylaw 20.9.9.2.1 — average 90 percent of the permissible number of grants-in-aid per year in football over a rolling two-year period. The Visiting Team must certify its intention to maintain the scholarship requirement in writing to the Home Team upon the signing of this Agreement. The Visiting Team shall further certify in writing as of November 22, 2017 (10 months prior to the Event) that it intends to maintain compliance with the applicable NCAA Bylaw effective during the academic year in which the Event is scheduled. The Visiting Team's failure to meet the standard specified in NCAA Bylaw 20.9.9.2.1, as it exists now or may be amended from time to time, shall entitle the Home Team to cancel this Agreement and recover liquidated damages as provided in paragraph THIRD of this Agreement.

SIXTH: The Home Team owns all radio rights to the Event; however the Home Team hereby grants to the Visiting Team a non-exclusive right to produce (or to have its officially designated station or affiliated radio network produce) a radio broadcast of the Event and distribute it via terrestrial broadcast, the Internet, and/or satellite radio, and to retain any revenue from that broadcast. The applicable conference of the Home Team owns all television rights to the Event.

SEVENTH: The Visiting Team shall be allowed Three Hundred (300) complimentary tickets and Two Hundred (200) consigned tickets for sale to its fans at the price(s) established by the Home Team. Unsold consigned tickets may be returned to the Home Team up to ten (10) days prior to Event date. The Visiting Team is responsible for paying the printed face value to the Home Team for any consigned tickets not returned to the Home Team by 5:00 p.m. on the date ten (10) days prior to the Event date. Cheerleaders and up to 150 band members shall be admitted free of charge. The Visiting Team shall notify the Home Team by July 15, 2018 of the number of band members that it wishes to be admitted (not to exceed 150). Seating for band members that exceeds 150 shall be provided from the Visiting Team's allotment of complimentary tickets.

EIGHTH: This Agreement may be voided by either Party upon written notice to the other if either is reclassified to a different NCAA membership division after this Agreement has been executed.

NINTH: Any delay in or failure of performance by either Party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such Party ("event of force majeure"), including, but not limited to, acts of God, power outages, governmental restrictions and civil unrest. If any event of force majeure occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event. Notwithstanding the foregoing, either Party may terminate this Agreement in the event that a delay due to an event of force majeure continues for a period of sixty (60) or more uninterrupted days.

TENTH: Any notices or other communications between the Parties as contemplated by this Agreement shall be in writing and shall be effective upon receipt. In the case of a notice delivered by (a) pre-paid personal delivery; (b) pre-paid messenger, pre-paid express or air courier or similar courier, or (c) United States first class certified or registered mail, postage pre-paid, return receipt requested, addressed to either Party as provided below, the notice shall be deemed received on the delivery date indicated by the United States Postal Service or courier service on the return receipt or on the date such delivery is refused or marked "undeliverable," or if the Party is served personally, on the date of personal delivery. In the case of a notice delivered by facsimile or e-mail, the notice shall be deemed received on the date such facsimile or e-mail is sent, provided that a copy of such notice is sent the same day or the following business day by any of the methods in clauses (a), (b) and (c) of the preceding sentence. Notices shall be delivered to the addresses set out respectively as follows, or at such other addresses as are specified by written notice delivered in accordance herewith:

If to Gardner-Webb University:

Gardner-Webb Athletics
PO Box 877
Boiling Springs, NC 28017

Or personal service to: _____
Or e-mail to: cburch@gardner-webb.edu
Or facsimile to: 704-406-4739

If to Appalachian State University:

App State Athletics
425 Jack Branch Drive
Boone, NC 28608
Attn: BOUG GILLIN/DIRECTOR OF ATHLETICS
Or personal service to: _____
Or e-mail to: sgillind@appstate.edu
Or facsimile to: 828-262-2556

With a copy to:

General Counsel
Appalachian State University
PO Box 32126
Boone, NC 28608-2126
Or facsimile to: 828.262.8056

ELEVENTH: This agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile or scanned signatures.

TWELFTH: This agreement contains the entire contract between the Parties hereto and each Party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this contract not specifically set forth herein.

THIRTEENTH: Neither Party to this agreement shall assign this agreement as a whole, or in part, without the written consent of the other.

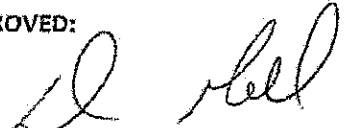
FOURTEENTH: In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

FIFTEENTH: Each Party acknowledges and agrees that it will provide to the North Carolina State Auditor and the Auditor's authorized representatives ready access to, and allow examination and copying of, its records, papers, reports, vouchers, correspondence, books, and any other documentation related to this Agreement in accordance with North Carolina General Statutes § 147-64.7.

SIXTEENTH: Pursuant to North Carolina General Statutes § 143C-6-8, as applicable, all obligations of Appalachian State University under this Agreement are subject to the availability, appropriation, or grant of State, Federal, or other funds to pay amounts due, or to otherwise perform under this Agreement.

APPROVED:

APPROVED:



Director of Athletics



Director of Athletics

Appalachian State University
Institution

Gardner-Webb University
Institution

Date:

3-24-16

Date: March 4, 2016

Scheduling: NMF

Please sign two originals and return one to: App State Athletics, 425 Jack Branch Drive, Boone, NC 28608 Attn: