



SUN BELT CONFERENCE ATHLETIC AGREEMENT



THIS AGREEMENT ("Agreement") is made and entered into as of the 17th day of November 2016 by and between the athletic authorities representing East Carolina 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 in the following football games (the "Events"):

1. At Bank of America Stadium in Charlotte, North Carolina on September 4, 2021 (Appalachian State University Home Game) – Time: TBA
2. At East Carolina University on September 14, 2024 – Time: TBA
3. At Appalachian State University on September 6, 2025 – Time: TBA
4. At East Carolina University on September 5, 2026 – Time: TBA

SECOND: The financial considerations shall be as specified:

For the September 4, 2021 Event:

- The Visiting Team shall add the game to its season-ticket package for season 2021-2022 and shall retain the first One Hundred Thousand Dollars (\$100,000) raised in revenue on the sale of those tickets. After the first One Hundred Thousand Dollars (\$100,000), the Visiting Team shall pay the Home Team fifty percent (50%) of the revenue raised.
- The Visiting Team shall pay to the Home Team seventy-five percent (75%) of all single-game ticket sales sold through its ticketing office.
- The Visiting Team shall be allowed Four Hundred (400) complimentary tickets.
- The Home Team shall be responsible for all game operating expenses.
- The Home Team and Visiting Team shall mutually agree on the ticket pricing structure for this Event only.

For all other Events:

- The Home Team shall pay Visiting Team the sum of Two Hundred Thousand Dollars (\$200,000.00). Payment shall be made on or before February 15 of the following year after the Event.

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 Five Hundred Thousand Dollars (\$500,000.00) 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 either Team is classified as Football Championship Subdivision (FCS), the 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 FCS Team must certify its intention to maintain the scholarship requirement in writing upon the signing of this Agreement and further certify in writing as of 10 months prior to the Event date that it intends to maintain compliance with the applicable NCAA Bylaw effective during the academic year in which the Event is scheduled. Either 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 non-violating 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: For the September 4, 2021 Event the tickets shall be sold and revenue remitted pursuant to the section **SECOND** above. For all other Events, the Visiting Team shall be allowed Four Hundred (400) complimentary tickets and Two Thousand (2,000) 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 not less than 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, unless an alternate return date is mutually agreed upon by both institutions.

EIGHTH: Cheerleaders and up to 300 band members shall be admitted free of charge. The Visiting Team shall notify the Home Team by the July 15 immediately preceding the Event of the number of band members that it wishes to be admitted (not to exceed 300). Seating for band members that exceeds 300 shall be provided from the Visiting Team's allotment of complimentary tickets.

NINTH: 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.

TENTH: 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.

ELEVENTH: 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 in the event of personal delivery, on the date of such 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 East Carolina University:

365 Ward Sports Medicine Building

Greenville, NC 27858

ATTN: Jeff Compher

Or personal service to: Jeff Compher

Or e-mail to: CompherJ@ecu.edu

Or facsimile to: 252-737-4537

If to Appalachian State University:

App State Athletics
425 Jack Branch Drive
Boone, NC 28608
Attn: Doug Gillin, Director of Athletics
Or personal service to: 425 Jack Branch Drive, Boone, NC 28608
Or e-mail to: gillindp@appstate.edu
Or facsimile to: 828-262-6676

TWELFTH: 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. A facsimile or emailed copy of the fully executed Agreement shall constitute an original.

THIRTEENTH: This Agreement contains the entire agreement 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.

FOURTEENTH: Neither Party to this Agreement shall assign this Agreement as a whole, or in part, without the written consent of an authorized representative of the other Party.

FIFTEENTH: 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.

SIXTEENTH: 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.

SEVENTEENTH: This Agreement and any and all payments made under this Agreement are subject to the availability of state funds of North Carolina pursuant to NCGS § 143C-6-8.

APPROVED:



Director of Athletics

Appalachian State University
Institution

Date:

12-16-16

APPROVED:



Director of Athletics

East Carolina University
Institution

Date:

12/12/16

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

**First Amendment to the
Sunbelt Conference Athletic Agreement**

This First Amendment to the Sunbelt Conference Athletic Agreement between the Department of Athletics, East Carolina University and Appalachian State University (referred to individually as a "Party" and collectively as the "Parties") dated November 17, 2016 (the "Agreement") is effective this 4th day of January, 2018. Capitalized terms in this First Amendment shall have the same meaning and definitions as in the Agreement.

WHEREAS, the Parties entered into a Sunbelt Conference Athletics Agreement on November 17, 2016 to play multiple football games in the years 2021, 2024, 2025 and 2026;

WHEREAS, the Parties desire to amend the Agreement to alter the dates and locations of those football games as stated in this First Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, contained herein, the Parties agree as follows:

1. Modify the paragraph "First" to read as follows:

FIRST: The football teams representing the above named institutions shall compete in the following football games (the "Events"):

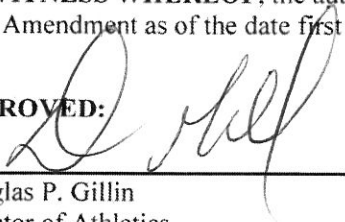
1. At Bank of America Stadium in Charlotte, North Carolina on September 4, 2021
(Appalachian State University Home Game) – Time: TBA
2. At Appalachian State University on September 16, 2023 – Time: TBA
3. At East Carolina University on September 14, 2024 – Time: TBA
4. At East Carolina University on September 5, 2026 – Time: TBA

2. All other terms and conditions of the Agreement shall continue in full force without change.

This First Amendment and any documents incorporated specifically by reference herein, including the Agreement, represent the entire agreement between the Parties and supersede any other written statements or agreements.

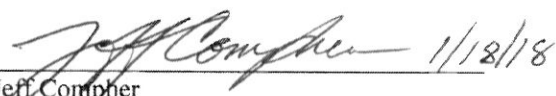
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this First Amendment as of the date first written above.

APPROVED:



Douglas P. Gillin
Director of Athletics

Appalachian State University
Institution

 1/18/18

Jeff Compher
Director of Athletics

East Carolina University
Institution