

SEPARATION & RELEASE AGREEMENT

This Separation & Release Agreement (“Agreement”) is made and entered into by and between Indiana State University, an Indiana institution of higher education authorized under the laws of the State of Indiana (“ISU”) and Sherard Clinkscales (“Mr. Clinkscales”), referred to collectively as “the Parties” and/or “Party.”

RECITALS

WHEREAS, Mr. Clinkscales is employed as the Director of Intercollegiate Athletics of ISU;

WHEREAS, the terms of the Parties’ employment relationship is set forth in that certain Employment Contract for Director of Intercollegiate Athletics of Indiana State University with an effective date of May 1, 2016 (“Initial Employment Contract”), as amended by an Amendment to Employment Contract for Director of Intercollegiate Athletics with an effective date of November 30, 2017 (“First Amendment”), and a Second Amendment to Employment Contract for Director of Intercollegiate Athletics with an effective date of September 13, 2022 (“Second Amendment”). The foregoing contracts are collectively referenced herein as “the Employment Contract”;

WHEREAS, Mr. Clinkscales and ISU have mutually agreed that Mr. Clinkscales will resign from his position as Director of Intercollegiate Athletics effective December 31, 2023 and have further agreed that the Employment Contract will also terminate as of that same date;

WHEREAS, under the terms of the Employment Contract, Mr. Clinkscales is entitled to certain benefits, including severance pay;

WHEREAS, the Parties wish to resolve all issues arising out of their employment relationship and provide for an amicable and smooth transition of Mr. Clinkscales’ employment;

WHEREAS, the Parties enter into this Agreement to memorialize the terms they negotiated relating to Mr. Clinkscales’ separation from ISU; and

WHEREAS, the Parties and their attorneys jointly drafted this Separation & Release Agreement.

AGREEMENT

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

1. RESIGNATION & TERMINATION OF EMPLOYMENT CONTRACT. By mutual agreement of the Parties, Mr. Clinkscales is resigning from his position as Director of Intercollegiate Athletics effective December 31, 2023 (“Separation Date”). The Employment Contract will also terminate by mutual agreement effective as of the Separation Date. All right of access to facilities, equipment, and all other privileges of employment conclude upon the Separation Date. Mr. Clinkscales shall continue to receive the applicable compensation and benefits set forth in the Employment Contract through the Separation Date.

2. **SEPARATION BENEFITS.** As additional consideration to support this Agreement, ISU agrees to provide Mr. Clinkscales the following compensation and benefits:

- a. **Severance Pay.** ISU agrees to pay Mr. Clinkscales severance pay in the gross amount of \$165,979, less applicable taxes and withholdings (“Severance Pay”). The Severance Pay compensates Mr. Clinkscales for 50% of his base salary for the remaining 18 months of the Employment Contract and is inclusive of the severance payments originally anticipated by the Parties in the Initial Employment Contract. Severance Pay shall be paid in a lump sum on the next payroll date following the Effective Date of this Agreement (as defined in Paragraph 5(c) below).
- b. **Other Benefits.** Mr. Clinkscales’ health insurance benefits under ISU’s plans will end on January 31, 2024, but he will have the opportunity to continue such coverage, to the extent provided under the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”). Additional information relating to COBRA rights will be provided separately. More economical health insurance coverage options may be available through sources other than COBRA. Separately, Mr. Clinkscales’ other benefits under the Employment Contract would otherwise end upon the final date of his employment at ISU. For these reasons, ISU will provide Mr. Clinkscales a lump sum payment in the gross amount of \$25,000, less applicable taxes and withholdings, to cover health insurance and other employment-related benefits he would have received under the Employment Contract. Such payment shall be paid concurrent with the Severance Pay, as specified in Paragraph 2(a) above.
- c. **Bonus Payment.** Pursuant to the terms of the Employment Contract, Mr. Clinkscales had the opportunity to receive certain bonuses. ISU agrees to pay Mr. Clinkscales the gross amount of \$10,000, less applicable taxes and withholdings, in recognition of realized and potential bonuses owing under the Employment Contract. Such bonus payment shall be paid concurrent with the Severance Pay, as specified in Paragraph 2(a) above.

3. **COMPLIANCE WITH SECTION 409A.** This Agreement is intended to comply with the requirements of IRC Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”) and its related regulations (“Section 409A”). Accordingly and notwithstanding anything to the contrary contained in this Agreement, any distribution under this Agreement shall be made in accordance with the requirements of Section 409A, and all interpretations of this Agreement will be made so as to insure such qualification under Section 409A. For purposes of this Agreement, the words “termination,” “cessation,” “separation,” “resignation,” from employment and similar phrases, mean a “separation from service” as defined in Treasury Regulation Section 1.409A-1(h). Notwithstanding any provision of this Agreement to the contrary, if, at the time of Mr. Clinkscales’ termination of employment with ISU, he is a “specified employee” as defined in

Section 409A, and one or more of the payments or benefits received or to be received by Mr. Clinkscales pursuant to this Agreement would become subject to the additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A (the “Section 409A Taxes”) if provided at the time otherwise required under this Agreement, no such payment or benefit will be provided under this Agreement until the date which is six months after Employee’s separation from service for any reason, other than death or “disability” (as such terms are used in Section 409A(a)(2) of the Code) or such shorter period that, as determined by ISU is sufficient to avoid the imposition of Section 409A Taxes. The provisions of this Paragraph 3 shall only apply to the minimum extent required to avoid Mr. Clinkscales’ incurrence of any Section 409A Taxes. In addition, if any provision of this Agreement would cause Mr. Clinkscales to incur any penalty tax or interest under Section 409A, ISU may reform such provision to maintain to the original intent of the applicable provision, to the extent permitted by Section 409A. Each payment and benefit payable under this Agreement, including any payment or benefit that is required to be aggregated with such payment and benefits under Section 409A, is hereby designated as a separate payment, and will not collectively be treated as a single payment, as provided in Treasury Regulation Section 1.409A-2(b)(2)(iii). ISU makes no representations whatsoever regarding the tax implications, if any, of the payment and provision of compensation and benefits pursuant to this Agreement. Mr. Clinkscales is advised to consult a tax professional or attorney regarding any such tax implications.

4. COMPLETE PAYMENTS. After receiving the payments and benefits set forth in Paragraphs 1 - 2 of this Agreement, Mr. Clinkscales agrees ISU will have paid all wages, salary, bonuses, paid time off benefits and other amounts due and owing in connection with his employment, the separation of his employment, and the terms of this Agreement.

5. NOTICE OF RIGHTS, REVIEW PERIOD AND RELEASE OF CLAIMS. Mr. Clinkscales understands and agrees that because he is at least 40 years of age, he is covered by the provisions of the Age Discrimination in Employment Act of 1967, as amended (“ADEA”) and the Older Workers Benefit Protection Act (“OWBPA”). In conformance with these Acts, Mr. Clinkscales acknowledges:

- a. Review by Counsel. ISU advised Mr. Clinkscales of his right to consult with an attorney prior to executing this Agreement.
- b. Review Period. Mr. Clinkscales acknowledges he has a period of 21 days from the date of receipt of this Agreement in which to review and execute this Agreement (“Review Period”). Mr. Clinkscales’ signature shall constitute and be considered a waiver of any days remaining in the Review Period. Any modifications made to this Agreement, whether material or non-material, do not restart or affect in any manner the original 21-day review period. Mr. Clinkscales understands if he fails to sign and return this Agreement within 21 days of receipt of the Agreement, this Agreement will be unenforceable by either Mr. Clinkscales or ISU.
- c. Revocation Period. Mr. Clinkscales is also advised that, after executing this Agreement, he has an additional seven days in which to revoke this Agreement (“Revocation Period”). Any revocation

must be submitted, via e-mail to Christopher J. Bayh at Barnes & Thornburg (Chris.Bayh@btlaw.com) within seven days after the execution of this Agreement. The terms of this Agreement will become effective upon the expiration of the Revocation Period (“Effective Date”).

- d. Effect of Revocation. Mr. Clinkscales understands if he revokes this Agreement, the consideration and benefits agreed to by ISU in this Agreement will be forfeited. If Mr. Clinkscales revokes this Agreement, it will become null and void and unenforceable by either Mr. Clinkscales or ISU.
- e. No Consideration Absent Execution of this Agreement. Mr. Clinkscales understands and agrees he is not entitled to and would not receive the benefits set forth in this Agreement, except for his execution of this Agreement and the fulfillment of the promises he has made in this Agreement.
- f. Release of Claims Under the ADEA. Mr. Clinkscales understands that by signing this Agreement, he is releasing ISU from all claims, whether known or unknown, that he may have under the ADEA, in addition to the claims released in Paragraph 6, below.

6. GENERAL RELEASE. In exchange for the above-described and other consideration, which Mr. Clinkscales acknowledges is in addition to anything to which he is otherwise entitled, Mr. Clinkscales (for himself, his agents, assigns, heirs, executors and administrators) releases and discharges ISU and the “Released Parties” (which includes Indiana State University, its affiliates, and their current or former officers, directors, trustees, agents, faculty, employees, insurers, representatives, and employee benefit or welfare programs or plans) from any claim, demand, action, or cause of action, known or unknown, which arose at any time from the beginning of time to the date he executes this Agreement, and waives and releases all claims relating to, arising out of, or in any way connected with his interactions with ISU, his employment with ISU (including any internal complaints and grievances), the termination of his employment and the Employment Contract, and the compensation or benefits payable in connection with that employment or the cessation of that employment, based on but not limited to: the Age Discrimination in Employment Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Americans With Disabilities Act of 1990; the Civil Rights Act of 1866; the Civil Rights Act of 1991, as amended; the Employee Retirement Income Security Act (“ERISA”); the Family and Medical Leave Act of 1993; Indiana Civil Rights and wage payment laws; any existing or potential entitlement or benefit under any program or plan unless forbidden by ERISA; any agreement, contract, or representation (whether oral or written), including the Employment Contract or any other federal, state, or local law whether emanating or arising from statute, executive order, regulation, common law or other source, including all suits in contract or tort, including claims of wrongful termination and breach of contract. Mr. Clinkscales understands and agrees he is releasing the Released Parties from any and all claims by which he is giving up the opportunity to recover any compensation, damages, or any other form of relief in any proceeding brought by him or on his behalf. Notwithstanding the foregoing, this Agreement is not intended to operate as a waiver of any retirement or pension benefits that are vested, the eligibility and entitlement to which shall be governed by the terms of

the applicable plan. Nor shall this Agreement operate to waive or bar any claim or right which, by express or unequivocal terms of law, may not under any circumstances be waived or barred.

7. **STATEMENT OF PROTECTED RIGHTS.** Nothing in this Agreement is intended to prohibit Mr. Clinkscales from assisting or communicating with others about workplace issues, from discussing or disclosing information about alleged unlawful acts in the workplace, including but not limited to harassment, discrimination, sexual assault, or any conduct that Mr. Clinkscales has reason to believe is unlawful, or from filing a charge or otherwise cooperating or participating in an investigation by the EEOC, NLRB, or comparable state or local agencies. Mr. Clinkscales agrees he is waiving the right to recover monetary damages or other individual relief in connection with any such charge or investigation. In addition, nothing in this Agreement is intended to prohibit Mr. Clinkscales from making any truthful statement about any unlawful employment practice.

8. **MUTUAL NON-DISPARAGEMENT.** Mr. Clinkscales agrees he will not make any disparaging or derogatory statements regarding ISU, its educational programs, its services, or any of its trustees, cabinet members, administrators, directors, officers, faculty, staff, employees, or agents. This obligation includes refraining from any such statements of any kind (*i.e.*, whether orally, electronically or via social media, Facebook, text messages, e-mail communications, blogs, tweets, or otherwise). Nothing in this paragraph or in this Agreement is intended to prohibit Mr. Clinkscales from engaging in activities referenced in the Statement of Protected Rights in Paragraph 7. ISU likewise agrees that its President Deborah Curtis agrees that she will not make any disparaging or derogatory statements regarding Mr. Clinkscales. Further, ISU agrees to instruct the individual members of the President's cabinet not to make any disparaging or derogatory statements regarding Mr. Clinkscales. This mutual obligation includes refraining from any such statements of any kind (*i.e.*, whether orally, electronically or via social media, Facebook, text messages, e-mail communications, blogs, tweets or otherwise). Nothing in this paragraph or in this Agreement is intended to prohibit employees of ISU from providing information in an official investigation or legal proceeding. Upon the execution of this Agreement, ISU will issue a written public statement announcing Mr. Clinkscales' departure; both Parties have contributed to drafting of this statement and have agreed on its final language.

9. **CONFIDENTIALITY.** Mr. Clinkscales agrees he has been provided Confidential Information (as defined below) of ISU in connection with his job responsibilities at ISU and agrees he shall not, either directly or indirectly, use, divulge, disclose or communicate, or cause or permit any other person or entity to use, divulge, disclose or communicate, to any person, firm, corporation or entity in any manner whatsoever, any Confidential Information, with the exception that the obligations stated in this Paragraph 9 shall not be violated by disclosure or use of information that at the time of disclosure and/or use (i) is publicly available through no act or omission of Mr. Clinkscales, (ii) is independently ascertainable without a substantial investment of time, expense or effort, or (iii) is disclosed pursuant to a court order or as otherwise required by law, provided Mr. Clinkscales provides reasonable notice of the requirement for such disclosure to the President of ISU (or their designee) prior to making any disclosure so that ISU may act to lawfully protect against, condition, limit or restrict the scope or extent of such disclosure.

For purposes of this Agreement, "Confidential Information" means any non-public knowledge or information not subject to open records act disclosures and for which ISU employs reasonable efforts under the circumstances to protect its confidentiality about the business and activities of ISU, including, but not limited to, student information (including information covered

by FERPA), donor information, strategic plans, marketing information, financial information, personnel information, information covered by the attorney-client privilege, data base designs, procedures, protocols, techniques, research data, technical data and all the other know-how and trade secrets pertaining in any respect to ISU. The foregoing covenants shall remain in effect for so long as any such information remains Confidential Information of ISU. Notwithstanding anything to the contrary in this Agreement, Mr. Clinkscales will never disclose or use confidential information which remains a trade secret of ISU; provided, that under the Defend Trade Secrets Act, 18 U.S.C. §1833(b), an individual shall not be held liable for disclosure of a trade secret if that disclosure (i) is made in confidence to a federal, state or local government official or to an attorney for the sole purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. §1833(b) or create liability for disclosures of trade secrets expressly allowed by 18 U.S.C. §1833(b).

10. RETURN OF PROPERTY. Mr. Clinkscales agrees that on or before January 5, 2024 he will return all property belonging to ISU, including but not limited to electronic equipment, mobile devices, ISU credit cards, keys, badges, access cards, passwords, flash drives and all information and documents, including but not limited to reports, student information, files, memoranda, records, software, instruction or operational manuals, written financial information, business plans, Confidential Information, or other property which Mr. Clinkscales received, prepared, or helped to prepare in connection with his employment with ISU. Mr. Clinkscales agrees he will not retain any copies, duplicates, reproductions or excerpts of the information and documents described herein.

11. REASONABLE ASSISTANCE & COOPERATION. In partial exchange for the benefits provided to Mr. Clinkscales under this Agreement, Mr. Clinkscales agrees that at any time following the end of his employment with ISU he will make himself reasonably available to assist current ISU personnel in the event assistance is needed to locate, understand or clarify work previously performed by him or other work-related issues relating to his employment. Mr. Clinkscales further agrees to cooperate fully with ISU in connection with any pending or future litigation, arbitration, business, or investigatory matter, specifically including cooperating with any attorney or other consultant retained by ISU in connection with such matters; provided, however, that ISU shall compensate Mr. Clinkscales at a reasonable hourly rate and reimburse any reasonable expenses he incurs if called upon to give a statement or testimony in any litigation or administrative or law enforcement investigation concerning ISU. The Parties acknowledge and agree that such cooperation may include but shall in no way be limited to Mr. Clinkscales being available to ISU and any attorney or other consultant retained by ISU, and providing to ISU any documents in his possession or under his control. "Cooperation" does not mean Mr. Clinkscales must provide information favorable to ISU; it means only that Mr. Clinkscales will, upon ISU's request, provide information he possesses or controls. ISU agrees to provide Mr. Clinkscales with reasonable notice of the need for assistance when feasible.

12. DISCLAIMER OF LIABILITY. The Parties expressly understand and agree this Agreement is entered into and executed for the primary purpose of severing the employment relationship between the Parties on an amicable basis and avoiding any controversies or disputes arising out of or in connection with Mr. Clinkscales' employment by ISU. This Agreement is not to be construed as an admission of liability or wrongdoing of any sort by either Party.

13. **SUCCESSORS.** This Agreement shall apply to Mr. Clinkscales, as well as his heirs, agents, executors and administrators. In the unlikely event of Mr. Clinkscales’ death before all monetary payments are paid under this agreement, any remaining payments shall be paid to Mr. Clinkscales’ estate. This Agreement also shall apply to, and inure to the benefit of ISU, its successors, assigns and each employee, agent, representative, officer or director of ISU and any division, subsidiary, parent or affiliated entity of ISU.

14. **SEVERABILITY.** The Parties explicitly acknowledge and agree that the provisions of this Agreement are both reasonable and enforceable. However, the provisions of this Agreement are severable, and the invalidity of any one or more provisions shall not affect or limit the enforceability of the remaining provisions. Should any provision be held unenforceable for any reason, then such provision shall be enforced to the maximum extent permitted by law.

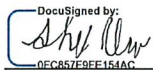
15. **APPLICABLE LAW & JURISDICTION.** This Agreement shall be interpreted, enforced, and governed under the laws of the State of Indiana. Any action regarding this Agreement or otherwise brought against ISU by or on behalf of Mr. Clinkscales shall be maintained in a court in Vigo County, Indiana. If the claim could be brought in federal court, the action shall be maintained in the United States District Court for the Southern District of Indiana. The Parties expressly consent to personal jurisdiction in Indiana.

16. **ACKNOWLEDGMENT AND UNDERSTANDING.** Mr. Clinkscales acknowledges he is fully aware of his rights, and has carefully read and fully understands all provisions of this Agreement before signing. Mr. Clinkscales further acknowledges he has had a reasonable amount of time to consider this Agreement and executes the Agreement knowingly and voluntarily.

17. **COMPLETE AGREEMENT.** Mr. Clinkscales represents and acknowledges that in executing this Agreement he does not rely and has not relied upon any representations or statements not set forth or referenced herein or attached hereto made by ISU or any of its employees, agents, representatives, trustees, officers or directors with regard to the subject matter, basis or effect of this Agreement or otherwise.

AGREED TO BY:

“MR. CLINKSCALES”

DocuSigned by:

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Sherard Clinkscales

Date: 1/1/2024

“ISU”

INDIANA STATE UNIVERSITY

DocuSigned by:

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By: _____

Deborah J. Curtis, President
Indiana State University

Date: 1/1/2024