

# DABO SWINNEY: A New Contract for a New Coaching Landscape

By Martin J. Greenberg

## I. INTRODUCTION

On May 1, 2019, William C. (Dabo) Swinney (“Swinney”) and the Clemson University Board of Trustees Compensation Committee (“Clemson”) entered into a Term Sheet for what will become the Third Amendment to Swinney’s Employment Agreement as Head Football Coach. After winning the 2018 CFP National Championship Game, Clemson awarded Swinney with a ten year contract worth 93 million, the richest contract ever to date for a college football coach.<sup>1</sup>

Swinney started his college football career at the University of Alabama where as a walk-on he went on to earn a football scholarship, and was a wide receiver on Alabama’s 1992 national championship team.<sup>2</sup> “Swinney received a commerce & business administration degree from Alabama in 1993 after lettering three times (1990-92).”<sup>3</sup> “Along with his appearance in the 1993 Sugar Bowl, his Alabama teams played in the 1990 Sugar Bowl, 1991 Fiesta Bowl and 1991 Blockbuster Bowl. Both Sugar Bowl appearances came after winning the SEC title game.”<sup>4</sup> After graduation, Swinney served as a graduate assistant at Alabama while earning his master’s degree in business administration.<sup>5</sup> Based upon his work as a graduate assistant, Swinney was hired as a full time assistant coach for Alabama in 1996 under Head Coach Gene Stallings, where he coached wide receivers and tight ends.<sup>6</sup> “Swinney was assigned to coach the Crimson Tide’s wide receivers and tight ends in 1996, a season that saw Alabama win the SEC West Division title.”<sup>7</sup> “During his time at Alabama, Swinney was a part of six teams with double-digit wins, five top-10 finishes, one national title (1992), three SEC championships (1989,92,99) and five SEC West Division titles (1992,93,94,96,99) as a player and coach.”<sup>8</sup> Swinney has a twelve year head coach career record of 116-30 and a bowl record of 9-5.<sup>9</sup>

Swinney joined the Clemson Football team as a wide receiver coach in 2003, then as assistant head coach in 2007, interim head coach in 2008, and was finally hired as head coach of Clemson Football in 2009.<sup>10</sup> As head coach, Swinney quickly racked up bowl game appearances including:

---

<sup>1</sup> Field Level Media, “Dabo Swinney Becomes Highest Paid College Coach,” THE NEW YORK TIMES, Apr. 26, 2019, <https://www.nytimes.com/2019/04/26/sports/dabo-swinney-clemson-contract.html>.

<sup>2</sup> Dabo Swinney, CLEMSON UNIVERSITY, <https://clemsontigers.com/coaches/dabo/>, (Last visited June 20, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Dabo Swinney, SPORTS-REFERENCE.COM, <https://www.sports-reference.com/cfb/coaches/dabo-swinney-1.html>, (Last visted June 20, 2019).

<sup>10</sup> Dabo Swinney, *supra* note 2.

2009 Gator Bowl ... 2009 Music City Bowl ... 2010 Meineke Car Care Bowl ... 2012 Orange Bowl ... 2012 Chick-fil-A Bowl ... 2014 Orange Bowl ... 2014 Russell Athletic Bowl ... 2015 Orange Bowl ... 2015 CFP National Championship Game ... 2016 Fiesta Bowl ... 2016 CFP National Championship Game ... 2018 Sugar Bowl ... 2018 Cotton Bowl ... 2018 CFP National Championship Game.<sup>11</sup>

Swinney's team won the 2018 CFP National Championship Game.<sup>12</sup> "The Tigers became the first major college football team in the modern era (and the first since the Penn Quakers in 1897) to finish a season 15-0."<sup>13</sup> "Clemson set school records in points (664) and total offense (7,718, also an ACC record). Conversely, the defense held opponents to 13.1 points per game, leading the country in scoring defense for the first time in school history."<sup>14</sup>

The 2018 Tigers produced a team-record 18 All-ACC selections and became the first team to produce the ACC Player of the Year, ACC Offensive Player of the Year, ACC Defensive Player of the Year, ACC Offensive Rookie of the Year and ACC Coach of the Year in a single season since Florida State in 1997.<sup>15</sup>

Truly, Clemson's 2018 football season was one for the history books.

Accolades also accumulated for Swinney, who earned his second career ACC Coach of the Year selection and brought home the Woody Hayes Award as national coach of the year. Less than a week after winning the national title, he also won the Paul "Bear" Bryant Award, becoming the first three-time winner in the award's history. With the 2018 Bryant and Hayes Awards, Swinney has now won national coach of the year honors from at least one organization in five of the last seven years.<sup>16</sup>

## II. NEW CONTRACT TERMS

There are several interesting provision in the current Swinney Extension that are noteworthy of mention and analysis.

1. Term – The term of the contract is unusually long. Swinney's new term commences May 1, 2019 and ends December 31, 2028.<sup>17</sup>
2. Financial Package - Swinney's contract is the richest contract ever for a college football coach.

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Term Sheet of Dabo Swinney, Head Football Coach, with Clemson University dated May 1, 2019, on file with the author.

What follows is Swinney's financial package:

Annual Compensation:

Year	Base Salary	Supplemental	Licensing	Total
2019	\$245,000	\$5,505,000	\$2,500,000	\$8,250,000 (eff. 1/1/19)
2020	\$245,000	\$5,505,000	\$2,500,000	\$8,250,000
2021	\$245,000	\$5,755,000	\$2,500,000	\$8,500,000
2022	\$245,000	\$5,755,000	\$2,500,000	\$8,500,000
2023	\$245,000	\$6,005,000	\$2,500,000	\$8,750,000
2024	\$245,000	\$6,255,000	\$2,500,000	\$9,000,000
2025	\$245,000	\$6,505,000	\$2,500,000	\$9,250,000
2026	\$245,000	\$6,755,000	\$2,500,000	\$9,500,000
2027	\$245,000	\$7,255,000	\$2,500,000	\$10,000,000
2028	\$245,000	\$7,255,000	\$2,500,000	\$10,000,000

*Note: Licensing Fee is for Coach's name, likeness, appearances, select trademarks, and similar IP, whether held by Coach or his LLC. If held by his LLC, the fee shall be paid to the LLC.*

Retention Bonus:

If employed on the date listed Employee shall receive the following

March 1, 2021: \$1,000,000

March 1, 2023: \$1,000,000

Split Dollar Life Premium:

September 1, 2019: \$1,000,000<sup>18</sup>

In essence then, Swinney has a ten year, \$93 million financial package which equates to \$9.3 million per year. Other coaches with rich contracts in comparison to Swinney are:

- Nick Saban, Alabama: 8 years, \$74.4 million (\$9.3 million a year)
- Jimbo Fisher, Texas A&M: 7 years, \$75 million (7.5 million a year)
- Jim Harbaugh, Michigan: 7 years, \$52.5 million\* (\$7.5 million a year)
- Gus Malzahn, Auburn: 7 years, \$49 million (\$7 million a year)
- Kirby Smart, Georgia: 7 years, \$49 million (\$7 million a year)<sup>19</sup>

3. Buyout Provision – There is an enormous buyout payment with no mitigation required in the event that Clemson terminates Swinney without cause.

<sup>18</sup> *Id.*

<sup>19</sup> Chris Hummer, "Breaking down Dabo Swinney's record-setting contract, buyout," 247SPORTS.COM, Apr. 30, 2019 <https://247sports.com/Article/Dabo-Swinney-contract-buyout-highest-paid-coaches-131654650/>

University Buyout (early Termination by University w/o cause)

If University terminates without Cause it shall pay to Employee the amount below for the year of the termination, payable, at the election of University either (a) in a regular payment schedule over remaining term of contract, or (b) payment in full within 90 days of termination. No mitigation required.<sup>20</sup>

CY	Amount
2019	\$50,000,000
2020	\$50,000,000
2021	\$47,500,000
2022	\$47,500,000
2023	\$45,000,000
2024	Remaining Total Compensation (Base + Supplemental + Licensing)
2025	Remaining Total Compensation (Base + Supplemental + Licensing)
2026	Remaining Total Compensation (Base + Supplemental + Licensing)
2027	Remaining Total Compensation (Base + Supplemental + Licensing)
2028	Remaining Total Compensation (Base + Supplemental + Licensing)

4. Employee Buyout – Unusually there are two columns of employee buyout, one if Swinney would take a position at the University of Alabama and the other if he would take a position at any other university. The buyout is much higher if he takes a job at Alabama, especially in the early years of his new contract.

Employee Buyout (early termination by Employee w/o cause)

Should Employee terminate early to accept another position with duties of or substantially similar to a collegiate head coach\*, Employee shall pay to University the amount below for the year of termination (within 90 days):

CY	Amount for HC position at Alabama	Amount for HC position at any other University
2019	\$6,000,000	\$4,000,000
2020	\$6,000,000	\$4,000,000
2021	\$4,500,000	\$3,000,000
2022	\$4,500,000	\$3,000,000
2023	\$3,000,000	\$2,000,000
2024	\$3,000,000	\$2,000,000
2025	\$3,000,000	\$2,000,000
2026	\$1,500,000	\$1,000,000
2027	\$1,500,000	\$1,000,000
2028	Not applicable	Not applicable

\*No amount owed if Coach leaves for NFL Head Coach Position

Employee shall notify Director of Athletics prior to discussions by Employee or his agents for other employment.<sup>21</sup>

<sup>20</sup> Term Sheet, *supra* note 17.

<sup>21</sup> *Id.*

5. Good Faith Market Review – Swinney’s contract will contain a good faith market review to adjust compensation during the term of the contract.

The following provision for a Good Faith Market Review shall be added:

- (a) Beginning with the 2022 collegiate football season, the Parties agree to complete a good faith review and negotiation of Head Coach compensation within 120 days after the football team appears in the CFP (or surviving system) Semi-Final Game. After said review and negotiation, if the Parties fail to reach an agreement for a market adjustment of Head Coach’s compensation and the University did not offer terms that would make Head Coach’s annual compensation no less than third (3<sup>rd</sup>) amongst active head coaches at institutions which are eligible to compete for the CFP (or surviving system), the University agrees to waive for the remaining Term of this Agreement any liquidated damages which would be due from Head Coach to University should he subsequently terminate his employment at University (employee Buyout). For purposes of this provision, the average compensation per year (APY) over the remaining term shall be used as the primary market comparison. The Parties agree to jointly engage, if needed, an independent valuation expert to assist with determining market valuations (the valuation expert’s opinion shall be non-binding).
- (b) No such review and negotiation will be required (but is not prohibited) if the Parties entered into an agreement for a market based adjustment in the immediately preceding year. Furthermore, this provision shall not prevent the Parties from mutually agreeing to amend the terms of the Head Coach’s employment agreement at any other point during the Term of this Agreement.<sup>22</sup>

6. Duties Clause Expanded – Swinney’s contract requires him to refrain from the commission of emotional or physical abuse. We believe this is one of the first clauses in college coaching contracts prohibiting this type of behavior.

Description of Coach’s duties (Section 2(b) of the Employment Agreement to be amended to include the following:

- (xiv) Engaging in (and using his best efforts to ensure that every person under Coach’s direct or indirect supervision is engaging in) safe and responsible treatment of student athletes on the Team. Coach shall refrain from any act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of hard to a student athlete. Without limited the preceding sentence, Coach shall comply with any and all applicable University Requirements pertaining to medical

---

<sup>22</sup> *Id.*

clearance for participation, including deferring to University sports medicine personnel in accordance with University Requirement.<sup>23</sup>

7. Swinney has a Baylor Clause.

Description of Coach's reporting and compliance obligations (Section 4 of the Employment Agreement) to be amended to include the following:

(c) Coach shall adhere to all University Requirements adopted for purposes of compliance with Title IX of the Education Amendments of 1972, the Violence Against Women Act's amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and/or any similar state or local law (collectively, "Title IX Policies). Without limiting the preceding sentence, Coach shall specifically adhere to all reporting obligations under Title IX Policies, pursuant to which he must report matters immediately and directly to the University's Title IX Coordinator as required by the Title IX Policies.

8. Baylor Clause - Swinney could get fired for failure to report and/or in sanctioned conduct.

Termination for Cause provision (Section 18(c) of the Employment Agreement) to be amended to, consistent with amendments to NCAA legislation and other applicable regulations, including the following:

(x) material breach of any Title IX Policy by Coach (it being understood that the foregoing shall not limit the University's right to terminate this Agreement for Cause based upon violations of other University Requirements otherwise constituting Cause under this Section [18(c)]);

(xi) failure by Coach to engage in (and/or to use his best efforts to ensure that personnel under Coach's direct or indirect supervision engage in) safe and responsible treatment of student athletes on the Team, including without limitation failure to comply with any University Requirement pertaining to medical clearance for participation, or any other act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete.<sup>24</sup>

### III. COMMENTARY ON NEW CONTRACT

With respect to the new contract, Swinney has stated that:

I am grateful and humbled by the incredible commitment Clemson has made to me, my family and our football program, Swinney said. For more than a decade, we have given our all to provide this world-class university and our incredible fans the championship football program they deserve – to live up to "Best is the Standard."

---

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

With this contract, we make a collective statement that we intend to continue pursuing championships and developing total student-athletes for years to come. Our sustained continuity in vision, people and culture has been a key ingredient to our success, on- and off-the field. I am thankful for the leadership we have at Clemson and appreciate all they do for Clemson football. I am truly blessed to be your head football coach.<sup>25</sup>

Clemson administrators have stated as follows:

"Dabo's leadership of our football program has brought value, exposure and unprecedented levels of success not only to our athletics program but to the entire university," athletic director Dan Radakovich said. "He has demonstrated the ability to consistently achieve at the highest level on and off the field, and he has done so with a commitment to integrity and core principles. This new agreement is evidence of Clemson's steadfast commitment to Dabo and to our football program, and we are thrilled that he and his family will be a part of our community for years to come."<sup>26</sup>

"The football program, under the direction of coach Swinney, has been a great source of pride for the Clemson family," university president Jim Clements said. "The success of the football program has helped to elevate the entire profile of the institution. We've seen all-time highs in applications, fundraising and numerous other areas. This is in part due to the national visibility that our football team's success has brought to the university. We are excited to have coach Swinney and his family with us for at least another decade."<sup>27</sup>

#### IV. CONCLUSION

What makes representation in college athletics so exciting is the fact that no two contracts are alike. Each university has its own philosophy as to the construction of a coach's financial package. As good sports representatives it is imperative that we follow the contracts of our coaches to determine new ways, new inventions, and creative means of enhancing contracts to meet the issue of competitiveness and to meet the issues that trouble student-athletes in today's college sports environments. Swinney's contract is definitely an exemplary contract sample that should be extensively reviewed by all practitioners in sports.

Thank you to my paralegal, Danelle Welzig, for her assistance in drafting and editing this article.

---

<sup>25</sup> Barrett Sallee, "Clemson, Coach Dabo Swinney agree to massive 10-year, \$93 million contract extension," CBSSPORTS.COM, Apr. 26, 2019, <https://www.cbssports.com/college-football/news/clemson-coach-dabo-swinney-agree-to-massive-10-year-93-million-contract-extension/>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*