

#9500066502

**EMPLOYMENT AGREEMENT
HEAD SWIMMING COACH**

This Employment Agreement (“Agreement”) is entered into by and between THE UNIVERSITY OF TENNESSEE (“University”), an instrumentality of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville (“UTK”) and UTK’s Athletics Department, (collectively, the “University”), and MATTHEW KREDICH (“Coach”). This Agreement cancels and supersedes all prior existing oral and written agreements and understandings between the University and Coach. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the University and Coach.

WITNESSETH:

In consideration of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties to this Agreement agree as follows:

ARTICLE I - PURPOSE AND TERM OF AGREEMENT

Section 1.1. Subject to the terms and conditions stated in this Agreement, the University agrees to employ Coach, and Coach agrees to serve, as the head coach of UTK’s intercollegiate men’s and women’s swimming and diving teams (“Head Swimming Coach”).

Section 1.2. The term of this Agreement shall be from July 1, 2017 through June 30, 2022, unless sooner terminated as provided in this Agreement (the “Term”). The University may allow the Term to expire and elect not to renew Coach’s employment as Head Swimming Coach without complying with any University Rules applicable to staff-exempt employees who do not serve under a contract of employment for a definite term.

ARTICLE II - COMPENSATION, BENEFITS, AND BUYOUT EXPENSE

Section 2.1. As payment and consideration for the services to be performed by Coach under this Agreement, the University agrees to pay Coach an annual salary (“Base Pay”) in accordance with the following schedule, subject to all applicable state and federal tax reporting and withholding requirements:

| <u>Contract Year</u> | <u>Base Pay</u> |
|------------------------------|-----------------|
| July 1, 2017 - June 30, 2018 | \$187,000 |
| July 1, 2018 - June 30, 2019 | \$197,000 |
| July 1, 2019 - June 30, 2020 | \$202,000 |
| July 1, 2020 - June 30, 2021 | \$202,000 |
| July 1, 2021 - June 30, 2022 | \$202,000 |

The University shall pay the Base Pay to Coach in twelve (12) equal monthly installments in accordance with the University’s customary monthly payroll procedures, with partial years or months prorated. The Base Pay shall not be increased in accordance with the terms of any across-the-board salary increase authorized or mandated for University employees by the State of Tennessee or the University if the University determines that Coach qualifies for the increase under the terms of the authorization or mandate.

Section 2.2. In recognition of exemplary athletic performance by UTK’s swimming team (the “Team”)

and the additional work required by Coach therewith, and as an incentive for Coach to assist the Team in achieving the goals described below, the University agrees to pay Coach, if earned, annual incentive compensation in an amount equal to the sum of the amounts described in subsections (a)-(b), subject to all applicable state and federal tax reporting and withholding requirements:

- (a) **NCAA achievements.** Coach is eligible to receive a maximum of one (1) incentive payment per Contract Year under this subsection 2.2(a), which shall be based on the Average Finish of the men's and women's swimming teams at the NCAA Championships. Average Finish shall be defined as the place finish of the men's and women's Teams added together and divided by 2, rounded down to the nearest whole number place if necessary (e.g. 7th place women, 10th place men = 8th place average finish).
- | | | |
|-------|---|-------------------|
| (i) | Top 5 Average Finish at NCAA Championships | 12% of Base Pay |
| (ii) | Top 10 Average Finish at NCAA Championships | 8.33% of Base Pay |
| (iii) | Top 15 Average Finish at NCAA Championships | 6% of Base Pay |
| (iv) | Six athletes from one team (men's team or women's Team competing at the NCAA Championships) | 4% of Base Pay |
- (b) **Championships.** Coach is eligible to receive as many incentive payments per Contract Year under this subsection 2.2(b) pertaining to winning the SEC or NCAA Team Swimming and Diving Championships, as the SEC and NCAA define Team Champions in Swimming and Diving.
- | | | |
|-------|---|----------------|
| (i) | Winning the SEC Championship in Men's Swimming and Diving | 4% of Base Pay |
| (ii) | Winning the SEC Championship in Women's Swimming and Diving | 4% of Base Pay |
| (iii) | Winning the NCAA Championship in Men's Swimming and Diving | 4% of Base Pay |
| (iv) | Winning the SEC Championship in Women's Swimming and Diving | 4% of Base Pay |
- (c) **Coach of the Year Achievements.** Coach is eligible to receive both of the following incentive payments:
- | | | |
|------|------------------------------------|---------|
| (i) | SEC Coach of the Year | \$2,500 |
| (ii) | National Coach of the Year - CSCAA | \$5,000 |

Annual incentive compensation due under this Section 2.2 relating to athletic performance shall be paid by the University on or before sixty (60) days following the conclusion of the NCAA National Championship for the swimming season in which the goal was achieved. However, annual incentive compensation described in this Section 2.2 shall be earned by and payable to Coach only if Coach is employed as Head Swimming Coach at the University on the day of the event that forms the basis for the incentive compensation.

Section 2.3. The University, in its sole discretion as to which option it selects, shall provide Coach with either: (1) one (1) vehicle of a quality, in terms of make and model, similar to vehicles provided to other University head coaches, for Coach's personal use; or (2) compensation in the amount of eight hundred fifty dollars (\$850) per month as a vehicle allowance in lieu of Coach's participation in the Athletics Department's courtesy vehicle program. The University will be solely responsible for maintaining liability insurance coverage on the vehicle provided to Coach under the courtesy vehicle program. Coach shall be solely responsible for maintaining full comprehensive and collision insurance coverage on the courtesy vehicle, for paying fuel costs, and for otherwise complying with the courtesy vehicle program.

Coach acknowledges that the value of the courtesy vehicle or the amount of a vehicle allowance will be reported as income and that Coach shall be responsible for payment of any income taxes associated with the vehicle or a vehicle allowance.

Section 2.4. The University shall include Coach in the University's athletic play/practice insurance coverage. Coach acknowledges that this insurance coverage is subject to an annual bid process and that the type and amount of coverage for all participants may change from year to year.

Section 2.5. As a regular full-time employee of the University, Coach is eligible for participation in the same fringe benefit programs for which other similarly situated regular full-time employees are eligible. The Base Pay shall be used to determine benefits that are based on salary.

Section 2.6. Coach understands and agrees that federal and state law limit the compensation on which the University may make retirement contributions. The University agrees to make the maximum annual amount of retirement contributions allowed by federal and state law for Coach. Retirement contributions shall be made periodically in accordance with the University's business practices.

Section 2.7. All compensation paid to Coach pursuant to this Agreement is subject to all applicable state and federal tax reporting and withholding requirements.

ARTICLE III - TERMINATION

Section 3.1. Termination by University Without Cause

Section 3.1.1. In its sole discretion and at any time during the Term, the University may terminate this Agreement without "cause" (as defined in Section 3.2.2 below) upon written notice to Coach. If the University terminates this Agreement without cause at any time during the Term, then the University shall pay Coach liquidated damages ("Liquidated Damages") in accordance with the following schedule:

| <u>Date of Termination by University</u> | <u>Amount of Liquidated Damages Owed by University</u> |
|--|---|
| July 1, 2017 - June 30, 2019 | \$400,000 |
| July 1, 2019 - June 30, 2021 | \$200,000 |
| July 1, 2021 - June 30, 2022 | Base Pay (prorated) that would have been owed to Coach for the remainder of the Term as of the date of the termination of the Agreement |

Subject to all applicable state and federal tax reporting and withholding requirements, payment of the Liquidated Damages shall be made in thirty-six (36) monthly installments ("Liquidated Damages Payments"). The first Liquidated Damages Payment shall be due on or before the last day of the month following the month in which the Agreement was terminated.

Section 3.1.2. If the University terminates this Agreement without cause, then all obligations of the University to Coach under this Agreement other than earned or accrued but unpaid compensation and the obligation in Section 3.1.1 shall cease as of the date of any such termination, and Coach shall be eligible for any post-termination benefits applicable to other regular full-time employees who terminate employment with the University (e.g., COBRA)

except for payment of accrued and unused annual leave. Payment of the Liquidated Damages under this Section 3.1 is in lieu of all other legal remedies or equitable relief. Upon termination of this Agreement pursuant to this Section 3.1, Coach shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of Coach's position as Head Swimming Coach from the University other than amounts earned but not yet paid. Notwithstanding the preceding sentence, Coach waives all rights to receive compensation for accrued and unused annual leave upon termination of this Agreement pursuant to this Article III. Coach understands and agrees that the University's decision to terminate this Agreement without cause is not subject to any University Rules.

Section 3.1.3. The parties have bargained for and agreed to the provisions in this Section 3.1, giving consideration to the fact that termination of this Agreement without cause by the University prior to its expiration may cause Coach to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with Coach's employment with the University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such Liquidated Damages by the University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for any damages and injuries suffered by Coach because of such termination by the University. The Liquidated Damages shall not be, nor be construed to be, a penalty.

Section 3.1.4. As soon as practicable following the termination of this Agreement, Coach is required to mitigate the University's obligation to pay Liquidated Damages by making reasonable, good faith, and diligent efforts to obtain an employment position or paid services opportunity that is comparable to Head Swimming Coach ("Comparable Employment"). Without limiting the types of positions that are comparable, Coach agrees that any of the following positions and opportunities shall be deemed Comparable Employment for the purpose of this Section 3.1.4: head swimming or diving coach at a college, junior college, or university; assistant swimming or diving coach at a college, junior college, or university; or swimming or diving administrator at a college, junior college, or university; professional swimming or diving coach (head or assistant), scout or administrator; and media commentator or analyst of swimming or diving with a national, regional, or local network, broadcast station, cable or satellite company. If, following a termination of this Agreement by the University pursuant to this Section 3.1, Coach obtains any Comparable Employment prior to the date the Term would have expired, then all Liquidated Damages Payments shall be offset and reduced dollar-for-dollar using the average rate of monthly gross income Coach is scheduled to receive, either directly or indirectly, from the Comparable Employment using the greater of the rates as calculated over the following time periods: (1) the contract term of the Comparable Employment or, if there is no contract, the reasonably expected duration of the Comparable Employment; or (2) the remaining Term in this Agreement. Coach shall not structure the timing of gross income in order to avoid Coach's obligations or the offset and reduction of the Liquidated Damages Payments. Coach must provide the University a copy of an offer letter, employment contract, or other document describing the terms of any Comparable Employment within fourteen (14) days of obtaining the Comparable Employment. While the University's obligation to pay the Liquidated Damages is in effect, and for a period of six (6) months thereafter, Coach shall provide the University with a written accounting of all gross income received or earned by Coach during the immediately preceding quarter. In addition, Coach agrees to provide the University with a copy of Coach's W-2 form for each calendar year. The parties expressly agree that Coach's obligation to report all gross income to the University shall survive termination of the Agreement under this Section 3.1 for the entire period in which the University's obligation to pay the Liquidated Damages is in effect, plus an additional period of six (6) months. If Coach fails either to notify the University of Coach's employment in any Comparable Employment or to provide the quarterly written reports of gross income after the University sends a formal, written request

to Coach to do so, then, after giving Coach fourteen (14) days' written notice to cure, the University's obligation to continue paying Liquidated Damages to Coach shall cease.

Section 3.1.5. The automatic termination of this Agreement upon the death or disability of Coach, as provided in Section 3.4 of this Agreement, shall not give rise to a right to Liquidated Damages pursuant to this Section 3.1.

Section 3.1.6. Coach agrees that nothing in this Section 3.1 shall be construed to conflict with or limit the University's rights set forth in any other part of this Agreement, including but not limited to Section 3.2, Article V, and Article IX.

Section 3.2. Termination by University for Cause

Section 3.2.1. In addition to the grounds for termination of this Agreement under any other part of this Agreement, including but not limited to Section 3.1, Article V, and Article IX, Coach agrees that the University has the right to terminate this Agreement "for cause" (as defined in Section 3.2.2) under this Section 3.2 at any time prior to its expiration.

Section 3.2.2. For purposes of this Section 3.2, the term "for cause" shall include, but not be limited to, any one or more of the following as determined in the reasonable and good faith judgment of the University:

- (a) conduct or omission(s) by Coach that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by Coach that more likely than not will lead to an NCAA finding of a Level I or Level II violation of one or more Governing Athletic Rules, including but not limited to multiple Level III or Level IV violations of Governing Athletic Rules considered collectively to be a Level I or Level II violation, whether or not the conduct or omission(s) occurred while Coach was employed by the University or during Coach's prior employment at another NCAA member institution;
- (b) conduct or omission(s) by a person under Coach's direct or indirect supervision (or subject to Coach's control or authority) that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by a person under Coach's direct or indirect supervision (or subject to Coach's control or authority) that more likely than not will lead to an NCAA finding of a Level I or Level II violation of one or more Governing Athletic Rules, including but not limited to multiple Level III or Level IV violations of Governing Athletic Rules considered collectively to be a Level I or Level II violation, whether or not the conduct or omission(s) occurred while the person was employed by the University or during the person's prior employment at another NCAA member institution;
- (c) failure of Coach to report promptly to the Athletics Director or the staff member in the Athletics Department with primary responsibility for compliance any actual knowledge of or reasonable cause to believe that a violation of Governing Athletic Rules or University Rules has been committed by Coach and/or any other person;
- (d) failure to promote an atmosphere of compliance within the swimming program;
- (e) failure to monitor the activities of all University staff members involved with the swimming program who report, directly or indirectly, to Coach;

- (f) failure of Coach to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the NCAA and its infractions program, including without limitation protecting the integrity of investigations and making full and complete disclosures of any relevant information;
- (g) failure of Coach to cooperate with a University investigation, including without limitation protecting the integrity of an investigation and making full and complete disclosures of any relevant information, except that deny some or all of the alleged violations shall not be deemed to be non-cooperation;
- (h) conduct or omission(s) by Coach constituting a prohibited conflict of interest under University Rules or applicable state law;
- (i) conduct or omission(s) by Coach that constitutes material neglect or inattention by Coach to the standards, duties, and responsibilities generally expected of University employees and specifically required of Coach under this Agreement;
- (j) conduct or omission(s) by Coach that constitutes one or more acts of fraud by Coach in the performance of Coach's duties and responsibilities under this Agreement;
- (k) sale of complimentary tickets or admissions to an athletics event;
- (l) conduct or omission(s) by Coach that constitutes the provision by Coach of false, misleading, or incomplete information relevant to the conduct of University business or a NCAA or University investigation, if Coach knew or should have known the information was false, misleading, or incomplete;
- (m) counseling or instructing by Coach of any coach, swimming staff member, current or former student-athlete, student, or person to fail or refuse to respond accurately and fully within a reasonable time to any inquiry or request concerning a matter relevant to the athletics programs of the University or of another institution of higher education which shall be propounded by the NCAA, Southeastern Conference, the University, or other governing body having supervision over the athletics program of the University, or which shall be required by law, Governing Athletic Rules, or University Rules;
- (n) conviction of Coach of a criminal act or omission that constitutes either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses);
- (o) failure by Coach to report misconduct as required by University Rules (e.g., failure to comply with Tennessee laws regarding the mandatory reporting of child abuse and/or child sexual abuse);
- (p) prolonged absence by Coach from Coach's duties under this Agreement, without the consent of the Athletics Director;
- (q) soliciting, placing, or accepting by Coach of a bet or wager on any *intercollegiate* or professional athletic contest whether through a bookmaker, a pool, or any

other person, means, or method, or permitting, encouraging, or condoning such acts by any person under Coach's control or authority, including without limitation a student-athlete;

- (r) furnishing by Coach of information or data relating in any manner to swimming, or any other sport, or any student-athlete, to any individual known by Coach to be, or whom Coach should reasonably know to be, a gambler, bettor, or bookmaker, or an agent of any such person, or the consorting or associating by Coach with such person;
- (s) failure by Coach to fully cooperate in the enforcement and implementation of any drug testing program established by the University, the Southeastern Conference, the NCAA, or any other governing athletic body, for student-athletes;
- (t) shocking and/or reprehensible conduct of Coach which brings Coach and/or the University into significant public disrepute or scandal;
- (u) gross misconduct by Coach, as defined by University personnel policy now in effect or hereafter adopted by the University. "Gross misconduct" is currently defined by University personnel policy to include the following: theft or dishonesty; gross insubordination; willful destruction of University property; falsification of records; acts of moral turpitude; reporting for duty under the influence of intoxicants; illegal use, manufacture, possession, distribution, or dispensing of controlled substances or alcohol; disorderly conduct; provoking a fight; and other similar acts involving intolerable behavior by the employee; or
- (v) any other material breach by Coach of Coach's duties or responsibilities under this Agreement if: (i) in the University's reasonable and good faith judgment, the breach is capable of being cured and Coach fails to cure the material breach within thirty (30) days after written notice by the University specifying the nature of the breach; or (ii) in the University's reasonable and good faith judgment, the breach is not capable of being cured.

Section 3.2.3. The grounds for termination contained in Section 3.2.2 are separate and independent grounds for termination, and one ground for termination shall not be interpreted in any manner to modify, explain, or restrict any other ground for termination provided for anywhere in this Agreement.

Section 3.2.4. In its sole discretion, the University may suspend Coach with pay pending an investigation or decision relating to termination for cause under this Section 3.2.

Section 3.2.5. Upon termination of this Agreement for cause, Coach shall not be entitled to further salary, compensation, benefits, or perquisites from the University (except for monies due or accrued prior to the effective date of termination). Coach waives all rights to receive compensation for his accrued and unused annual leave.

Section 3.2.6. For any one or more acts, omissions, or events that would be grounds for termination for cause under this Section 3.2, the University may take other disciplinary or corrective action against Coach short of terminating this Agreement. Other disciplinary or corrective action may include, but is not limited to, one or more of the following: (a) written reprimand; (b) suspension with pay; (c) suspension without pay (not to exceed 90 days); or (d) reassignment to a position that does not involve contact with prospective or enrolled student-

athletes or representatives of the University's athletics interests. No such disciplinary or corrective action shall be construed to conflict with or limit the University's right to terminate this Agreement during or subsequent to such disciplinary or corrective action. The University shall have no obligation to use progressive discipline. Any University decision to utilize progressive discipline shall not create any future obligation on the University to utilize progressive discipline.

Section 3.2.7. Prior to the effective date of termination of Coach's employment or suspension of Coach without pay under this Section 3.2, the University shall afford Coach notice and a reasonable opportunity to meet with the Athletics Director and the Chancellor to respond to the proposed termination or suspension. Coach voluntarily waives all rights to a post-termination opportunity to contest a termination pursuant to this Section 3.2, including but not limited to his rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq.

Section 3.2.8. In its sole discretion, the University may elect to terminate this Agreement for cause under this Section 3.2 but offer Coach continued employment with or without a new employment agreement.

Section 3.2.9. In the event a termination of this Agreement by the University under this Section 3.2 is ultimately found to be a breach of this Agreement by the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted, then Coach shall be entitled to the remedies described in Section 3.1 according to the date of termination, in lieu of all other legal remedies or equitable relief.

Section 3.2.10. Coach agrees that nothing in this Section 3.2 shall be construed to conflict with or limit the University's rights set forth in any other Article of this Agreement, including but not limited to Section 3.1, Article V, and Article IX.

Section 3.3. Termination by Coach

Section 3.3.1. Coach shall have the right to terminate this Agreement at any time without cause. If Coach terminates this Agreement without cause, then Coach shall pay the University liquidated damages according to the following schedule:

| <u>Date of Termination by Coach</u> | <u>Amount of Liquidated Damages Owed by Coach</u> |
|-------------------------------------|---|
| July 1, 2017 - June 30, 2019 | \$200,000 |
| July 1, 2019 - June 30, 2020 | \$100,000 |
| July 1, 2020 - June 30, 2021 | \$50,000 |
| July 1, 2021 - June 30, 2022 | \$0 |

Payment of the liquidated damages shall be due on or before the last day of the month following the month in which the Agreement was terminated. This obligation shall survive the termination of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination of this Agreement.

Section 3.3.2. The parties have bargained for and agreed to the liquidated damages provision in Section 3.3.1, giving consideration to the fact that Coach's promise to work for the University for the entire Term is an essential consideration in the University's decision to employ him as the Head Swimming Coach and the fact that the University will commit substantial financial resources to the success of the swimming program and that if Coach terminates his employment with the University, the University will suffer damages the amount, nature, and extent of which

are difficult to determine and which may include, but not be limited to, additional expenses to search for another head swimming coach, salary or other compensation to hire another Head Swimming Coach, and tangible and intangible detriment to the swimming program of the University and support of its fans and donors. Accordingly, Coach acknowledges and agrees that the amount of liquidated damages set forth in Section 3.3.1 is a reasonable and fair approximation of the harm that the University will incur in the event of such termination by Coach. The liquidated damages shall not be, nor be construed to be, a penalty.

Section 3.3.3. Coach shall promptly notify the Athletics Director in the event Coach has any direct or indirect material negotiations with any entity, or agent or representative of the entity's athletics interests, regarding potential employment by or with another college or university or swimming entity.

Section 3.3.4. Coach shall have the right, subject to applicable Tennessee law, to terminate this Agreement in the event of a material breach by the University of its duties under this Agreement if: (i) the breach is capable of being cured and the University fails to cure the material breach within thirty (30) days after the University's receipt of written notice from Coach specifying the nature of the breach; or (ii) the breach is not capable of being cured.

Section 3.4. Termination upon Death or Disability of Coach

Section 3.4.1. This Agreement shall terminate automatically upon the death of Coach, and all salary, compensation, benefits, and perquisites shall terminate as of the conclusion of the calendar month in which death occurs, except that the executor or administrator of Coach's estate or other beneficiary specifically designated in writing shall be paid any death benefits due Coach under any University Rules now in effect or hereafter adopted by the University (and except for other payments earned or accrued prior to the effective date of termination).

Section 3.4.2. This Agreement shall terminate automatically if Coach becomes disabled. "Disabled" shall mean physical or mental incapacity of a nature that prevents Coach, in the reasonable and good faith judgment of the University, from coaching, recruiting, or performing several of the other essential functions of the position of Head Swimming Coach for a period of one hundred twenty (120) consecutive calendar days. If this Agreement is terminated because Coach becomes disabled pursuant to this Section 3.4.2, all unearned salary, compensation, benefits, and perquisites shall terminate, except that Coach shall receive: (a) any disability benefits to which he is entitled under any disability program in which he is enrolled; (b) compensation for his accrued and unused annual leave; and (c) other payments which were due or accrued prior to the effective date of termination.

ARTICLE IV - DUTIES

Section 4.1. Subject to other provisions of this Agreement, Coach shall devote his full time, skill, and attention to the performance of the duties of the Head Swimming Coach. Coach shall report directly to the Athletics Director. Coach's duties as the Head Swimming Coach shall be as follows:

- (a) Leading, supervising, evaluating, recruiting, training, promoting, and coaching the University's swimming team within Governing Athletic Rules and University Rules.
- (b) Supporting the University's educational mission by maintaining an environment in which the pursuit of higher education is a priority as may be reflected by swimming student-athletes' class attendance, grade point averages, graduation rates, and NCAA Academic Progress Rates.

- (c) Performing his duties and personally comporting himself at all times in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, and academic standards of the University. At all times, Coach shall exercise good faith efforts so that all employees and students under Coach's direct supervision, or subject to Coach's direct or indirect control (e.g., a swimming student-athlete or an employee with duties directly related to swimming), comport themselves in a like manner.
- (d) Becoming knowledgeable of and complying with all Governing Athletic Rules and University Rules, to which Coach acknowledges he has access.
- (e) As contemplated by Governing Athletic Rules, promoting and advancing institutional control over every aspect of the swimming program; promoting and maintaining an atmosphere of compliance with Governing Athletic Rules and University Rules within the swimming program; monitoring all employees who report directly or indirectly to Coach, and students on the swimming team under Coach's supervision, and taking other reasonable steps to ensure that such persons know and strictly comply with Governing Athletic Rules and University Rules including, but not limited to, requiring them to attend compliance education sessions, encouraging them to seek interpretations as necessary, taking compliance into account when evaluating their performance, and applying appropriate disciplinary measures in the event of a violation.
- (f) Monitoring all aspects of prospective swimming student-athlete recruiting, including but not limited to recruiting contacts, evaluations, official visits, telephone calls and other communications, and any travel-related activities of prospective student-athletes and the swimming program's coaching staff.
- (g) Reporting promptly to the Athletics Director or the staff member in the Athletics Department with primary responsibility for compliance any actual knowledge of or reasonable cause to believe that one or more violations of Governing Athletic Rules or University Rules have been committed by himself or by a University employee under Coach's direct or indirect control or a University swimming student-athlete under Coach's supervision.
- (h) Cooperating fully in any investigation of any aspect of the swimming program or the intercollegiate athletics program, whether by the NCAA, the Southeastern Conference, or the University.
- (i) Working cooperatively with the Athletics Compliance Office on compliance matters and Governing Athletic Rules education.
- (j) Participating in a reasonable number of University radio, television, and other media shows, programs and appearances.
- (k) Carrying out endorsement or consultation services relating to the University's contracts with athletics shoe, equipment, or apparel manufacturers, or (non-personal) endorsement or consultation contracts entered into by the University or its agent, but in no event shall such services unreasonably interfere with games, practices or recruiting, or preparation for games or practices or Coach's other duties herein.
- (l) Scheduling future swimming opponents, in consultation with the Athletics Director;

- (m) Making diligent, good faith efforts to maintain and cultivate effective working relations with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, staff, and friends of the University.
- (n) Under the direction of the Athletics Director, making diligent, good faith efforts to maintain responsibility for the fiscal and budgetary functions associated with the swimming program.
- (o) Performing the duties of a Campus Security Authority under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the duties of a mandatory reporter under UTK's Title IX policies.
- (p) Performing other duties specifically described elsewhere in this Agreement.
- (q) Performing other reasonable duties ordinarily associated with and performed by a head swimming coach at a major university that participates in intercollegiate swimming competition at the NCAA Division I level.
- (r) Performing other reasonable and customary swimming-related duties as may be reasonably assigned by the Athletics Director and/or his or his designee from time to time.

Notwithstanding anything to the contrary in this Section 4.1, a breach of a duty described in this Section 4.1 shall not be considered to be cause sufficient to terminate this Agreement unless termination for the breach would be "for cause" under Section 3.2.2.

Section 4.2. Coach recognizes and acknowledges the importance of the maintenance and observance of the principles of institutional control as contemplated by Governing Athletic Rules over every aspect of the swimming program. Coach agrees to recognize and respect the organizational structure of the University in the execution of his duties under this Agreement.

Section 4.3. Coach recognizes that the primary mission of the University is higher education. Coach also recognizes that a student-athlete may be declared not eligible for competition: (i) for academic reasons; (ii) because the University believes the student-athlete would not be an appropriate representative of the University; (iii) because the University believes that the student-athlete is not eligible according to Governing Athletic Rules; and/or (iv) under University Rules. Coach agrees that such action by the University shall not be considered a breach of this Agreement.

Section 4.4. Coach shall receive payment and/or reimbursement for reasonable and necessary expenses incurred in connection with the performance of his duties, subject to applicable University Rules and Governing Athletic Rules. Payment and/or reimbursement for reasonable and necessary travel expenses for a spouse or other guests will be in accordance with University Rules and Governing Athletic Rules.

**ARTICLE V - ENFORCEMENT OF GOVERNING ATHLETIC RULES; UNIVERSITY DISCLAIMER
REGARDING NCAA VIOLATIONS**

Section 5.1. Coach agrees that the University, as a member of the NCAA, is required to apply and enforce certain Governing Athletic Rules with respect to all institutional staff members through appropriate disciplinary or corrective action and is further required by NCAA Bylaw 11.2.1 to include the following stipulation in this Agreement: If Coach is found in violation of Governing Athletic Rules or responsible for another person's violation of Governing Athletic Rules, he shall be subject to *disciplinary* or corrective action as set forth in the provisions of the NCAA enforcement procedures, including but not

limited to suspension without pay or termination of employment for significant or repetitive violations, whether the violation(s) occurred while Coach was employed by the University or during prior employment at another NCAA member institution. For the purposes of this Agreement, the phrase "significant or repetitive violations" shall mean any Level I or Level II violation of one or more Governing Athletic Rules or multiple Level III or Level IV violations considered collectively to be a Level I or Level II violation, whether committed by Coach or for which Coach has been found responsible.

Section 5.2. Coach agrees that a finding by the NCAA Committee on Infractions (or, if appealed by the University, by the NCAA Infractions Appeals Committee), or an agreed-on finding approved by the NCAA Committee on Infractions in the course of a summary disposition, that Coach has engaged in or condoned a Level I or Level II violation of one or more Governing Athletic Rules, or is responsible for another person's Level I or Level II violation(s) of Governing Athletic Rules, shall constitute a material breach of this Agreement that is not capable of being cured, and the University, in its sole discretion, may elect to terminate this Agreement, suspend Coach without pay, or take other disciplinary or corrective action against Coach as set forth in the provisions of the NCAA enforcement procedures upon written notice to Coach within thirty (30) days of the finding by the NCAA Committee on Infractions (or, if appealed by the University, by the NCAA Infractions Appeals Committee) or the NCAA Committee on Infractions' approval of the agreed-on finding, whether the violation(s) occurred while Coach was employed by the University or during prior employment at another NCAA member institution.

Section 5.3. Coach agrees to comply with any penalty imposed by the NCAA and/or the Southeastern Conference pursuant to Governing Athletic Rules, following the exhaustion of any available appeals by Coach. Any fine imposed personally on Coach by the NCAA and/or the Southeastern Conference shall be the sole responsibility of Coach.

Section 5.4. Upon termination of this Agreement pursuant to this Article V, Coach shall not be entitled to further salary, compensation, benefits, or perquisites from the University (except for payments earned or accrued prior to the effective date of termination). Coach waives all rights to receive compensation for his accrued and unused annual leave upon termination of this Agreement pursuant to this Article V.

Section 5.5. In its sole discretion, the University may elect to terminate this Agreement for cause under this Article V but offer Coach continued employment with or without a new employment agreement.

Section 5.6. Prior to implementing any disciplinary or corrective action as contemplated by this Article V against Coach based on a finding by the Southeastern Conference, NCAA Committee on Infractions, or, if appealed, the NCAA Infractions Appeals Committee, the University shall afford Coach notice and a reasonable opportunity to meet with the Athletics Director and the Chancellor to respond to the proposed disciplinary or corrective action. Coach voluntarily waives all rights to a post-termination or post-suspension opportunity to contest a termination or suspension without pay pursuant to this Article V under University Rules and the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 *et seq.*

Section 5.7. Coach shall forfeit and repay to the University all bonuses paid to Coach pursuant to Section 2.3 if any goal achieved is subsequently vacated by the Southeastern Conference or the NCAA, or if the swimming program is subsequently placed on probation by the NCAA (or by the University, if the self-imposed) for violations that occurred in whole or in part during a year for which Coach was awarded incentive compensation. This obligation shall apply regardless of whether the University terminates this Agreement or Coach's employment. This obligation shall survive the termination of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination of this Agreement.

Section 5.8. Nothing in this Article V shall be construed to conflict with or limit the University's

rights set forth in any other part of this Agreement, including but not limited to Article III and Article IX.

ARTICLE VI - OUTSIDE INCOME AND ACTIVITIES

Section 6.1. Outside Income

Section 6.1.1. Coach understands and agrees that he shall receive the prior written approval of the Athletics Director and the Chancellor (not to be unreasonably withheld or delayed) for all athletically-related income and benefits from sources outside the University. Sources of such income and benefits shall include, but are not limited to, income and benefits from: annuities; sports camps; housing benefits (including preferential housing arrangements); country club memberships; complimentary tickets; television, radio, and other media programs; endorsement or consultation contracts with athletics shoe, apparel, or equipment manufacturers; and any other outside activities described in Section 6.2.

Section 6.1.2. Coach shall submit an annual written detailed report of all athletically related income and benefits from sources outside the University to the Chancellor, through the Athletics Director, on or before August 1 of each year, consistent with the way in which the Athletics Department's collects this information from other employees. Upon request, the University shall have reasonable access to all records of Coach necessary to verify the information contained in such report.

Section 6.2. Outside Activities

Section 6.2.1. Coach understands and agrees that all swimming camps conducted by Coach at University facilities shall be operated through the University and in accordance with Governing Athletic Rules and University Rules, and that all compensation for coaches and staff shall be paid through the University's payroll or its disbursement voucher system. Coach may use the University's name and logo in connection with any swimming camps or clinics he conducts at University facilities with prior written approval from the Athletics Director, or his designee (not to be unreasonably withheld or delayed). The University will use its best efforts to minimize camp operational costs relating to housing, facilities, and food, in accordance with University Rules.

Section 6.2.2. Coach shall not, by any statements or appearances on television, on radio, in newspapers, or in magazines or other published media or any promotional material, personally or officially endorse, promote, or advertise for commercial purposes any product or service unless prior written approval has been granted by the Athletics Director and the Chancellor in accordance with Article VI, Section 6.1.1 of this Agreement (said approval not be unreasonably withheld or delayed), and by the University's multi-media rights partner as contemplated by the University's agreement with the University's multi-media rights partner. Coach shall also receive annual prior written approval from the Athletics Director and the Chancellor for any use, directly or by implication, of the University's name, logo, or other University trademark in the endorsement of commercial products or services. Coach shall include all income and benefits derived from such endorsement activities in the report of all athletically-related income and benefits he must file annually in accordance with Article VI, Section 6.1.2 of this Agreement. All such endorsements shall cease at the termination of Coach's employment as the Head Swimming Coach.

Section 6.2.3. Coach may serve on corporate boards of directors or enter into personal service contracts for outside employment services, provided (a) prior written approval of the Athletics Director and the Chancellor of the University is received (not to be unreasonably withheld or delayed) and all income and benefits are reported annually in accordance with Article VI, Section

6.1; (b) such activities do not interfere or conflict with his duties at the University or contracts entered into by the University or the University's multi-media rights contractor; (c) University facilities and resources are not used (although Coach shall have the right to be identified as the Head Swimming Coach of UTK); and (d) such activities are conducted in accordance with Governing Athletic Rules.

Section 6.2.4. The University further agrees that Coach may write for publications and speak before public gatherings, provided said writings and speeches are made in the same professional way and manner expected of any member of the administrative staff of the University. The University expressly agrees that any compensation received for such speeches and writings by Coach in the form of honoraria, royalties, and the like may be retained by him in addition to compensation set forth herein; provided, however, that if the University reimburses Coach or otherwise pays for travel or other expenses associated with the receipt of an honorarium, the honorarium shall be remitted in full to the University.

Section 6.2.5. Coach understands and agrees that the University has no responsibility or liability for any claim arising out of Coach's performance of the activities described in Section 6.2 or for any other activity outside the scope of his University employment. In no event shall Coach usurp any corporate opportunities of the University or engage in an activity involving a conflict of interests with his University duties. Outside activities are independent of Coach's employment with the University, and the University shall have no responsibility or liability for any claims arising from Coach's outside activities. In undertaking outside activities, Coach shall make clear to any individual or entity with whom Coach may be involved that Coach is acting in his independent, individual capacity and not as an agent, employee, and/or other representative of the University.

ARTICLE VII - INTELLECTUAL PROPERTY

Section 7.1. Coach grants the University the right during the Term to use, and the right to grant to others use of, his name, initials, facsimile signature, voice, video or film portrayals, photographs, likeness, image, or facsimile image in any manner in connection with any radio, television, internet, and other media shows, programs and appearances, or in connection with any endorsement or consultation contracts entered into by the University or the University's multi-media rights partner.

Section 7.2. Coach covenants and agrees that the University retains, owns, and controls all intellectual property and media rights relating to the University's swimming program and Athletics Department, including but not limited to all television, radio, internet, and any other form of written or electronic media now known or developed in the future related to the University's swimming program and Athletics Department, whether produced by the University or through a third-party. Coach further covenants and agrees that the University shall have the exclusive right to designate the media rights and intellectual property holder for all forms of media created during the Term.

Section 7.3. Coach covenants and agrees that, upon termination of this Agreement, the University shall have the right, but not the obligation, to continue to use, and to authorize, license, or grant any sponsor, manufacturer, media rights company, or vendor the right to use, any intellectual property or media rights relating to the swimming program, the Athletics Department, or Coach's employment that were created or produced during the Term, notwithstanding the fact that such intellectual property or media rights may contain Coach's name, nickname, initials, facsimile signature, voice, video or film portrayals, photographs, likeness, image, facsimile image, or biographical information. Coach shall have no further right to any compensation for any such continued use by the University unless expressly provided in this Agreement. The use of Coach's name, nickname, initials, facsimile signature, voice, video or film portrayals, photographs, likeness, image, or facsimile image for endorsement purposes shall cease upon termination of this Agreement.

Section 7.4. Except as otherwise provided in this Agreement, Coach shall retain all rights in and to his name and endorsement. Upon expiration or termination of this Agreement, the University shall have no further right to the continued or future use Coach's name and/or endorsement, except as provided explicitly in this Article VII.

Section 7.5. The rights and obligations described in this Article VII shall survive the termination of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination of this Agreement.

ARTICLE VIII - LIMITATION OF REMEDIES AND WAIVER OF CLAIMS

The financial consequences of the termination of this Agreement pursuant to Section 3.1, Section 3.2, Section 3.4, Article V, or Article IX are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Section 3.1, Section 3.2, Section 3.4, Article V, or Article IX, except as expressly provided for in this Agreement, the University shall have no liability whatsoever to Coach, nor shall Coach be entitled to receive, and Coach hereby waives and releases all claims that Coach or his personal representatives may have against the University, its trustees, officers, employees, or agents, and their respective successors, heirs, and assigns for: (a) payment of fringe benefits; (b) accrued and unused annual leave; (c) the amounts payable under Article II or any other athletically related income or benefits derived by virtue of Coach's position as the Head Swimming Coach; (d) any direct or consequential damages by reason of any economic loss, including, but without limitation, loss of outside or collateral business income or opportunities, talent fees, earning capacity, incentive and supplemental income, benefits, or perquisites; and/or (e) alleged humiliation or defamation resulting from the fact of termination or suspension, the public announcement thereof, or the University's release of information or documents required by law. Coach acknowledges that in the event of the termination by the University of this Agreement for cause, without cause, or otherwise, Coach shall have no right to occupy the position of the Head Swimming Coach and Coach's sole remedies are provided for in this Agreement and shall not extend to injunctive relief.

**ARTICLE IX - MATERIAL INDUCEMENT FOR UNIVERSITY'S AGREEMENT
AND RESERVATION OF RIGHTS**

Section 9.1. As a material inducement to the University to execute and perform this Agreement, Coach represents and warrants the following to the University:

- (a) He has no knowledge of or reasonable cause to believe there exists an unreported violation or potential violation of any Governing Athletic Rules or University Rules by any assistant coach, staff member, or any other person associated with the swimming program prior to the date on which he executed this Agreement;
- (b) He has not knowingly furnished the NCAA or the University with false, misleading or incomplete information concerning his, any assistant coach's, any staff member's, or supporter's involvement in or knowledge about matters relevant to a possible violation of an NCAA regulation or University Rule when requested to do so by the NCAA or the University;
- (c) He is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and
- (d) He has never been convicted of a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses).

Section 9.2. Coach agrees that a breach of any representation or warranty contained in Section 9.1 shall be a material breach of this Agreement that is not capable of being cured, and the University in its sole discretion may elect to terminate this Agreement upon written notice to Coach. In its sole discretion, the University may elect to terminate this Agreement for cause under this Article IX but continue Coach's employment, with Coach's agreement, with or without a new employment agreement. Prior to the effective date of termination this Agreement pursuant to this Article IX, the University shall afford Coach notice and a reasonable opportunity to meet with the Athletics Director and the Chancellor to respond to the proposed termination or suspension. Coach voluntarily waives all rights to a post-termination opportunity to contest a termination pursuant to this Article IX, including but not limited to his rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq.

Section 9.3. Upon termination of this Agreement pursuant to this Article IX, Coach shall not be entitled to further salary, compensation, benefits, or perquisites from the University, including but not limited to all rights to receive compensation for his accrued and unused annual leave.

Section 9.4. Coach agrees that nothing in this Article IX shall be construed to conflict with or limit the University's rights set forth in any other Article of this Agreement, including but not limited to Article III and Article V.

ARTICLE X - DEFINITIONS

The following words, terms, or phrases, when used in this Agreement, shall have the following meanings:

Section 10.1. "Athletics Director" means UTK's Vice Chancellor and Director of Athletics.

Section 10.2. "Governing Athletic Rules" means: (1) all present or future legislation, rules, regulations, directives, written policies, bylaws, and constitutions, and official or authoritative interpretations thereof, and all amendments, supplements, or modifications thereto, promulgated by the NCAA or the Southeastern Conference or any successor of such association or conference, or by any other athletic conference or governing body hereafter having regulatory power or authority relating to the University's intercollegiate athletics program; and (2) all state or federal laws or regulations regulating college athletics, coaches, staff, student-athletes, or competition.

Section 10.3. "Swimming team" or "swimming program" means UTK's intercollegiate men's swimming team, intercollegiate men's diving team, intercollegiate women's swimming team, and/or intercollegiate women's diving team.

Section 10.4. "NCAA" means the National Collegiate Athletic Association and its successors and assigns, or any other athletic association of which the University, subsequent to the execution of this Agreement, may be a member.

Section 10.5. "Southeastern Conference" or "SEC" means the Southeastern Conference and its successors and assigns, or any other athletic conference of which UTK, subsequent to the execution of this Agreement, may be a member.

Section 10.6. "University" means The University of Tennessee and its campus located in Knoxville, Tennessee.

Section 10.7. "University Rules" means all present or future policies, procedures, rules, regulations, and guidelines of the University, including but not limited to policies of UTK.

Section 10.8. "UTK" means The University of Tennessee, Knoxville and its Athletics Department.

Section 10.9. "Contract Year" shall mean a three hundred and sixty-five (365) day period beginning on July 1 of one calendar year and ending on June 30 of the following calendar year.

ARTICLE XI - MISCELLANEOUS

Section 11.1. This Agreement contains the complete agreement between the parties concerning Coach's employment as the Head Swimming Coach. Neither party has made any representation with respect to the subject matter of this Agreement not specifically included in this Agreement, nor has either party relied on any such representation in entering into this Agreement.

Section 11.2. This Agreement may only be modified by a writing signed by Coach and the Athletics Director, UTK's Chancellor, and the University's Chief Financial Officer.

Section 11.3. The invalidity of any portion of this Agreement shall not and shall not be deemed to affect the validity of any other provision. In the event any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

Section 11.4. Coach acknowledges that no policy or procedures manual, faculty or staff handbook, course of conduct, practice, award, commendation, promotion, transfer, or length of service creates any express or implied contract modifying any part of this Agreement.

Section 11.5. This Agreement shall be interpreted in accordance with Tennessee law.

Section 11.6. The captions of the various provisions contained in this Agreement are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge, or restrict any of the provisions of this Agreement.

Section 11.7. Any notice required or permitted to be given under this Agreement shall be sufficient if given in writing and either (a) delivered in person, (b) sent via electronic mail, or (c) sent by a nationally recognized delivery service (e.g., FedEx, etc.). Notice shall be deemed given when the written notice is (a) delivered in person, (b) sent via electronic mail, or (c) placed with a nationally recognized delivery service. Notice to Coach shall be sent to his campus office or to his University-provided e-mail account(s). Notice to the University shall be delivered to the Athletics Director at his or his campus office.

Section 11.8. All documents, files, records, materials (in any format, including electronically stored information), equipment, or other property, including without information, personnel records, recruiting records, team information (excluding on-field property such as Coach's plays, defenses, etc.), athletic equipment, films, videos, statistics, keys, credit cards, laptop computers, software programs, and electronic communication devices, furnished to Coach by the University or developed by Coach at the University's direction or for the University's use or otherwise in connection with Coach's employment with the University are and shall remain the sole and confidential property of the University. Within three (3) days of the expiration or termination of this Agreement, Coach shall, upon initiation by the University, complete the University's exit procedure, including returning all University property in his possession. The foregoing provisions shall not apply to Coach's personal notes, personal playbooks, memorabilia, diaries, and similar personal records of Coach, which he is entitled to retain.

Section 11.9. Upon the expiration or earlier termination of this Agreement for any reason, Coach agrees that the University shall be entitled to withhold and deduct from any final payment of any kind that is owed to Coach by the University the amount of any indebtedness owed to the University by Coach, in accordance with the procedures described in University Human Resources Policy 0515.

Section 11.10. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

Section 11.11. It is expressly agreed that nothing contained in this Agreement shall be construed to constitute a waiver or relinquishment by the University of any rights to claim such exemptions, privileges, and immunities as may be provided by law.

Section 11.12. Coach agrees to be responsible for the payment of all taxes due on all compensation or benefits provided by the University. Coach agrees to defend, indemnify, and hold harmless the University, its trustees, officers, employees, or agents, and their respective successors, heirs, and assigns from all claims or penalties asserted against them for any failure to pay taxes due on any compensation or benefit provided by the University pursuant to this Agreement. Coach expressly acknowledges that the University has not made, nor herein makes, any representation about the tax consequences of any consideration provided by the University to Coach pursuant to this Agreement or otherwise in connection with his employment, except where otherwise explicitly noted.

Section 11.13. This Agreement shall be binding upon the parties and their respective successors, assigns, heirs, and personal and legal representatives, but neither party may assign, pledge, or encumber its respective rights, interests, or obligations under this Agreement.

Section 11.14. Each party hereto shall be viewed as an equal participant to the drafting of this Agreement, and each party agrees that there shall be no presumption against the drafting party.

Section 11.15. Coach acknowledges that he has read and understands this Agreement and agrees that its provisions are reasonable and enforceable and that he will abide by them.

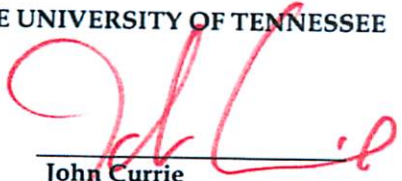
Section 11.16. This Agreement shall not be binding on the University until signed by the Chancellor and the University's Chief Financial Officer. Coach expressly acknowledges that the Athletics Director does not have authority to bind the University with respect to this Agreement, any amendment of this Agreement, or Coach's employment as the Head Swimming Coach.

Section 11.17. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement on the dates shown below.

THE UNIVERSITY OF TENNESSEE

By:


John Currie
Vice Chancellor and Director of
Athletics
The University of Tennessee,
Knoxville

MATTHEW KREDICH


Matthew Kredich

7/26/17
Date

30 JUL 2017

Date

Beverly Davenport

**Dr. Beverly Davenport
Chancellor
The University of Tennessee,
Knoxville**

8.4.17

Date

DocuSigned by:
David Miller 00353809

**David Miller
Chief Financial Officer
The University of Tennessee**

8/9/2017 | 09:33:01 PDT

Date