

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into between **THE UNIVERSITY OF TENNESSEE**, a public educational corporation of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville ("UTK") and its Athletics Department (collectively, the "University"), and **Sean Carlson** ("Coach"), and records the agreement of the University and Coach as to the principal terms and conditions under which the University shall employ Coach and Coach accepts employment as UTK's Head Coach and Director of Cross Country. This MOU is effective on May 23, 2022 ("Effective Date") and constitutes a binding agreement between Coach and the University, subject to the execution of a formal Employment Agreement, which shall not be inconsistent in any material way with this MOU, and cancels and supersedes all prior existing oral and written agreements between the University and Coach. In consideration of the mutual promises contained herein, the parties agree as follows:

1. TERM, DUTIES & AUTHORITY: Coach shall be employed as UTK's Head Coach and Director of Cross Country from the Effective Date through June 30, 2027 ("Term"), with the duties and authority ordinarily associated with a head coach/director of cross country at a major university that participates at the NCAA Division I FBS level.

2. COMPENSATION & BENEFITS (ALL SUBJECT TO APPLICABLE STATE AND FEDERAL LAWS; DOLLARS STATED IN GROSS AMOUNTS; PARTIAL MONTHS/YEARS PRORATED): The University shall provide Coach with the following compensation and benefits:

- (a) Annualized base compensation of \$225,000.00 ("Base Pay").
- (b) Annual incentive compensation for athletic achievements as provided in Exhibit A, which is incorporated herein by reference.
- (c) A one-time moving stipend in a gross amount of up to \$30,000.00, subject to applicable state and federal tax withholding and in accordance with University rules and Department policy.
- (d) In the University's discretion, either a monthly vehicle allowance of \$850.00 or 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. The University shall be solely responsible for maintaining liability insurance coverage on the vehicle. Coach shall be solely responsible for maintaining full comprehensive and collision insurance coverage on the vehicle, for paying fuel costs, and for otherwise complying with the courtesy vehicle program.
- (e) Complementary home football tickets in accordance with Athletics Department policy.
- (f) Coach shall be included in the University's athletic play/practice insurance coverage. Coach shall be eligible for participation in the same fringe benefit programs for which other regular full-time employees are eligible. The University shall not be required to compensate Coach for his accrued and unused annual leave upon the termination of employment for any reason. Coach shall be entitled to the maximum annual amount of retirement contributions by the University allowed by federal and state law. All of Coach's compensation (including but not limited to Base Pay and Incentive Pay) is subject to any furlough and/or temporary salary reduction measures that may be imposed by the University or the UTK Athletics Department.
- (g) Coach shall receive an annual allotment of \$2,000 through the Department's exclusive apparel provider, currently Nike, for personal use.

3. TERMINATION FOR CAUSE BY UNIVERSITY: The University has the right to terminate this MOU or the resulting Employment Agreement at any time for cause as determined in the reasonable and good faith judgment of the University. For the purpose of terminating this MOU, "cause" shall be interpreted consistently with its meaning in the most recent head coach/director of cross country's employment agreement, excluding a memorandum of understanding, executed by the University. Termination of the Employment Agreement for "cause" shall be in accordance with the definitive terms and conditions set out in the Employment Agreement, which shall be generally consistent with, but not limited to, those included in the most recent head coach/director of cross country's employment agreement, excluding a memorandum of understanding, executed by the University. In the event of a termination of either this MOU or the Employment Agreement for "cause," the University shall not be liable to Coach for any unearned or unaccrued payments or benefits after the date of

termination. The University may suspend Coach with pay pending an investigation or decision relating to termination for "cause." For any one or more acts, omissions, or events that would be grounds for termination for "cause," the University may take other disciplinary or corrective action against Coach short of termination, including but not limited to suspension without pay (said suspension not to exceed 90 days). Prior to any final determination regarding a possible termination for "cause," the University shall afford Coach notice and an opportunity to meet with the Vice Chancellor and Director of Athletics to respond to any allegations or proposed termination. Coach voluntarily waives all rights to a post-termination opportunity to contest a for-cause termination, including but not limited to his rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq. In the event a termination of this MOU or the Employment Agreement 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 only to the remedies that would be available to him under this MOU or the Employment Agreement if the University terminated this MOU or the Employment Agreement without cause, according to the date of termination, in lieu of all other legal remedies or equitable relief.

4. TERMINATION WITHOUT CAUSE BY UNIVERSITY: In its sole discretion and at any time during the Term, the University may terminate this MOU or the Employment Agreement without cause. If the University terminates this MOU or the Employment Agreement without cause, then the University shall pay Coach a separation payment ("University Separation Payment") in the amount equal to 50% of the monthly rate of the Base Pay times the number of months remaining in the Term, with any part of a month prorated based on weekdays and subject to all applicable state and federal tax reporting and withholding requirements. Payment of the University Separation Payment shall be made in equal monthly installments over a period equal to the number of months remaining in the Term until June 30, 2027, with the first monthly installment of the University Separation Payment due on or before the last day of the month following the month in which the MOU or the Employment Agreement was terminated. The University's obligations to pay the University Separation Payment shall not accrue interest (so long as not in arrears). As a condition of being eligible to receive the University Separation Payment, Coach shall be required to (1) execute a waiver and release of claims that is substantially similar to the release attached to the most recent head coach's employment agreement and (2) use his reasonable best efforts to mitigate the University's obligation to pay the University Separation Payment by making reasonable and diligent efforts as soon as practicable following termination to obtain the objectively best comparable employment or paid services position that Coach is able to obtain based on Coach's skill and experience; Coach's failure to satisfy either condition will nullify the University's obligation to make the University Separation Payment. During the period of time in which the University is obligated to make the University Separation Payment, Coach shall promptly report to the University on a quarterly basis all non-passive income received or earned by him relating to all employment, independent contractor and/or paid services. For each month from the termination date through the end of the Term, the University shall have the right to deduct or offset any and all such non-passive income of Coach from the monthly University Separation Payment installment. Notwithstanding the language and/or guidelines contained herein, the parties agree to engage in a good faith discussion and review regarding the applicability of Internal Revenue Code §409A ("§409A") to such guarantee payment structure and, pending such review, agree to make reasonable accommodations in the Employment Agreement to comply with §409A.

5. TERMINATION WITHOUT CAUSE BY COACH: In his sole discretion and at any time during the Term, Coach may terminate this MOU or the Employment Agreement without cause. If Coach terminates this MOU or the Employment Agreement without cause prior to the end of the Term, including any extension thereof, and accepts employment with another member institution of the Southeastern Conference, then Coach shall pay the University a separation payment in the amount equal to 50% of the total Base Pay that would have otherwise been payable to Coach through the end of the Term had he not terminated the MOU or the Employment Agreement. Payment of the Coach's separation payment shall be paid to the University before the last day of the month following the month in which the MOU or Employment Agreement was terminated.

6. MISCELLANEOUS:

- (a) In addition to the terms and conditions concerning the matters set out in Paragraphs 1 through 5 above (excluding terms and conditions applicable only while the MOU is in effect), the Employment Agreement shall include, among other things, provisions concerning the following, all in a form substantially similar to

the provisions of the most recent head coach/director of cross country's employment agreement: (i) duties and authority of Coach as Head Coach and Director of Cross Country; (ii) reasonable limitations on outside activities by Coach, including commercial endorsements; (iii) enforcement of NCAA, Southeastern Conference, and other governing athletic rules; (iv) the University's rights to use Coach's name, likeness, image, etc.; (v) Coach's obligation to notify the Athletics Director of material discussions about employment with another college or university or with a professional track organization; (vi) limitation of remedies and waiver of claims by both parties; and (vii) restrictions on Coach's disclosure of confidential information relating to the track program during the Term and after termination of the Employment Agreement. Additionally, the Employment Agreement shall include a provision stating that Coach will be solely responsible for any fine or other penalty imposed personally on Coach by the NCAA and/or the Southeastern Conference and for any fine or other penalty imposed upon the University by the NCAA and/or the Southeastern Conference based on conduct of Coach.

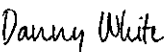
- (b) Coach represents and warrants that he has disclosed to the University all material information concerning previous NCAA, conference, or institutional rules violations or potential violations committed by his or any coach, staff member, or other person under his direct or indirect control at any other NCAA member institution prior to the date on which he executed this Agreement. Coach also represents that: neither he nor any person acting on his behalf knowingly misrepresented material information, knowingly withheld material information, or knowingly provided incomplete or false material information during the University's process of interviewing and hiring Coach; he is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and he has never been convicted of, pled guilty to, or pled nolo contendere to a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses). This MOU is conditioned on a satisfactory criminal background check and NCAA compliance check, to be completed within five (5) business days after the University's execution of this MOU.
- (c) Notwithstanding anything herein to the contrary, neither party shall be considered in default of performance of any obligations under this MOU or the Employment Agreement if such performance is prevented or delayed by any cause which is beyond the reasonable control of the party affected, including but not limited to causes such as war, hostilities, revolution, or civil commotion; epidemic; accident; fire, wind, flood, or other natural disaster; state or national declaration of emergency; requirement of law, legislative enactment, or executive order; act of God; or any other reason that is generally regarded as force majeure. To the extent that Coach's ability to perform under this MOU or the Employment Agreement is materially prevented in any way or delayed for more than sixty (60) days due to a cause that is beyond the University's reasonable control, the University shall not be obligated to pay Coach the compensation set forth in this MOU or the Employment Agreement, and shall have cause to terminate the MOU or the Employment Agreement without any further obligation to Coach.
- (d) This MOU 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 MOU. This MOU shall be governed by the laws of the State of Tennessee.

The parties acknowledge their agreement by signing and dating this Memorandum of Understanding below.

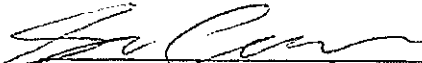
THE UNIVERSITY OF TENNESSEE

SEAN CARLSON

By:

DocuSigned by:

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Dr. Daniel White
Vice Chancellor and Director of Athletics
The University of Tennessee, Knoxville


Coach

6/2/2022 | 08:18:54 PDT

Date

Date

6/1/2022

DocuSigned by:
Donde Plowman
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Dr. Donde Plowman
Chancellor
The University of Tennessee, Knoxville

6/3/2022 | 11:33:07 MDT

Date

The University of Tennessee

DocuSigned by:
Chris Cimino
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Signature:
Name: Chris Cimino
Title: Sr. Vice Chancellor for Finance & Administration
Date: 6/28/2022

EXHIBIT A – INCENTIVE COMPENSATION

In recognition of exemplary athletic performance by the men's and women's cross country teams individually a "Team" and the additional work required by Coach therewith, and as an incentive for Coach to assist each 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 the following subsections (a)-(c), subject to all applicable state and federal tax reporting and withholding requirements:

- (a) Coach is eligible to receive a maximum of one (1) incentive payment per Contract Year under this Exhibit A, subsection (a) based on the highest goal achieved for each Team (i.e., one (1) incentive payment can be earned in each sport and each men's or women's cross-country – a total of two (2) incentive payments opportunities) (defined as % of Base Pay):
- | | |
|---|------|
| (i) Sending six (6) athletes from one Team to compete in an NCAA Championship | 2.0% |
| (ii) Top 20 Team finish at an NCAA Championship | 3.0% |
| (iii) Top 10 Team finish at an NCAA Championship | 5.0% |
| (iv) Top 5 Team finish at an NCAA Championship | 6.0% |
| (v) NCAA Championship | 8.0% |
- (b) SEC Team Championship (one (1) incentive payment can be earned in each sport and for each men's and women's cross-country Team – a total of four (2) incentive payment opportunities) (defined as % of Base Pay) – SEC Championship - 2.0%
- (c) Coach is eligible to receive a maximum of one (1) incentive payment per Contract Year under this Exhibit A, subsection (a) based on the highest goal achieved for each Team (i.e., one (1) incentive payment can be earned in each sport and each men's or women's for indoor or outdoor track & field – a total of four (4) incentive payments opportunities) (defined as % of Base Pay):
- | | |
|---|------|
| (i) Men's SEC Indoor Championships: 1st bonus: 20 points, 2ndbonus: 30 points | 1.0% |
| (ii) Men's SEC Outdoor Championships: 1st bonus: 30 points, 2ndbonus: 35 points | 2.0% |
| (iii) Men's NCAA Indoor Championships: 1st bonus: 15 points, 2ndbonus: 20 points | 2.0% |
| (iv) Men's NCAA Outdoor Championships: 1st bonus: 15 points, 2ndbonus: 20 points | 3.0% |
| (v) Women's SEC Indoor Championships: 1st bonus: 20 points, 2ndbonus: 30 points | 1.0% |
| (vi) Women's SEC Outdoor Championships: 1st bonus: 30 points, 2ndbonus: 35 points | 2.0% |
| (vii) Women's NCAA Indoor Championships: 1st bonus: 15 points, 2ndbonus: 20 points | 2.0% |
| (viii) Women's NCAA Outdoor Championships: 1st bonus: 15 points, 2nd bonus: 20 points | 3.0% |
- (d) Either or both of the following:
- | | |
|--|---------|
| (i) USTFCCA National Coach of the Year | \$5,000 |
| (ii) SEC Coach of the Year | \$2,500 |

Annual incentive compensation due under this Exhibit A shall not exceed 20% of Base Pay in any Contract Year. Annual incentive compensation due under this Exhibit A is subject to all applicable state and federal tax reporting and withholding requirements. Annual incentive compensation due under this Exhibit A shall be paid by the month following the conclusion of the cross country season in which the goal was achieved. Annual incentive compensation due under this Exhibit A shall be earned by and payable to Coach only if Coach is employed as Head Coach and Director of Cross Country through the completion of the team's final competition of the season for which the incentive compensation was earned. Notwithstanding anything herein to the contrary, however, the University shall not be obligated to pay any incentive compensation to Coach (and Coach shall be obligated to

reimburse any incentive compensation that he has already received) if Coach is found by the NCAA to have committed a Level I or Level II infraction during the time period in which the incentive compensation was otherwise earned.