

EMPLOYMENT AGREEMENT
VICE CHANCELLOR AND DIRECTOR OF ATHLETICS

This Employment Agreement is entered into between THE UNIVERSITY OF TENNESSEE, for and on behalf of The University of Tennessee at Chattanooga ("UTC") and UTC's Athletics Department, (collectively, the "**University**"), and MARK WHARTON ("**Wharton**"). This Agreement cancels and supersedes all prior existing oral and written agreements and understandings between the University and Wharton.

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 Wharton, and Wharton agrees to serve, as the Vice Chancellor and Director of Athletics for UTC.

Section 1.2 The term of this Agreement shall be from September 11, 2017 through August 31, 2022, unless sooner terminated as provided in this Agreement (the "**Term**"). The parties agree that the effective date of this Agreement shall be September 1, 2017, even if the Agreement's execution date is subsequent thereto. The University may allow this Agreement to expire and elect not to renew Wharton's employment as Athletics Director without complying with any University Rules applicable to staff-exempt employees who do not serve under a contract of employment for a definite term. On or before August 31, 2020, the parties to agree to engage in good faith discussions concerning whether the Term will be extended. Wharton agrees that oral agreements to renew or extend this Agreement are invalid and nonbinding.

ARTICLE II - COMPENSATION AND BENEFITS

Section 2.1 The University, as payment and consideration for the services to be performed by Wharton, as set forth herein, agrees to pay Wharton guaranteed gross base compensation in the amount of one hundred eighty-five thousand dollars (\$185,000.00) per Contract Year (the "**Base Pay**"). Base Pay shall not be increased in accordance with any across-the-board or merit salary increase authorized for University employees by the State of Tennessee or the University. The University shall pay Base Pay to Wharton in twelve (12) equal monthly installments in accordance with the University's customary monthly payroll procedures, with partial months prorated.

Section 2.2 Wharton shall be eligible to receive the annual incentive compensation described in **Exhibit A** to this Agreement. Wharton shall not be eligible to receive annual incentive compensation under any other bonus policy for employees of the Athletics Department.

Section 2.3 In addition to the benefits set forth in this Agreement, as a regular full-time employee of the University, Wharton is entitled to the same fringe benefits as other regular full-time employees, which may be amended by the University from time to time. As additional payment and consideration for the services to be performed by Wharton, as set forth herein, the University agrees to pay and/or provide Wharton with the fringe benefits and/or other payments described in **Exhibit B** to this Agreement. The Base Pay shall be used to determine benefits that are based on salary. The University will not be required to compensate Wharton for his accrued annual leave upon termination of his employment for any reason.

Section 2.4 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 Wharton. Retirement contributions shall be made periodically in accordance with the University's business practices.

Section 2.5 All compensation and benefits provided to Wharton pursuant to this Agreement are subject to all applicable state and federal tax reporting and withholding requirements.

ARTICLE III - DUTIES AND AUTHORITY

Section 3.1 Subject to the terms and conditions stated in this Agreement, Wharton shall devote his full time, skill, and attention to the performance of the duties of Athletics Director. Wharton's duties as Athletics Director shall include:

- (a) Reporting directly to the Chancellor and serving as a member of the Chancellor's Executive Leadership Team;
- (b) Achieving and maintaining a high level of comprehensive intercollegiate competitive success in the athletics program;
- (c) Recommending and effecting the hiring, termination, terms and conditions of employment of all personnel in the Athletics Department, with the requisite authority to accomplish the same, in consultation with and approval by the Chancellor and in accordance with University Rules;
- (d) Becoming knowledgeable of, and complying with, all Governing Athletic Rules and University Rules, and using efforts consistent with those exercised by a reasonably prudent athletics director at a Division I program similar to UTC's program to ensure that all coaches, staff, student-athletes, and other persons affiliated or associated with UTC's athletics program do the same;
- (e) Advising the Chancellor on the means and methods necessary to promote and maintain institutional control over UTC's intercollegiate athletics program, as defined by Governing Athletic Rules, and ensuring that means and methods approved by the Chancellor are implemented;

- (f) Promptly reporting to the Chancellor and the staff members in the Athletics Department with primary duties for compliance any actual knowledge of, or reasonable cause to believe, that a violation of Governing Athletic Rules more likely than not has been committed or are being committed by himself or others;
- (g) Cooperating fully with and maintaining the integrity of any investigation conducted by the NCAA, the Southern Conference, or the University;
- (h) Supporting the University's educational mission by using efforts consistent with those exercised by a reasonably prudent athletics director at a Division I program similar to UTC's program to maintain an environment in which the pursuit of higher education is a priority as reflected by student-athletes' class attendance, academic progress rates, grade point averages, and graduation rates;
- (i) Organizing, managing and directing the administrative and related activities of the Athletics Department consistent with Governing Athletic Rules, University Rules, and the philosophy and mission of the University;
- (j) Developing and maintaining programs that will assure meaningful, enriching, and rewarding experiences for all student-athletes and students who participate in or are involved with intercollegiate athletics;
- (k) Representing and promoting the Athletics Department and its programs to the public, generating fan interest, and soliciting private gifts for athletics programs and facilities.
- (l) Envisioning and planning for the future direction and needs of the Athletics Department and making recommendations to responsible University administrators;
- (m) Making diligent, good faith efforts to maintain and cultivate effective working relationships with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, and staff;
- (n) Developing effective internal communications with all members of the Athletics Department so that an efficient and effective athletics program will be maintained;
- (o) Planning, organizing, and promoting a competitive schedule for all intercollegiate sports, in collaboration with the Athletics Department's head coaches and consistent with head coaches' own duties pertaining to scheduling;
- (p) Serving as the official spokesperson of the Athletics Department in matters of athletics policy in accordance with University Rules and organization;
- (q) Preparing, reviewing, and managing the Athletics Department budget and receiving appropriate administrative support for budget priorities as well as budget approval;

- (r) Reviewing and approving Athletics Department operating expenditures;
- (s) Directing the management, maintenance and development of the Athletic Department's physical plant and facilities;
- (t) Representing the Athletics Department at conference and national levels;
- (u) 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 the University's Title IX-related policies;
- (v) Performing other duties as described elsewhere in this Agreement;
- (w) Performing other duties and having the authority ordinarily associated with and performed by an athletics director at a Division I program similar to UTC's program; and
- (x) Performing other reasonable duties as may be reasonably assigned by the Chancellor from time to time.

ARTICLE IV - OUTSIDE INCOME AND ACTIVITIES

Section 4.1 Outside Income

Section 4.1.1 Wharton understands and agrees that Wharton shall receive the prior written approval of 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 4.2.

Section 4.1.2 Wharton shall submit an annual written detailed report of all athletically-related income and benefits from sources outside the University to the Chancellor, on or before August 1 of each year, consistent with the Athletics Department's collection of this information from other employees. Upon request, the University shall have reasonable access to all records of Wharton necessary to verify the information contained in such report.

Section 4.2 Outside Activities

Section 4.2.1 Wharton 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 Chancellor in accordance with Section 4.1.1 (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. Wharton shall also receive annual prior written approval from 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. With the required prior written approvals, and subject to limitations arising out of any University contracts with third parties concerning media rights or the endorsement, promotion, or advertisement of commercial products or services, Wharton may undertake commercial endorsements in which Wharton identifies as the Athletics Director. Wharton shall include all income and benefits derived from such endorsement activities in the report of all athletically-related income and benefits Wharton must file annually in accordance with Section 4.1.2 of this Agreement. At the termination of Wharton's employment as UTC's Athletics Director, Wharton may continue to fulfill commercial endorsement agreements entered into during his employment as UTC's Athletics Director as long as he does not directly or indirectly identify himself as UTC's current or former Athletics Director and does not use, directly or by implication, of the University's name or logo in the endorsement of commercial products or services.

Section 4.2.2 Wharton may serve on corporate boards of directors or enter into personal service contracts for outside employment services, provided (a) prior written approval of the Chancellor is received and all income and benefits are reported annually in accordance with Section 4.1; (b) such activities do not interfere or conflict with Wharton's 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; (d) Wharton takes annual leave to perform those services; and (e) such activities are conducted in accordance with Governing Athletic Rules.

Section 4.2.3 The University further agrees that Wharton 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 Wharton in the form of honoraria, royalties, and the like may be retained by Wharton in addition to compensation set forth herein; provided, however, that if the University reimburses Wharton 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 4.2.4 Wharton understands and agrees that the University has no responsibility or liability for any claim arising out of Wharton's performance of the activities described in Section 4.2 or for any other activity outside the scope of Wharton's University employment. In no event shall Wharton usurp any corporate opportunities of the University or engage in an activity involving a conflict of interest with Wharton's University duties. Outside activities are independent of Wharton's employment with the University, and the University shall have no responsibility or liability for any claims arising from Wharton's outside activities. In undertaking outside activities, Wharton shall make clear to any individual or entity with whom Wharton may be involved that Wharton is acting in Wharton's independent, individual capacity and not as an agent, employee, and/or other representative of the University.

ARTICLE V – INTELLECTUAL PROPERTY

Section 5.1 Wharton grants the University the right during the Term to use, and the right to grant to others use of, Wharton's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, or facsimile image in any manner in connection with any radio, television, and other media shows, programs and appearances, or in connection with any contracts, endorsement agreements, sponsorship agreements, or similar arrangements entered into by the University or the University's multi-media rights partner.

Section 5.2 Wharton covenants and agrees that the University retains, owns, and controls all intellectual property and media rights relating to UTC's 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 UTC's Athletics Department, whether produced by the University or through a third-party. Wharton 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 5.3 Wharton covenants and agrees that, upon termination of this Agreement, the University shall have the right to continue through completion any contracts, endorsement agreements, sponsorship agreements, or similar arrangements that were entered into during the Term and which contain Wharton's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, facsimile image, biographical information, or endorsement. Wharton shall have no further right to any compensation for any such continued use by the University unless expressly provided in this Agreement.

Section 5.4 Wharton 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 Athletics Department or Wharton's employment, that were created or produced during the Term, notwithstanding the fact that such intellectual property or media rights may contain Wharton's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, facsimile image, biographical information, or endorsement. Wharton shall have no further right to any compensation for any such continued use by the University unless expressly provided in this Agreement.

Section 5.5 Except as otherwise provided in this Agreement, Wharton shall retain all rights in and to Wharton's name and endorsement. Upon termination of this Agreement, the University shall have no further right to the continued or future use of Wharton's name or endorsement, except as provided in this Article V.

Section 5.6 The rights and obligations described in this Article V 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 VI - ENFORCEMENT OF GOVERNING ATHLETIC RULES

Section 6.1 Wharton agrees that UTC, 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 Wharton is found in violation of Governing Athletic Rules or responsible for another person's violation of Governing Athletic Rules, Wharton 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 Wharton 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 or not the violation was committed or condoned by Wharton or is a violation for which Wharton has been found responsible.

Section 6.2 Wharton 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 Wharton 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 Wharton without pay, or take other disciplinary or corrective action against Wharton as set forth in the provisions of the NCAA enforcement procedures upon written notice to Wharton within sixty (60) 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 Wharton was employed by the University or during prior employment at another NCAA member institution.

Section 6.3 Wharton agrees to comply with any penalty imposed by the NCAA and/or the Southern Conference pursuant to Governing Athletic Rules, following the exhaustion of any available appeals by Wharton. Any fine or loss of compensation resulting from a suspension imposed personally on Wharton by the NCAA and/or the Southern Conference shall be the sole responsibility of Wharton. 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 6.4 Upon termination of this Agreement pursuant to this Article VI, Wharton shall not be entitled to further salary, compensation, benefits, or perquisites from the University. Wharton waives all rights to receive compensation for accrued and unused annual leave upon termination of this Agreement pursuant to this Article VI.

Section 6.5 In its sole discretion, the University may elect to terminate this Agreement for cause under this Article VI but offer Wharton continued employment with or without a new employment agreement.

Section 6.6 Prior to implementing any disciplinary or corrective action as contemplated by this Article

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

Section 6.7 Nothing in this Article VI 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 VIII and Article XI.

ARTICLE VII - TERMINATION BY UNIVERSITY WITHOUT CAUSE

Section 7.1 In its sole discretion and at any time during the Term, the University may elect to terminate this Agreement without cause upon written notice to Wharton.

Section 7.1.1 If the University terminates this Agreement without cause, then the University shall pay Wharton liquidated damages in an amount equal to fifty percent (50%) of the Base Pay (in effect on the date of termination) that would have been due to Wharton between the date of termination and August 31, 2022 if the Agreement had not been terminated, subject to Wharton's mitigation obligation under Section 7.3 (the "**Separation Payment**"). The Separation Payment shall be paid in equal monthly installments over the remaining Term, subject to all applicable state and federal tax reporting and withholding requirements and subject to Wharton's mitigation obligation under Section 7.3, with the first payment due on or before the last day of the month following the date of termination of this Agreement. Payment of the Separation Payment is in lieu of any and all other legal remedies or equitable relief.

Section 7.1.2 The University's decision to terminate this Agreement without cause is not subject to any University Rules.

Section 7.2 Upon termination of this Agreement pursuant to this Article VII, Wharton shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically-related income or benefits derived by virtue of Wharton's position as Athletics Director other than: (i) amounts earned but not yet paid; and (ii) post-termination benefits applicable to other regular, full-time University employees who terminate employment with the University. Notwithstanding the preceding sentence, Wharton waives any and all rights to receive compensation for accrued and unused annual leave upon termination of this Agreement pursuant to this Article VII.

Section 7.3 Wharton is required to mitigate the University's obligation to pay the Separation Payment by making reasonable and diligent efforts as soon as practicable following termination to obtain other comparable employment or paid services position. While the University's obligation to pay the Separation Payment is in effect, and for a period of six (6) months thereafter, Wharton 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 date of the termination of this Agreement through the end of the Term, the University shall have the right to deduct

or offset all such non-passive income of Wharton from each monthly Separation Payment installment.

Section 7.4 The parties have bargained for and agreed to the Separation Payment, giving consideration to the fact that termination of this Agreement without cause by the University prior to its expiration may cause Wharton to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with Wharton's employment with the University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such Separation Payment by the University and the acceptance thereof by Wharton shall constitute adequate and reasonable compensation to Wharton for any damages and injuries suffered by Wharton because of such termination by the University. The Separation Payment shall not be, nor be construed to be, a penalty. If applicable, the obligations 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.

Section 7.5 The automatic termination of this Agreement upon the death or disability of Wharton, as provided in Article IX of this Agreement, shall not give rise to a right to a Separation Payment pursuant to this Article VII.

Section 7.6

Section 7.6.1 The parties intend all payments and benefits under this Agreement to comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder (collectively, "**Section 409A**"). Wharton acknowledges that the penalties for noncompliance with Section 409A will be assessed against Wharton. Wharton and his advisors have reviewed this document for compliance with Section 409A and are not relying on the University's review or advice.

Section 7.6.2 Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred unless such termination is also a "separation from services" within the meaning of Section 409A and for purposes of any such provision of this Agreement, references to a "termination", "termination of employment" or like terms shall mean "separation from service."

Section 7.6.3 All expenses or reimbursement paid under this Agreement that are taxable income to Wharton shall be paid promptly upon submission of appropriate documentation, but in no event later than the end of the calendar year following the year that Wharton incurs such expenses or pays such related tax.

Section 7.6.4 For purposes of Section 409A, Wharton's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

Section 7.7 Nothing in this Article VII 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 VI, Article VIII, and Article XI.

ARTICLE VIII - TERMINATION BY UNIVERSITY FOR CAUSE

Section 8.1 In addition to the grounds for termination of this Agreement under any other Article of this Agreement, including but not limited to Article VI and Article XI, Wharton agrees that the University has the right to terminate this Agreement for cause under this Article VIII at any time prior to the expiration of the Term.

Section 8.2 For purposes of this Article VIII, 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 Wharton that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by Wharton 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 Wharton was employed by the University or during Wharton's prior employment at another NCAA member institution;
- (b) Conduct or omission(s) by a coach or another person under Wharton's supervision or subject to Wharton's direct or indirect control or authority, which: (1) constitutes a Level I or Level II violation of one or more Governing Athletic Rules or 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; and (2) Wharton knew or should have known about through the exercise of diligence that would have been exercised by a reasonably prudent athletic director at a Division I program comparable to that of UTC, and Wharton failed to respond consistently with how a reasonably prudent athletic director would have responded;
- (c) Failure of Wharton to exercise the diligence that would have been exercised by a reasonably prudent athletic director of a Division I program comparable to that of UTC to promote and require compliance with Governing Athletic Rules or University Rules, thus resulting in conduct or omission(s) by another person that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by another person 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;
- (d) Failure of Wharton to appropriately advise the Chancellor on the means and methods necessary to promote and maintain institutional control over UTC's intercollegiate athletics program, as defined by Governing Athletic Rules, or failing to implement the means and methods approved by the Chancellor to promote and maintain institutional

control, as defined by Governing Athletic Rules;

- (e) Failure of Wharton to report immediately to the Chancellor and the staff member(s) in the Athletics Department with primary duties for compliance any actual knowledge of or reasonable cause to believe that a violation of Governing Athletic Rules more likely than not has been committed or are being committed by himself or others;
- (f) Failure of Wharton to reasonably cooperate with, or maintain the integrity of, a NCAA, Southern Conference, or University investigation, or materially obstructing such an investigation;
- (g) Misrepresentation or withholding of material information, specifically including, but not limited to previous violations or potential violations of Governing Athletic Rules or institutional rules violations, during the University's process of interviewing and hiring Wharton;
- (h) Conduct by Wharton constituting a prohibited conflict of interest under the University's conflict of interest policy or applicable state law that is not cured by Wharton within thirty (30) days after written notice by the University specifying the nature of the conflict, unless, in the University's reasonable and good faith judgment, the conflict is not capable of being cured;
- (i) Fraud or dishonesty by Wharton in the performance of his duties under this Agreement;
- (j) The provision of false, misleading, or incomplete material information relevant to the conduct of University business or an investigation conducted by the NCAA, the Southern Conference, the University, or law enforcement, if Wharton knew or should have known that the information was false, misleading, or incomplete;
- (k) Counseling or instructing by Wharton of any coach, 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 UTC or of another institution of higher education which shall be propounded by the NCAA, Southern Conference, the University, or other governing body having supervision over the athletics program of UTC, or as required by law, Governing Athletic Rules, or University Rules, unless Wharton believed in good faith that the person was not obligated by law, Governing Athletic Rules, or University Rules to respond to the inquiry or request;
- (l) With respect to a criminal act that constitutes either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding traffic offenses), a conviction, guilty plea, plea of no contest, or other plea other than a plea of not guilty;
- (m) Failure by Wharton 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; failure to perform the duties of a campus security authority under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; failure to perform the duties of a mandatory reporter under the University's Title IX-related policies);

- (n) Prolonged absence by Wharton from his duties under this Agreement, without the consent of the Chancellor, other than because of a temporary, verifiable illness or because Wharton becomes Disabled as defined in Article IX;
- (o) Soliciting, placing, or accepting by Wharton 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 knowingly permitting, encouraging, or condoning such acts by any coach or other employee of the Athletics Department, or any person under Wharton's control or authority, including without limitation a student-athlete;
- (p) Furnishing by Wharton of information or data relating in any manner to any sport or student-athlete, to any individual known by Wharton to be a gambler, bettor, or bookmaker, or an agent of any such person, or the consorting or associating by Wharton with such person;
- (q) Failure by Wharton to fully cooperate in the enforcement and implementation of any drug testing program for student-athletes established by the University, the Southern Conference, the NCAA, or any other governing athletic body;
- (r) Shocking and/or reprehensible conduct by Wharton which brings Wharton and/or the University into significant public disrepute or scandal;
- (s) Gross misconduct by Wharton, 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
- (t) Any other material breach by Wharton of his duties under this Agreement if (i) in the University's reasonable and good faith judgment, the breach is capable of being cured and Wharton fails to take action 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 8.3 The grounds for termination contained in this Article VIII 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 8.4 In its sole discretion, the University may suspend Wharton with pay pending an investigation or decision relating to termination for cause under this Article VIII.

Section 8.5 Upon termination of this Agreement for cause pursuant to this Article VIII, Wharton shall not be entitled to further salary, compensation, benefits, or perquisites from the University, and Wharton waives all rights to receive compensation for his accrued and unused annual leave.

Section 8.6 For any one or more acts, omissions, or events that could be grounds for termination for cause under this Article VIII, the University may take other disciplinary or corrective action against Wharton short of terminating this Agreement. Other disciplinary or corrective action may include, but is not limited to, one or more of the following: (i) written reprimand; (ii) suspension with pay; (iii) suspension without pay (not to exceed sixty (60) days); or (iii) reassignment to a position that does not involve contact with prospective or enrolled student-athletes or representatives of UTC's athletics interests (the University will make a good faith effort to assign Wharton to a position that is consistent with his education or experience). 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 8.7 Prior to terminating Wharton's employment or suspending Wharton without pay under this Article VIII, the University shall afford Wharton oral or written notice of the proposed termination or suspension and a reasonable opportunity to meet with the Chancellor to respond to the proposed termination or suspension. If the University terminates Wharton's employment or suspends Wharton without pay under this Article VIII, the University shall afford Wharton a post-termination or post-suspension opportunity to contest the University's action in accordance with the University's rules for conducting contested case proceedings under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated 4-5-301 *et seq.* If the Tennessee Claims Commission or a court of competent jurisdiction determines, after any available appeals have been exhausted, that the University's termination of this Agreement was not "for cause," then the termination of this Agreement shall be retroactively converted to a termination without cause pursuant to Article VII, in which case Wharton's remedies for the University's termination of this Agreement are limited to the payment of the Separation Payment by the University to Wharton pursuant to Article VII with Tennessee's statutory post judgment interest rate applied to payments that are owed by the University as of the date of the final decision of the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted.

Section 8.8 In its sole discretion, the University may elect to terminate this Agreement for cause under this Article VIII but offer Wharton continued employment with or without a new employment agreement.

Section 8.9 Nothing in this Article VIII 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 VI, Article VII, and Article XI.

ARTICLE IX - AUTOMATIC TERMINATION UPON DEATH OR DISABILITY

Section 9.1 This Agreement shall terminate automatically upon the death of Wharton, and all salary, compensation, benefits, and perquisites shall terminate as of the last day of the calendar month in which death occurs, except that the executor or administrator of Wharton's estate or other beneficiary specifically designated in writing shall be paid any death benefits due Wharton under any University policy now in effect or hereafter adopted by the University.

Section 9.2 This Agreement shall terminate automatically if Wharton becomes disabled. "Disabled" shall mean physical or mental incapacity of a nature that prevents Wharton from performing his duties under this Agreement for a period of one hundred twenty (120) consecutive calendar days. The determination of whether Wharton has become disabled shall be made by a physician mutually acceptable to the University and Wharton. If this Agreement is terminated because Wharton becomes Disabled, all salary, compensation, benefits, and perquisites shall terminate, except that Wharton shall receive any disability benefits to which he is entitled under any disability program in which he is enrolled and any compensation and benefits earned but not yet paid at the time of termination.

Section 9.3 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.

ARTICLE X - TERMINATION BY WHARTON WITHOUT CAUSE

Section 10.1 Wharton shall have the right to terminate this Agreement without cause at any time upon written notice to the University.

Section 10.2 If Wharton terminates this Agreement without cause on or before August 31, 2019 to accept employment at another educational institution in a position in the institution's athletics department, then within thirty (30) days following the date of the termination of this Agreement, Wharton (or a third party on his behalf) shall pay the University liquidated damages in a single, lump sum amount equal to the sum of two (2) times the Base Pay in effect on the date of termination. If Wharton terminates this Agreement without cause on or before August 31, 2019 for any other reason or no reason at all, then within six (6) months following the date of the termination of this Agreement, Wharton (or a third party on his behalf) shall pay the University liquidated damages in an amount equal to two (2) times the Base Pay in effect on the date of termination.

If Wharton terminates this Agreement without cause after August 31, 2019 but on or before August 31, 2021, to accept employment at another educational institution in a position in the institution's athletics department, then within thirty (30) days following the date of the termination of this Agreement, Wharton (or a third party on his behalf) shall pay the University liquidated damages in a single, lump sum amount equal to one (1) year of the Base Pay in effect on the date of termination. If Wharton terminates this Agreement without cause after August 31, 2019 but on or before August 31, 2021 for any other reason or no reason at all, then within six (6) months following the date of the termination of this Agreement, Wharton (or a third party on his behalf) shall pay the University liquidated damages in an amount equal to one (1) year of the Base Pay in effect on the date of termination.

If Wharton terminates this Agreement without cause at any time during the Term on or after September 1, 2021, to accept employment at another educational institution in a position in the institution's athletics department, then within thirty (30) days following the date of the termination of this Agreement, Wharton (or a third party on his behalf) shall pay the University liquidated damages in a single, lump sum amount equal to seventy-five percent (75%) of one (1) year of the Base Pay in effect on the date of termination. If Wharton terminates this Agreement without cause at any time during the Term on or after September 1, 2021 for any other reason or no reason at all, then within six (6) months following the date of the termination of this Agreement, Wharton (or a third party on his behalf) shall pay the University liquidated damages in an amount equal to seventy-five percent (75%) of one (1) year of the Base Pay in effect on the date of termination.

If applicable, the obligations in this Article X 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 10.3 The parties have bargained for and agreed to the liquidated damages described in Section 10.2, giving consideration to the fact that Wharton's promise to work for the University for the entire Term is an essential consideration in the University's decision to employ him as Athletics Director and the fact that the University will commit substantial financial resources to the success of the Athletics Department, and that if Wharton 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 athletics director, salary or other compensation to hire another athletics director, tangible and intangible detriment to the Athletics Department, and support of its fans and donors. Accordingly, Wharton acknowledges and agrees that the amount of the liquidated damages set forth in Section 10.2 is a reasonable and fair approximation of the harm that the University will incur in the event of such termination by Wharton. The payment of such liquidated damages shall not be, nor be construed to be, a penalty.

Section 10.4 Payment of the liquidated damages described in Section 10.2 is in lieu of all other legal remedies or equitable relief. Upon termination of this Agreement by Wharton, Wharton shall not be entitled to further salary, compensation, benefits, or perquisites from the University, and Wharton waives all rights to receive compensation for his accrued and unused annual leave.

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

Section 11.1 As a material inducement to the University to execute and perform this Agreement, Wharton represents and warrants the following to the University:

- (a) Wharton did not knowingly misrepresent material information, knowingly withhold material information, or knowingly provide incomplete or false material information during the University's process of interviewing and hiring Wharton;
- (b) Wharton has disclosed to the University all material information known to him concerning previous NCAA, conference, or institutional rules violations or potential

violations committed by him or any person under his direct or indirect control prior to the date on which he executed this Agreement;

- (c) Wharton has not knowingly furnished the NCAA or the University with false, misleading or incomplete information concerning the involvement or knowledge of Wharton, any employee, or representative of an institution's athletics interests, about matters relevant to a possible violation of Governing Athletic Rules or University Rules when requested to do so by the NCAA or the University;
- (d) Wharton is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and
- (e) With respect to a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses), Wharton has never been convicted, pled guilty, pled no contest, or entered any other plea other than a plea of not guilty, or is Wharton subject to any pending criminal charge.

Section 11.2 Wharton agrees that a breach of any representation or warranty contained in Section 11.1 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 Wharton. In its sole discretion, the University may elect to terminate this Agreement for cause under this Article XI but continue Wharton's employment, with Wharton's agreement, with or without a new employment agreement. Wharton voluntarily waives all rights to a post-termination opportunity to contest a termination pursuant to this Article XI under University Rules and the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 *et seq.*

Section 11.3 Upon termination of this Agreement pursuant to this Article XI, Wharton shall not be entitled to further salary, compensation, benefits, or perquisites from the University, and he waives all rights to receive compensation for his accrued and unused annual leave.

Section 11.4 Nothing in this Article XI 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 VI and Article VIII.

ARTICLE XII - LIMITATION OF REMEDIES AND WAIVER OF CLAIMS

Section 12.1 The financial consequences of the termination of this Agreement pursuant to Article VI, Article VII, Article VIII, Article IX, and Article XI are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Article VI, Article VII, Article VIII, Article IX, and/or Article XI, except as expressly provided for in this Agreement, the University shall have no liability whatsoever to Wharton, nor shall Wharton be entitled to receive, and Wharton hereby waives and releases all claims that Wharton or his personal representatives may have against the University, its trustees, officers, employees, or agents, and their respective successors, heirs, and assigns for: (i) payment of fringe benefits; (ii) accrued and unused annual leave; (iii) the amounts payable under Article II or any other athletically-related income or benefits derived by virtue of Wharton's position as the Athletics Director; (iv) 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 (v) 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. Wharton acknowledges that in the event of the termination by the University of this Agreement for cause, without cause, or otherwise, Wharton shall have no right to occupy the position of the Athletics Director and Wharton's sole remedies are provided for in this Agreement and shall not extend to injunctive relief.

Section 12.2 The financial consequences of the termination of this Agreement pursuant to Article X are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Article X, except as expressly provided for in Article X, Wharton shall have no liability whatsoever to University, nor shall University be entitled to receive, and University hereby waives and releases all claims that University may have against the Wharton, said claims to include, without limitation, claims for: (i) any direct or consequential damages; and/or (ii) alleged reputational damage, humiliation or defamation resulting from the fact of such termination, the public announcement thereof, or Wharton's release of information or documents required by law. Nothing herein shall limit or decrease Wharton's liability to University for intentional torts, criminal acts, or fraudulent conduct or omissions.

ARTICLE XIII - DEFINITIONS

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

Section 13.1 "APR" shall mean the final Academic Progress Rate calculated by the NCAA under Governing Athletic Rules.

Section 13.2 "Athletics Director" shall mean the Vice Chancellor and Director of Athletics for UTC.

Section 13.3 "Chancellor" shall mean the Chancellor for UTC.

Section 13.4 "Contract Year" shall mean a three hundred and sixty-five (365) day period beginning on September 1 of one calendar year and ending on August 31 of the following calendar year.

Section 13.5 "Governing Athletic Rules" shall mean: (a) any and all present or future legislation, rules, regulations, directives, written policies, bylaws, and constitutions, and official or authoritative interpretations thereof, and any and all amendments, supplements, or modifications thereto, promulgated by the NCAA or Southern 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 UTC's intercollegiate athletics program; and (b) any and all state or federal laws or regulations regulating college athletics, coaches, staff, student-athletes, or competition.

Section 13.6 "NCAA" shall mean the National Collegiate Athletic Association and its successors.

Section 13.7 "Southern Conference" shall mean the Southern Conference and its successors or any other athletic conference of which UTC may be a member.

Section 13.8 "University" shall mean The University of Tennessee and its campus located in Chattanooga, Tennessee.

Section 13.9 "University Rules" shall mean any and all present and future policies, procedures, rules, regulations, and guidelines of the University, including but not limited to policies of UTC's Athletics Department.

Section 13.10 "UTC" shall mean The University of Tennessee at Chattanooga.

ARTICLE XIV - MISCELLANEOUS

Section 14.1 This Agreement, including Exhibit A and Exhibit B, contains the complete agreement between the parties concerning Wharton's employment as Athletics Director. 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 14.2 This Agreement may only be modified by a writing signed by Wharton and either the Chief Financial Officer or the President of the University.

Section 14.3 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 14.4 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 14.5 This Agreement shall be interpreted in accordance with Tennessee law.

Section 14.6 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 14.7 Upon the expiration of the Term or earlier termination of this Agreement for any reason, Wharton agrees that the University shall be entitled to withhold and deduct from any final payment of any kind that is owed to Wharton by the University the amount of any indebtedness owed to the University by Wharton.

Section 14.8 Any notice required or permitted to be given under this Agreement shall be sufficient if given in writing and either (i) delivered in person, (ii) sent by United States mail, with first class postage prepaid, (iii) sent by a nationally-recognized delivery service, or (iv) sent by e-mail. Notice shall be deemed given when the written notice is (i) delivered in person, (ii) placed in the United States mail, (iii) placed with a nationally-recognized delivery service, or (iv) sent by e-mail. Notice to Wharton shall be

sent to his campus office or to his University-provided e-mail account(s). Notice to the University shall be sent to the Chancellor at his or her campus office or to his or her University-provided e-mail account.

Section 14.9 All documents, files, records, materials (in any format, including electronically stored information), equipment, or other property, including without limitation, personnel records, keys, credit cards, laptop computers, software programs, and electronic communication devices, furnished to Wharton by the University or developed by Wharton at the University's direction or for the University's use or otherwise in connection with Wharton's employment with the University are and shall remain the sole and confidential property of the University. Within three (3) business days of the expiration or termination of this Agreement, Wharton shall complete the University's exit procedure, including returning all University property in his possession. The foregoing provisions shall not apply to Wharton's personal notes, memorabilia, diaries, and similar personal records of Wharton, which he is entitled to retain.

Section 14.10 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 14.11 Wharton agrees to be responsible for the payment of all taxes due on all compensation or benefits provided by the University. Wharton 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 or otherwise in connection with Wharton's employment. Wharton 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 Wharton pursuant to this Agreement or otherwise in connection with Wharton's employment.

Section 14.12 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 14.13 The parties may not assign, pledge, or encumber their respective rights, interests, or obligations under this Agreement.

Section 14.14 This Agreement shall be binding upon the parties and their respective successors, assigns, heirs, and personal and legal representatives. Wharton shall not assign, pledge, or encumber Wharton's rights, interests, or obligations under this Agreement.

Section 14.15 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 14.16 Wharton 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 14.17 This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

**[The remainder of this page has been left blank
intentionally - signature page follows]**

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

THE UNIVERSITY OF TENNESSEE

MARK WHARTON

By: Steven R. Angle
Steven R. Angle, Ph.D.
Chancellor
The University of Tennessee,
Chattanooga

Mark Wharton

4 October 2017
Date

Date

DocuSigned by:
David Miller
3AAA731D612346E
David L. Miller
Chief Financial Officer
The University of Tennessee

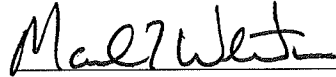
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Date

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

THE UNIVERSITY OF TENNESSEE

MARK WHARTON

By: _____
Steven R. Angle, Ph.D.
Chancellor
The University of Tennessee,
Chattanooga



Mark Wharton

Date

10/9/17

Date

David L. Miller
Chief Financial Officer
The University of Tennessee

Date

EXHIBIT A

DISCRETIONARY BONUS

The University, as additional payment and consideration for the services to be performed by Athletic Director, as shall be set forth in the Agreement, may pay Wharton a Discretionary Bonus, as follows:

1. On or before May 30th of each year, the Chancellor and Wharton shall meet to review, among other things, Wharton's performance pursuant to the terms of the Agreement and whether Wharton is entitled to a Discretionary Bonus (and, if so, in what amount).
2. The Chancellor may, at the Chancellor's sole discretion, award Wharton a Discretionary Bonus for superior administrative performance as Athletics Director. Factors that the Chancellor may consider in determining the award of any such Discretionary Bonus include, but are not limited to, Grade Point Average ("GPA") and APR for student-athletes; University and community involvement by student-athletes; Athletic Department facilities improvements; Athletic Department financial performance; alumni, student, University, community and fan support for intercollegiate athletics; representation of the Athletic Department at Southern Conference and NCAA events and meetings; and overall commitment to student-athlete welfare, rules and regulatory compliance.
3. Wharton acknowledges that the total bonus to be paid as a Discretionary Bonus shall not exceed \$15,000.00 in any Contract Year.

EXHIBIT B

OTHER FRINGE BENEFITS

1. The University shall provide Wharton with an annual vehicle allowance of six thousand dollars (\$6,000.00), paid in twelve (12) equal monthly installments, with any part of a month prorated.
2. The University shall provide Wharton with an annual mobile telephone allowance of one thousand two hundred dollars (\$1,200.00), paid in twelve (12) equal monthly installments, with any part of a month prorated.
3. The University shall provide Wharton with a one-time gross moving allowance of twenty-five thousand dollars (\$25,000.00) in accordance with University Rules.
4. Payment and/or reimbursement of reasonable and necessary expenses incurred in connection with the performance of Wharton's duties, including but not limited to travel, subject to the terms and limits of applicable University policies.

The benefits outlined in this Exhibit B are subject to all applicable state and federal tax reporting and withholding requirements.