

AMENDMENT NUMBER 3 TO EMPLOYMENT AGREEMENT

This is Amendment Number 3 to the Employment Agreement (as previously amended) between **THE UNIVERSITY OF TENNESSEE** ("University"), an instrumentality of the State of Tennessee, for and on behalf of The University of Tennessee at Chattanooga and its Athletics Department, and **MARK WHARTON** ("Wharton") that became effective September 1, 2017. In consideration of the covenants contained in this Amendment Number 3, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the University and Wharton agree to modify the Employment Agreement as follows:

ARTICLE I, Section 1.2 of the Employment Agreement is amended by deleting the current language in its entirety and substituting the following language:

Section 1.2 The term of this Agreement shall be from September 1, 2017 through August 31, 2026, 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. Wharton agrees that oral agreements to renew or extend this Agreement are invalid and nonbinding.

ARTICLE II, Section 2.1 of the Employment Agreement is amended by deleting the current language in its entirety and substituting the following language:

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, effective July 1, 2021, guaranteed gross base compensation in the amount of Two Hundred Twenty Thousand Dollars (\$220,000.00) per Contract Year (the "**Base Pay**"), subject to all applicable state and federal tax reporting and withholding requirements. The University shall pay the Base Pay to Wharton in twelve (12) equal monthly installments in accordance with the University's customary monthly payroll procedures, with any part of a month prorated. The Base Pay shall not be increased in accordance with the terms of any across-the-board or merit salary increase authorized or mandated for University employees by the State of Tennessee or the University.

ARTICLE VII, Section 7.1.1 of the Employment Agreement is amended by deleting the current language in its entirety and substituting the following language:

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, 2026 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.

ARTICLE IX, Section 10.2 of the Employment Agreement is amended by deleting the current language in its entirety and substituting the following language:

Section 10.2 If Wharton terminates this Agreement without cause on or before August 31, 2023 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, 2023 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, 2023 but on or before August 31, 2025, 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, 2023 but on or before August 31, 2025 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, 2025, 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, 2025 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.

Except as revised by this Amendment Number 3, the Employment Agreement (as previously amended) remains in full force and effect.

THE UNIVERSITY OF TENNESSEE

MARK WHARTON

By: Steven R. Angle
Steven R. Angle
Chancellor
University of Tennessee at Chattanooga

Mark Wharton
Mark Wharton
Vice Chancellor and Director of Athletics
University of Tennessee at Chattanooga

Date: 6/25/21

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