

**EMPLOYMENT AGREEMENT
UNIVERSITY OF WYOMING
Head Coach for Men’s & Women’s Swimming and Diving**

THIS AGREEMENT is made and entered into, this 1st day of December, 2023, between the University of Wyoming (the University) and David Denniston (the Employee).

WITNESSETH:

WHEREAS, the University desires to employ the Employee, to serve as its Head Coach for Men’s & Women’s Swimming and Diving, the Employee desires to engage in such employment under the terms and conditions set forth below;

WHEREAS, the Employee desires to engage in such employment under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing, it is agreed as follows:

1. **APPOINTMENT**

Employee is appointed by the University as its Head Coach for Men’s & Women’s Swimming and Diving. The appointment shall be for the period from December 1, 2023, through April 30, 2027. This appointment is governed by policies set forth in the Trustee and UW Regulations; as such Regulations are approved or amended from time to time. UW Regulations can be found on the Office of General Counsel’s website at <http://www.uwyo.edu/generalcounsel/new-regulatory-structure/index.html>

2. **SALARY**

The University shall pay Employee an annual base salary payable in equal monthly installments during the Period of Appointment as follows:

<u>Period of Appointment</u>	<u>Base Salary</u>
• December 1, 2023 – June 30, 2024	\$92,916 (prorated)
• July 1, 2024 – June 30, 2025	\$100,008
• July 1, 2025 – June 30, 2026	\$103,008
• July 1, 2026 – April 30, 2027	\$106,008

The salary for the contract period shall be pro-rated to reflect the actual start date of employment. Future salary improvements will be determined in accordance with applicable University Regulations and/or Trustee policies. Employee will receive an annual vacation entitlement of twenty-two (22) working days, accrued at the rate of 1.834 days per month of service. Employee will receive sick leave and other employee benefits including health insurance, disability insurance and a retirement program, for which the Employee is eligible and chooses to participate according to University Regulations. Information about these programs and services may be secured from the Human Resources Office or at <http://www.uwyo.edu/hr/>.

3. **SUPPLEMENTAL BENEFITS**

During the term of Employee’s appointment as Head Coach for Men’s & Women’s Swimming and Diving, Employee shall receive supplemental benefits in the form of 4 complimentary season tickets for all applicable University of Wyoming home (athletic) competitions and a University stipend for a cell phone (e.g., iPhone, etc.). In addition, the Employee may be

eligible for additional supplemental benefits including the use of a courtesy/lease vehicle and auto insurance in accordance with Cowboy Joe Club policy and the University Vehicle Policy. Should a courtesy/lease vehicle not be available the Employee shall receive a payment of \$550 a month (\$6,600 annually) for a vehicle allowance and the purchase of automobile insurance.

4. **SUPPLEMENTAL COMPENSATION FOR SERVICES RENDERED**

During the term of Employee's appointment as Head Coach for Men's & Women's Swimming and Diving, Employee shall receive supplemental compensation (from non-State funds). This supplemental compensation shall not be recognized as compensation that qualifies for participation in the Wyoming State Retirement System or TIAA-CREF. The services rendered and compensation for these services are as follows:

Academic Progress Rate (APR) Achievement Award:

Employee shall receive \$2,500 for each year in which the most recent single-year (annual) APR score for men's and women's swimming and diving is between 985 and 999 as reported on the official NCAA APR Report. Employee shall receive \$5,000 for each year in which the most recent single-year (annual) APR score for men's and women's swimming and diving is 1,000 as reported on the official NCAA APR Report.

For purposes of this incentive (1) men's swimming and diving and (2) women's swimming and diving shall be considered two separate "teams." Thus, the following incentives are feasible:

- Neither team earns a 985 or above = \$0
- Only 1 team earns between a 985-999 = \$2,500
- Both teams earn between a 985-999 = \$5,000
- 1 team earns between a 985-999 and 1 team earns 1,000 = \$7,500
- Both teams earn 1,000 = \$10,000

Any incentive compensation for achieving the Academic Progress Rate (APR) Achievement Award that is earned by Employee will be paid to Employee by the University within thirty (30) days following the release of the official NCAA APR Report.

5. **ADDITIONAL COMPENSATION**

In addition to the University base salary and supplemental benefits, the University recognizes that the Head Coach for Men's & Women's Swimming and Diving has the opportunity, with prior written approval of the Director of Athletics/Designee, to receive additional income and/or products from outside sources such as shoe/apparel/equipment manufacturers/companies, independent speaking engagements, and camps and clinics.

In accordance with NCAA and University policies, all such additional compensated activities must be submitted in writing annually for approval by the Director of Athletics and kept on file in the office of the Director of Athletics. As additional revenue opportunities become available, the Employee must submit an additional income form for addendum purposes and approval to the Director of Athletics.

6. **COWBOY JOE ACHIEVEMENT AWARDS**

Employee will be eligible for Achievement Awards and Exceptional Achievement Awards pursuant to the terms and conditions described in the by-laws of the Cowboy Joe Club in force at the time the awards are made.

7. **STUDENT-ATHLETE ELIGIBILITY**

Employee and the University recognize that a student-athlete may be declared not eligible for competition for academic reasons, because the University believes the student-athlete would not be an appropriate representative of the University, as a disciplinary sanction under University's disciplinary rules, or because the University believes that the student-athlete is not eligible according to the rules for athletic competition specified by the MWC or any other athletic conference of which University is a member, or by the NCAA, or for similar reasons. This decision may be made either by the Employee, the Director of Athletics, or the President of the University. In no event shall such an action taken by the University be considered a breach of this Agreement. Any violation by student-athletes of the University's academic or disciplinary rules and regulations shall be addressed in accordance with those policies.

8. **EMPLOYEE'S SERVICES**

Employee shall serve as the University's Head Coach for Men's & Women's Swimming and Diving, with all the duties, responsibilities and obligations normally associated with this position at a major university. Employee shall devote full time and best efforts toward the development and maintenance of an exemplary Division I Men's & Women's Swimming and Diving program and the performance of all other duties as specified herein. Employee's supervisor will be the Director of Athletics/Designee of the University, who will evaluate Employee's performance as Head Coach for Men's & Women's Swimming and Diving on an annual basis.

9. **COMPLIANCE WITH RULES AND REGULATIONS**

If the Employee violates any regulation of the applicable conference, NCAA, the University or its Board of Trustees, or any condition of his appointment, he is subject to corrective or disciplinary action to include, but not limited to, suspension with or without pay and termination without notice, by the Director of Athletics. An athletic employee who is found in violation of NCAA regulations shall also be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. If the Employee is found guilty of an NCAA violation, Employee may be responsible (at the University's discretion) for reimbursing University for any legal expenses expended by the University in connection with any NCAA investigation, hearing or any other action related to the violation.

10. **ENDORSEMENT**

University permits Employee to endorse only those corporations that are not in competition with sponsors secured or being pursued by Learfield Communications Inc. in accordance with University's marketing agreement with Learfield.

11. **RENEWAL OR EXTENSION OF EMPLOYEE'S SERVICES**

Any renewal, extension or modification of this contract must be approved by the Director of Athletics with the concurrence of the President of the University and Employee. If the Agreement expires or is terminated, the Employee shall return all University equipment upon written request including, but not limited to: vehicles, keys, laptop computers, parking permits, and any other University-owned items for which the Employee may be responsible. The University will designate in writing the time and location for the return of all University property.

12. **TERMINATION OF APPOINTMENT**

Employee's appointment as Head Coach for Men's & Women's Swimming and Diving will end at the conclusion of the stated Period of this Agreement in Section 1, except as extended by mutual agreement of the Parties.

- A. During the term of this Agreement, Employee shall not seek or apply for other positions without prior notice to the Director of Athletics.
- B. The Director of Athletics, with the concurrence of the President of the University may terminate Employee's appointment for cause, without notice. Cause shall include, but is not limited to, the following:
- (a) Conduct unbecoming of a member of the University athletic staff or which brings discredit to the University as determined by the University; inability to perform duties; neglect of duty; acts of insubordination to any superior University officials; acts of malfeasance, misfeasance, or nonfeasance in office; violations of any institutional regulations, policies or procedures; violations of any condition of the Employee's appointment and violations of any applicable conference or NCAA regulations. A significant or repetitive or intentional violation (or a pattern of conduct which may constitute or lead to a major violation), as determined by the University, by Employee (or any other person under Employee's supervision and direction, including, but not limited to, student-athletes) of any laws, University Rules and Regulations or any applicable conference or NCAA regulations.
 - (b) Failure by Employee to promote a culture of compliance as such is defined by the regulations, policies, and practices of the NCAA or to report promptly to the Compliance Office in writing any violations or potential violations known to Employee of applicable conference or NCAA regulations or University rules or regulations including, but not limited to, those by Employee, the assistant coaches, student-athletes or other persons under the direct control or supervision of Employee, as determined by the University.
 - (c) Failure by Employee to promote a culture of professionalism and student-athlete well-being as such is defined by the regulations, policies and practices of the NCAA and the University and by the following:
 - The Employee shall model inclusive behavior, actively supporting diversity while opposing all types of discrimination, including, but not limited to, racism and sexism; and
 - The Employee shall refrain from all manner of personal abuse and harassment of others, whether verbal, physical, emotional or sexual and shall oppose such abuse harassment in all facets of the program; and
 - The Employee shall ensure, to the best of his/her ability, that the student-athlete's athletic development occurs in a safe and inclusive environment in which the health/well-being of the student-athlete is paramount; and
 - The Employee shall report all matters related to student-athlete well-being including, but not limited to, illnesses, injuries and mental health issues to the appropriate University officials in a timely manner.

- (d) Engagement in any businesses of a similar nature, as determined by the University, without receiving prior written approval on an annual basis of the President and the Director of Athletics of the University.
- (e) It is recognized and agreed that Subparagraphs 12 a. through e. encompass findings or determinations of violations during employment of Employee at the University of Wyoming or any other institution of higher learning.

Such termination shall include the immediate termination of all salary payments, incentive supplements, awards and benefits due under the remaining term of this Agreement, except to the extent such payments, award or benefits have been earned but not yet paid. Any other additional compensation conferred by virtue of Employee's University employment will be discontinued at time of termination.

- (f) Excluding termination under Paragraph 12 a. through e, if in the judgment of the Director of Athletics, with the concurrence of the President of the University, the best interests of the University would be served by terminating Employee's appointment as Head Coach for Men's & Women's Swimming and Diving prior to the ending date of this Agreement, such termination may be effected immediately. The University's liability for any damages or payments created by this appointment shall be limited to the sum of the remaining base salary including any base salary increases that may have occurred over the life of the Agreement to be paid annually, in a manner and method to be determined by the University. If Employee, after termination pursuant to this paragraph f, accepts another position in collegiate or professional athletics during the remainder of the agreement, the amount of damages owed by University shall be limited to the difference between the base salary owed by the University pursuant to this Paragraph and the base salary earned through new employment. If the Employee's new employment provides a greater base salary than the University base salary, the University's obligation to pay shall cease immediately upon the Employee's acceptance of the new position.

At the time of termination from University employment, all supplemental salaries, incentive supplements and awards, and any other additional compensation conferred by virtue of his University employment as Head Coach for Men's & Women's Swimming and Diving will be discontinued except to the extent such payments, award or benefits have been earned but not yet paid.

13. **ACTION FOLLOWING TERMINATION OF APPOINTMENT**

As soon as the Employee's resignation or termination is made, Employee will cooperate fully to insure that a smooth transition, in the best interests of the University, is made to Employee's successor. Prior to the effective date of the resignation or termination, the following will occur: the University will determine all payment and reimbursement matters, including any accrued sick leave and vacation benefits and previously agreed-upon liquidated damages; the Employee will return any courtesy/lease vehicle(s) and additional applicable items (e.g., keys, laptop, parking permit, etc.); and the Employee will terminate any non-University employment contracts or benefits received by virtue of University employment. On the effective date of the resignation or termination, the Employee will cease being a University employee and no longer be eligible for

benefits as a University employee or under the Parties' Agreement. Except for this termination of University employee status, all actions following the Employee's resignation or termination are subject to modification by written agreement of the Parties.

14. **RESPONSIBLE EMPLOYEE**

EMPLOYEE is considered a "Responsible EMPLOYEE" (Mandatory Reporter) pursuant to Title IX of the Education Amendments Act of 1972 ("Title IX"). As a responsible EMPLOYEE, EMPLOYEE is required to inform the (UNIVERSITY) Title IX Officer if EMPLOYEE becomes aware that a UNIVERSITY student (undergraduate, graduate, or professional) or employee has experienced sexual violence, sexual harassment, or other behavior prohibited by UNIVERSITY policy (either on-or-off-campus). EMPLOYEE must contact the UNIVERSITY'S Title IX Office and immediate supervisor as soon as possible when EMPLOYEE learns or becomes aware of an incident of sexual violence or sexual harassment and share whatever information EMPLOYEE has, including the names of any individuals involved, their contact information, and any details of the incident. As a Responsible EMPLOYEE, EMPLOYEE must report directly to the Title IX Office, even if EMPLOYEE is unsure that the incident actually occurred or unsure whether it constitutes sexual harassment or sexual violence. EMPLOYEE should not investigate the report, and should not try to intervene or resolve the issue. While information must be provided to the Title IX Office, Responsible EMPLOYEE should not discuss the case with other people who do not have a legitimate need to know.

15. **COST SAVING MEASURES**

Upon a determination that the fiscal year's revenue may be insufficient to cover the department's projected expenses or as part of an overall budget reduction plan consistent with University Regulation 2-13, the University of Wyoming by and through its Director of Intercollegiate Athletics and in its sole discretion retains the right to impose upon EMPLOYEE with at least 60 calendar days notice, cost saving measures, including but not limited to unpaid employee furloughs, salary reductions and/or other cost savings efficiencies deemed to be in the University's best interests.

16. **GOVERNING LAW**

Any actions or claims against the University under this Agreement must be in accordance with and are controlled by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq. (1977) as amended. The Parties hereto agree that (i) the laws of Wyoming shall govern this Agreement, (ii) any questions arising hereunder shall be construed according to such laws, and (iii) this Agreement has been negotiated and executed in the State of Wyoming and is enforceable in the courts of Wyoming.

17. **SOVEREIGN IMMUNITY**

The University does not waive its sovereign immunity or its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

18. **INTEGRATED AGREEMENT**

This Agreement constitutes the entire agreement between Parties and supersedes all prior written and oral agreements, amendments, addendums, etc. Any changes, modifications, supplements, or amendments to this Agreement, must be reduced to writing and signed by the Parties.

