



## HEAD COACH EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into by and between the **Wichita State University Intercollegiate Athletic Association, Inc.**, (“ICAA”) an affiliated corporation of Wichita State University, a state educational institution of Kansas (“WSU” or “University”) and **Colin Foster** (hereinafter “Coach”), referred individually as “Party” and collectively as “Parties.”

### WITNESSETH:

**WHEREAS**, ICAA operates the intercollegiate athletics programs of WSU, subject to the direction and control of the President of the University;

**WHEREAS**, Coach wishes to serve, and ICAA desires that Coach should serve, as Head Coach for the University’s intercollegiate Women’s Tennis Team (the “Program”);

**WHEREAS**, the Parties deem it to be to their mutual benefit and advantage to set forth the terms of their agreement in writing.

**NOW, THEREFORE**, in consideration of the above premises and the individual and mutual promises of the Parties hereinafter set forth, and for other good and valuable consideration, it is hereby agreed by and between the Parties:

1. **Definitions.** In addition to words, terms, or phrases defined elsewhere in this Agreement, the following words, terms, or phrases shall have the following meanings in this Agreement:
  - 1.1. **“AAC”** means the American Athletic Conference and its successor and assigns, or any other athletic conference of which ICAA and/or the University, subsequent to the execution of this Agreement, may be a member.
  - 1.2. **“Contract Year”** means the annual twelve (12) month period beginning July 1 and ending June 30 during the Term of this Agreement.
  - 1.3. **“Director of Athletics”** means the University’s Director of Athletics and his/her designee.
  - 1.4. **“Governing Athletics Rules”** means (a) any and all present or future legislation, rules, regulations, directives, policies, bylaws and constitutions, and official or authoritative interpretations thereof, and any and all amendments, supplements, or modifications thereto, promulgated hereafter by the NCAA or the AAC, or by any other athletic conference or governing body hereafter having regulatory power or authority relating to ICAA and/or the University’s intercollegiate athletics program; and (b) all applicable federal, state, and local laws or regulations, including but not limited to those regulating college athletics, coaches, staff, student-athletes, or competition.
  - 1.5. **“NCAA”** means the National Collegiate Athletic Association and its successors and assigns, or any other athletic association of which ICAA and/or the University, subsequent to the execution of this Agreement, may be a member.
  - 1.6. **“University Rules”** means all present or future policies, procedures, rules, regulations, guidelines, task force recommendations, and departmental handbooks, and official or authoritative interpretations



thereof, and any and all amendments, supplements, or modifications thereto, promulgated hereafter by ICAA, the University, and/or the Kansas Board of Regents.

2. **Supervision; Duties and Responsibilities.** Coach will report directly to and act and perform to the reasonable satisfaction of the Director of Athletics, who will determine Coach's duties and responsibilities. These duties will include, but not be limited to those duties normally associated with the position of Head Women's Tennis Coach at a Division I institution and those set forth on Appendix A. For clarity, Coach shall not be reassigned to any other position. Coach shall have the authority (subject to the final approval of the Director of Athletics) to employ, manage, discipline, and terminate all assistant coaches and other direct reports within the Program, further subject to all applicable federal, state, and local laws and ICAA and WSU hiring and termination policies, procedures, guidelines and budgetary limitations.
3. **Non-Delegable Duties.** Coach acknowledges that Coach's skills, expertise, and experience related to coaching duties contemplated by this Agreement are unique, specialized, and non-delegable.
4. **Term.** The term of Coach's employment shall be three (3) years, commencing July 1, 2023, and ending June 30, 2026, unless sooner terminated as provided in this Agreement (the "Term"). This Agreement does not imply further or continued employment beyond the Term. This Agreement does not count in any way toward tenure at the University.
5. **Guaranteed Compensation.** ICAA, as payment and consideration for the services to be performed by Coach, and contingent upon Coach's satisfactory annual performance evaluation, agrees to pay Coach, or cause Coach to be paid, annual guaranteed compensation as set forth in Appendix B ("Guaranteed Compensation"). ICAA shall pay Coach in accordance with all customary payroll procedures. Guaranteed Compensation is subject to the same furlough and temporary salary reduction measures that may be imposed from time-to-time Coach's employer on its exempt employees.
6. **Additional Stipend.** During each Contract Year, Coach may be eligible to receive an additional annual stipend in an amount to be determined by the Director of Athletics (the "Stipend"). This Stipend shall be in addition to Coach's Guaranteed Compensation and any Incentive Compensation Coach may be eligible to receive and shall be paid at a time and on a schedule as determined by ICAA, in its sole discretion. Receipt of this Stipend during any Contract Year is at the discretion of the Director of Athletics and is contingent upon ICAA's receipt of the necessary funds as well as Coach's compliance with the Performance Incentive Criteria, as that term is defined herein.
7. **Performance Incentive Compensation.**
  - 7.1. During each Contract Year, Coach will be eligible to receive performance incentive compensation for achieving annual specified performance goals ("Performance Goals") in the amounts set forth in Appendix C ("Incentive Compensation"), provided Coach meets the Performance Incentive Criteria, as that term is defined herein, during each Contract Year. Any such Incentive Compensation shall be prospective, compensating Coach only for services and events which have not occurred at the time of the signing of this Agreement. Any Incentive Compensation provided will be (a) subject to any conditions, limits or restrictions as set forth in this Agreement; (b) subject to any conditions, limits, or restrictions of University Rules; and (c) subject to the availability of adequate funding. All determinations of whether adequate funding is available shall be determined by the Director of Athletics, in his/her sole discretion. Incentive Compensation shall be payable by June 30 of each Contract Year in which it was earned.



7.2. Coach shall only be eligible for Incentive Compensation if **all** the following conditions are met (collectively, the “Performance Incentive Criteria”):

7.2.1. Coach completes the Women’s Tennis season during which the Performance Goal(s) was achieved in the capacity as Head Women’s Tennis Coach; and

7.2.2. Coach is compliant with all provisions of this Agreement at the time of the payout of the Incentive Compensation; and

7.2.3. This Agreement has not been terminated by ICAA for Cause during the Contract Year during which the Performance Goal(s) was achieved; and

7.2.4. Both Coach and the Program are in compliance with all Governing Athletics Rules and University Rules during the Contract Year during which the Performance Goal(s) was achieved. For purposes of this section, “in compliance” shall mean that no disciplinary action was taken against Coach or the Program for the violation of the Governing Athletics Rules and/or the University Rules by the NCAA, AAC, ICAA, and/or the University, by the time the Incentive Compensation is due; and

7.2.5. There are no pending or active NCAA, ICAA, and/or University investigations concerning Coach and/or the Program at the time of the payout of the Incentive Compensation.

7.3. Coach shall repay any Incentive Compensation paid for a Performance Goal that is subsequently vacated by the NCAA due to conduct that occurred while Coach was serving as Head Women’s Tennis Coach, provided that Coach either knew about, or should have reasonably known about and did not act reasonably to prevent, limit, or mitigate, the violation that caused the NCAA to vacate such a Performance Goal. This Section shall survive termination of this Agreement. Such reimbursement shall be due in full within sixty (60) days of written demand from ICAA.

**8. Payments, Taxes, Deductions, and Withholding.** All compensation in this Agreement will be paid in accordance with any applicable payroll policies of ICAA and/or WSU unless otherwise specified. All payments and benefits are subject to applicable deductions and withholdings for federal, state, and local taxes. To the extent there are applicable taxes for any payments or benefits set forth in this Agreement, Coach shall be solely responsible for payment of such taxes. Coach agrees to save, hold harmless, and indemnify ICAA, WSU, and its/their affiliates, officers, directors, regents, employees, agents, and contractors (collectively, the “ICAA Indemnitees”) from and against any and all taxes, penalties, interest or other costs, including, but not limited to, costs of legal counsel and accounting professionals, assessed against or incurred by any of the ICAA Indemnitees in connection with any audit, litigation, or other controversy involving in any way compensation or payments under this Agreement.

## 9. Benefits.

9.1. **Standard Benefits.** In addition to compensation, Coach is entitled to the same benefits as other regular full-time employees provided by Coach’s employer of record, which may be amended from time to time.

9.2. **Automobile Allowance.** During the Term, Coach shall receive one (1) automobile from ICAA’s courtesy vehicle program which may be used by Coach for business and personal purposes in accordance with ICAA policies regarding courtesy vehicles. Coach will be solely responsible for all automobile expenses including, but not limited to, property taxes and registration, insurance coverage, replacement costs,



and maintenance. Coach will not be eligible for reimbursement of mileage. Coach understands that receipt of a courtesy automobile may constitute taxable compensation to Coach.

9.3. **Spousal / Family Travel.** Coach's spouse and children will be permitted to accompany Coach to away Women's Tennis games at ICAA's expense, provided allocated team travel resources support the expense.

**10. Coach's Name, Image, Likeness.** Coach agrees that, without payment of any compensation to Coach beyond that provided in this Agreement, ICAA and/or the University may use, and may grant others the right to use, Coach's name, image, likeness, and voice ("Coach's NIL") in connection with all programs, promotions and endorsements of ICAA and/or the University which includes but is not limited to for factual, historical, or documentary purposes, and Coach agrees to cooperate with such use. Coach specifically and exclusively licenses Coach's NIL solely to ICAA and WSU for use by ICAA, WSU, and its/their respective agents, affiliates, and licensees as described herein. This license shall be effective at all times while Coach is employed by ICAA and shall be in perpetuity.

**11. Outside Activities.** Coach is authorized to receive compensation for activities, including but not limited to personal appearances, lectures, and speaking engagements that are not a part of Coach's ICAA duties and responsibilities and that are appropriate to the promotion of the positive values of the athletics programs (the "Outside Activities"). The following general terms and conditions shall apply to each case in which Coach seeks to or makes arrangements to earn outside income as a result of his being the Head Women's Tennis Coach:

11.1. Coach must have prior written approval from the Director of Athletics for engaging in Outside Activities. When seeking such approval, Coach shall provide all details of the proposed Outside Activity. ICAA reserves the right to prohibit any Outside Activity which ICAA deems, in good faith, to (a) conflict with Coach's responsibilities to ICAA and/or the University; (b) involve an unreasonable time commitment; and/or (c) that may reflect materially unfavorably upon ICAA and/or the University; provided, however that such approval shall not be arbitrarily, capriciously, or otherwise unreasonably delayed, conditioned or withheld. If Coach requests approval from the Director of Athletics for engaging in an Outside Activity, and no denial of approval has been issued within five (5) business days, the Outside Activity shall be deemed to be approved.

11.2. The Outside Activity shall be at no expense to ICAA and/or the University, nor obligate in any way ICAA and/or the University.

11.3. Coach shall perform all Outside Activities at a time and in a way which will not interfere with the duties of his position as Head Women's Tennis Coach, and which will not be detrimental to the interests of ICAA and/or the University.

11.4. All Outside Activities must be conducted pursuant to the terms of this Agreement, the Governing Athletics Rules, and the University Rules.

11.5. Coach shall not use any University students or student-athletes in any Outside Activity.

11.6. Coach shall not conduct any Outside Activity on ICAA and/or WSU property or in any ICAA and/or WSU facility, unless otherwise approved by the Director of Athletics. Such use of ICAA and/or University facilities shall be in accordance with the University Rules.



11.7. Neither ICAA nor the University shall have responsibility or liability for any claims arising from Coach's Outside Activities, and Coach shall indemnify and hold harmless the ICAA Indemnitees from and against any and all suits, claims, demands, damages, liabilities, costs, and expenses arising from Coach's Outside Activities.

11.8. Coach must disclose all sources of outside income if required by and in conformity with the Governing Athletics Rules and the University Rules.

## **12. Team Records, Materials, and University Trademarks.**

12.1. All materials or articles of information, including, without limitation, personnel records, recruiting records, team information, films, statistics or other material or data furnished to Coach by ICAA and/or WSU, or developed by Coach, or any person under Coach's direct or indirect supervision, during the course of Coach's employment with ICAA, shall remain the sole property of ICAA and/or WSU.

12.2. Nothing in this Agreement shall constitute permission or license for Coach to use or to authorize third parties to use ICAA's and/or WSU's characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, and all trade names which are owned, licensed to or controlled by ICAA and/or WSU ("Institutional Marks") for any reason. A license to use the Institutional Marks must be obtained from and approved by the appropriate ICAA and/or WSU office(s). Further, nothing in this Agreement shall constitute permission or license for Coach to modify or change any existing Institutional Marks for ICAA and/or WSU, or create any new Institutional Marks, without the express written consent of the appropriate ICAA and/or WSU office(s).

## **13. Sports Camps.**

13.1. Coach, acting as an individual or a private legal entity, may own and operate sports camps or clinics ("Sports Camps"). Such Sports Camps must be operated in accordance with all Governing Athletics Rules and University Rules and with appropriate financial controls. Within sixty (60) days of closing the Sports Camps, Coach will provide to ICAA a full financial accounting of the Sports Camps, including a statement of income and expenses, and an accounting of the distribution to ICAA and/or WSU employees and third parties. Coach agrees that Coach has the right to operate the Sports Camps only as long as Coach serves as the Head Men's Tennis Coach, and that ICAA and/or WSU may assume the right to operate the Sports Camp upon the termination of Coach's employment as Head Men's Tennis Coach.

13.2. Coach shall be entitled to utilize ICAA and/or WSU facilities in the operation of the Sports Camps as provided herein. Such usage of ICAA and/or WSU property or facilities will be subject to the terms and conditions of a separate facilities use agreement. The manner, means, and details of the Sports Camps must be submitted to and approved by ICAA prior to the Sports Camps being advertised. Coach shall be responsible for all facility or other fees and/or expenses and equipment usage assessed by ICAA and/or WSU and/or any third party for the Sports Camps. Coach agrees to provide adequate liability insurance for the Sports Camps, with a minimum single occurrence limit of at least \$1 million, and with ICAA and WSU listed as additional insureds. At the discretion of the Director of Athletics, ICAA may agree to place advertising links to Sports Camps websites on ICAA's official athletics website(s).

13.3. Coach shall not use the name "Wichita State University," "Shockers," or any other term identifying ICAA and/or WSU in the name of the Sports Camps.



13.4. To the extent permitted by, and in accordance with, applicable Governing Athletics Rules and University Rules, Coach shall be entitled to retain all revenues from such Sports Camps.

**14. Shoe, Apparel, and Equipment Agreements.** During the Term of this Agreement, Coach shall not enter into or be a party to any shoe, apparel, or equipment agreement, including any agreement that obligates Coach to wear, promote, endorse, or consult with a manufacturer or seller concerning the design and/or marketing of such shoes, apparel, or equipment. This notwithstanding, ICAA may require Coach to comply and Coach shall comply and cooperate with the terms of any shoe, apparel, and equipment agreements entered into by ICAA and/or the University (“ICAA Agreements”), including but not limited to requiring Coach to wear or use a particular brand of shoe, apparel, or equipment while performing Coach’s duties as Head Women’s Tennis Coach. Coach shall direct all questions concerning the terms of the ICAA Agreements to the Director of Athletics. ICAA and/or the University is entitled to all revenue and/or proceeds derived from any ICAA Agreement. Notwithstanding the foregoing, Coach may enter into a separate agreement with any company with whom ICAA and/or the University has an ICAA Agreement.

**15. Exclusivity of Services.** During the Term of this Agreement, and except as otherwise permitted hereunder, Coach shall use Coach’s full-time energies and abilities for the exclusive benefit of ICAA and WSU. Coach agrees that, during the Term of this Agreement, Coach will notify the Director of Athletics and obtain permission prior to any discussions by Coach or Coach’s agents or representatives pertaining to coaching opportunities at any NCAA member institution or any other coaching or non-coaching positions that may result in termination of Coach’s employment with ICAA. If formally announced as the coach or employee of a different employer, or if Coach reaches agreement to work for a different employer, the Parties agree such action shall be considered a termination by Coach as provided for in this Agreement.

**16. Social Media Presence.** Notwithstanding any else in this Agreement, Coach agrees that Coach shall not establish an Internet website or weblog, social media account (including but not limited to Twitter, Facebook, Instagram, TikTok, etc.), or Internet program or presence in any form (collectively, “Social Media”), that in any way relate to the Program or Coach’s position as Head Women’s Tennis Coach without the written consent of the Director of Athletics, which consent shall not be unreasonably withheld, delayed or conditioned. To the extent that Coach establishes any of the Social Media, Coach agrees to terminate such Social Media upon expiration and/or termination of this Agreement. This Section shall not apply to personal accounts that are unrelated to the Program or Coach’s position as Head Women’s Tennis Coach.

## **17. Compliance.**

**17.1. Compliance with Governing Athletics Rules and University Rules.** In the performance of Coach’s duties and obligations under this Agreement, Coach shall (a) know, recognize, abide by, and comply with; (b) shall cause all persons under Coach’s direct or indirect supervision, including but not limited to employees and student-athletes to know, recognize, abide by, and comply with; and (c) conduct the Program in accordance with all Governing Athletics Rules and the University Rules, and all decisions issued by the NCAA, AAC, ICAA and/or the University. Violations of any Governing Athletics Rules, University Rules, or any decisions issued by the NCAA, AAC, ICAA and/or the University, by Coach will be sufficient cause for disciplinary action up to and including termination for Cause.

**17.2. Cooperation with NCAA Infractions Process.** Pursuant to NCAA bylaws, Coach has an affirmative obligation to cooperate fully and assist ICAA and/or the University in the NCAA enforcement process as set forth in NCAA bylaws or other procedures. Full assistance and cooperation includes, but is not limited to reporting issues of noncompliance in a timely manner; timely participation in interviews and providing





complete truthful responses and relevant information; disclosing and providing access to all electronic devices used for business purposes (regardless of whether Coach pays for the device or ICAA pays for the device); providing access to all social media, messaging and other applications that may be relevant to the investigation; and preserving the integrity of an investigation along with the confidentiality required. Should Coach be found to be in violation of NCAA regulations, Coach shall be subject to disciplinary and/or corrective action as set forth in the provisions of the NCAA enforcement procedures and/or this Agreement, including suspension without pay or termination of employment for Cause. Coach shall sign any statement, affirmation, confirmation, and/or certification required by ICAA and/or the University with regard to compliance with any NCAA bylaw.

**17.3. Cooperation with ICAA and/or University Investigations.** Coach has an affirmative obligation to cooperate fully in any ICAA and/or University investigation. Full assistance and cooperation includes, but is not limited to reporting issues of noncompliance in a timely manner; timely participation in interviews and providing complete truthful responses and relevant information; disclosing and providing access to all electronic devices used for business purposes (regardless of whether Coach pays for the device or ICAA pays for the device); providing access to all social media, messaging and other applications that may be relevant to the investigation; and preserving the integrity of an investigation along with the confidentiality required. Failure to comply with any ICAA and/or University investigation may result in disciplinary and/or corrective action including suspension without pay or termination of employment for Cause.

**17.4. Representations and Warranties.** By signing this Agreement, Coach represents that Coach has disclosed to ICAA: (a) any known previous material breach or alleged material breach by Coach of Coach's duties or Coach's employment agreement or other agreement at any other NCAA member institution; (b) any known material violation or alleged violation of any law or rule applicable to intercollegiate athletics by Coach or any person under Coach's direct or indirect supervision; (c) any known material violation or alleged violation by any athletic program under Coach's direction, including, but not limited to, a member of the coaching staff, a student-athlete, or any other person affiliated with the intercollegiate athletics program who reported directly or indirectly to Coach, of rules or regulations of the NCAA or any other association, conference or like organization associated with another NCAA member institution, state or federal laws, rules or regulations, or any rules or policies of another NCAA member institution; (d) other known material misconduct or alleged misconduct, including without limitation fraud, dishonesty, acts of violence, or other conduct that is contrary to the mission of another NCAA member institution or an educational institution; and (e) all convictions and guilty pleas (including an Alford Plea) to: (1) a felony, or (2) a criminal offense which constitutes fraud, dishonesty or moral turpitude, the underlying offense or activity, but not the conviction or guilty plea, having occurred prior to the date of Coach's signature below. Coach acknowledges that ICAA is relying on Coach's representation set forth in this Section, that this representation is a material inducement for ICAA to enter into this Agreement, and that a breach of this representation will constitute a material breach of this Agreement and subject Coach to termination for Cause.

**18. Termination for Cause.** In its sole discretion and at any time during the Term, ICAA has the right to terminate this Agreement with Cause, as that term is defined herein. The effective date of the termination for Cause shall be the date contained in the notice of termination for Cause.

**18.1.** For purposes of this Agreement, the term "Cause" shall include, but not be limited to, any one or more of the following as determined by ICAA: (a) the refusal, failure, fraud, or dishonesty of Coach in any material respect to comply with the reasonable directives of the Director of Athletics or to perform the



duties set forth in this Agreement; (b) conduct or omission(s) by Coach that constitutes a Level I or Level II violation of one or more Governing Athletics Rules; (c) conduct or omission(s) by Coach that will more likely than not lead to an NCAA finding of a Level I or Level II violation of one or more Governing Athletics Rules, as reasonably determined by ICAA and/or the University; (d) conduct or omission(s) that constitutes a Level I or Level II violation, or would constitute a Level I or Level II violation as reasonably determined by ICAA and/or the University by a person who reports, directly or indirectly, to Coach and where such conduct or omission occurred either at the directive of Coach or where the Coach was aware of such conduct or omission but failed to report it; (e) knowing and deliberate failure to comply with the Governing Athletics Rules; (f) knowing and deliberate failure to comply with the University Rules; (g) failure to cooperate with the NCAA infractions process; (h) failure to cooperate with any ICAA and/or University investigation; (i) knowing and deliberate failure to comply with the terms of this Agreement; (j) any conduct that ICAA or the University reasonably determines in good faith, in its sole discretion, would bring ill repute to a Head Women's Tennis Coach of an intercollegiate Women's Tennis sports team, or which reasonably brings into question the integrity of Coach, or that would render Coach unfit to serve in the position of head coach; (k) any conduct that ICAA or the University reasonably determines in good faith, in its sole discretion, would bring ill repute on ICAA, the University, or its sports programs; (l) failure by Coach to report in a timely fashion to the Director of Athletics any alleged violations of the Governing Athletics Rules or the University Rules by Coach and/or by any other person once Coach becomes aware of such alleged violation; (m) conduct resulting in a criminal charge being brought against Coach involving a felony, or conviction of any crime involving theft, dishonesty, or moral turpitude; (n) requiring a student-athlete to perform a physical act that (1) is not relevant to the sport of Women's Tennis but is, instead, obviously intended to embarrass or degrade a student-athlete, (2) unreasonably compromises the health or safety of a student-athlete, or (3) is in direct or conflict with restrictions or guidelines established by ICAA's sports medicine staff subsequent to Coach's receipt of written notification of such restrictions or guidelines; (o) engaging in deliberate physical contact with a student-athlete or ICAA and/or University employee that is obviously not necessary for instructional purposes (but not including occasional appropriate supportive or congratulatory physical contact); (p) knowing and deliberate conduct or omission(s) by Coach that causes substantial injury to or unreasonably endangers the health or safety of another person, including without limitation physical, psychological, verbal, or sexual abuse or violence; (q) use or consumption by Coach of alcoholic beverages, drugs, narcotics, controlled substances, steroids, or other chemicals in such degree or for such appreciable period as to impair materially Coach's ability to perform Coach's duties, as determined by ICAA and/or WSU; or (r) any other knowing and deliberate breach by Coach of Coach's duties or responsibilities under this Agreement.

18.2. In the event of termination of this Agreement for Cause, ICAA's sole obligation to Coach shall be to pay Coach's Guaranteed Compensation until the effective date of termination, in addition to any Other Compensation that has been earned as of the effective date of termination.

## 19. Termination Without Cause.

19.1. **Definitions.** For purposes of this Section 19, the following terms have the following meaning: (a) "Competition End Date" shall mean the day of last competition during a season, including post-conference play; (b) "Season 1" means the period beginning on July 1, 2023, and ending on the next Competition End Date; (c) "Season 2" means the period beginning the day after the Season 1 Competition End Date and ending on the next Competition End Date; and (d) "Season 3" means the period beginning the day after the Season 2 Competition End date and ending on the next Competition End Date. By way of example only: (e) if the Season 1 Competition End Date is April 30, 2024, Season 1





shall be July 1, 2023, through April 30, 2024, and Season 2 shall begin on May 1, 2024; (f) if the Season 2 Competition End Date is May 12, 2025, Season 2 shall be May 1, 2024, through May 12, 2025, and Season 3 shall begin on May 13, 2025.

19.2. **By Coach.** Coach will have the right to terminate this Agreement. If Coach terminates this Agreement, Coach will pay to ICAA the amounts set forth below:

19.2.1. If Coach terminates this Agreement during Season 1, Coach will pay ICAA 40% of the amount equal to the remaining balance of Coach's Guaranteed Compensation that would have been owed to Coach if Coach was fully performing Coach's duties through the end of the Term.

19.2.2. If Coach terminates this Agreement during Season 2 or Season 3, Coach will pay ICAA 25% of the amount equal to the remaining balance of Coach's Guaranteed Compensation that would have been owed to Coach if Coach was fully performing Coach's duties through the end of the Term.

19.2.3. One-half of such amount shall be due within thirty (30) days of the date of termination, and the remaining one-half shall be due one (1) year following the date of termination.

19.3. **By ICAA.** In its sole discretion, ICAA has the right to terminate this Agreement at any time during the Term without Cause. In the event ICAA terminates this Agreement without Cause, ICAA's sole obligation shall be to pay Coach, as liquidated damages and not as a penalty, the amounts set forth below (the "ICAA Separation Payment").

19.3.1. If ICAA terminates this Agreement during Season 1, ICAA will pay Coach 60% of the amount equal to the remaining balance of Coach's Guaranteed Compensation that would have been owed to Coach if Coach was fully performing Coach's duties through the end of the Term.

19.3.2. If ICAA terminates this Agreement during Season 2, ICAA will pay Coach 75% of the amount equal to the remaining balance of Coach's Guaranteed Compensation that would have been owed to Coach if Coach was fully performing Coach's duties through the end of the Term.

19.3.3. If ICAA terminates this Agreement during Season 3, ICAA will pay Coach 35% of the amount equal to the remaining balance of Coach's Guaranteed Compensation that would have been owed to Coach if Coach was fully performing Coach's duties through the end of the Term.

19.3.4. The applicable sum due to Coach shall be paid by ICAA over twelve (12) months in equal installments beginning thirty (30) days from the effective date of Coach's termination without Cause. The payment of liquidated damages as set forth in this subsection is subject to the duty to mitigate in subsection 19.4 below.

19.4. **Coach's Duty to Mitigate.** If Coach is terminated by ICAA without Cause, Coach must diligently seek mitigation of ICAA's payment obligation set forth in subsection 19.2 by obtaining full-time subsequent employment at Actual Market Rate, as that term is defined herein ("Subsequent Employment"). Subsequent Employment shall include working in the capacity of employee for another employer, as a consultant, as a self-employed person, or as an independent contractor. ICAA's payment obligation set forth under subsection 19.3 shall continue but be reduced on a dollar-for-dollar basis by the total compensation received by Coach from all sources directly related to any Subsequent Employment ("Subsequent Compensation"). Subsequent Compensation shall include any and all compensation earned through Coach's Subsequent Employment including, but not limited to base salary, additional



compensation, performance incentive compensation, consulting fees, bonuses, and any other compensation. If Coach obtains such Subsequent Employment before the date on which this Agreement would have expired, but for the termination, then Coach shall provide the Director of Athletics with written notice, within ten (10) calendar days of agreeing to accept such Subsequent Employment, of the (a) name and address of the new employer, (b) position title, (c) monthly salary, and (d) start date. For purpose of this Agreement, "Actual Market Rate" is defined as the average total compensation for the position, and, if the position is in intercollegiate athletics, is commensurate to similar positions among public universities in the conference of the subsequent employer, utilizing available compensation sources (e.g., WINAD and other coaching compensation databases). ICAA reserves the right to adjust the ICAA Separation Payment if Coach's Subsequent Compensation, to a reasonable and objective person, appears contrived to rely upon payments to Coach by ICAA. Failure of Coach to comply with this subsection shall make ICAA's payment obligation herein voidable at ICAA's option, and in the event Coach's Subsequent Compensation is below an Actual Market Rate, Coach expressly agrees that ICAA may assign a market value of compensation to Coach's Subsequent Employment based upon ICAA's analysis of similar positions. If Coach does not notify ICAA about the Subsequent Employment within the ten (10) day calendar period, ICAA shall not be liable for any further payments under subsection 19.3.

19.5. The Parties have bargained for and agreed to the ICAA Separation Payment, giving consideration to the fact that termination of this Agreement prior to its expiration may cause Coach to lose certain benefits and incentives, supplemental compensation, or other athletically related compensation associated with Coach's employment with ICAA, the amounts of which are extremely difficult to determine with certainty. The Parties further agree that the payment of the ICAA Separation Payment by ICAA and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for any damages and injuries suffered by Coach because of such termination by ICAA. The ICAA Separation Payment shall not be, nor be construed to be, a penalty.

19.6. As a condition of Coach's right to receive the ICAA Separation Payment, within fifteen (15) calendar days of the notice of termination without Cause, Coach shall execute a waiver and release of claims as drafted by ICAA. If Coach fails to execute this waiver, or if Coach brings a claim in violation of the waiver and release of claims, other than a claim against ICAA for a breach of this Section 19, all obligations of ICAA under this Section 19 shall cease, and Coach shall refund in full all monthly installments of the ICAA Separation Payment received from ICAA.

## 20. Termination for Death or Disability.

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

20.2. **Disability.** This Agreement shall terminate automatically if Coach becomes disabled. "Disabled" shall mean physical or mental incapacity of a nature that prevents Coach, in the reasonable and good faith judgment of ICAA, from coaching, recruiting, or performing the other essential functions of the position of Head Women's Tennis Coach for a period of ninety (90) consecutive calendar days (including but not limited to days on which Coach uses accumulated sick, annual, or personal leave). If this Agreement is terminated because Coach becomes Disabled, all unearned salary, compensation, benefits, and



prerequisites shall terminate, except that Coach shall receive: (a) any disability benefits to which Coach is entitled under any disability program in which Coach is enrolled; (b) compensation for Coach's accrued and unused annual leave; and (c) other payments which were due or accrued prior to the effective date of termination.

20.3. In the event of termination of this Agreement for death or Disability, ICAA's sole obligation to Coach shall be to pay Coach all earned and accrued compensation, including Guaranteed Compensation, Other Compensation, Performance Incentives, and Retention Bonus as of the date of Coach's death or Disability. ICAA shall pay this compensation to Coach or his estate or beneficiaries, as the case may be.

**21. Termination by Mutual Agreement of the Parties.** This Agreement may be terminated upon the mutual written agreement of the Parties, the terms of which may be stipulated in the writing. In the event of mutual termination of this Agreement, ICAA's sole obligation to Coach shall be to pay Coach's Guaranteed Compensation until the effective date of termination, in addition to any Other Compensation that has been earned as of the effective date of termination.

**22. Discipline for Cause.** In the event Coach engages in conduct constituting Cause, ICAA may, in lieu of terminating Coach's employment, impose discipline short of termination including, but not limited to, written reprimand or suspension. ICAA is not required to engage in progressive discipline. ICAA's selection to engage in discipline, rather than termination, shall in no way restrict ICAA's ability to terminate Coach's employment for subsequent misconduct constituting Cause. Notwithstanding the foregoing, nothing shall prohibit and/or prevent ICAA from disciplining Coach for reasons other than would constitute Cause.

**23. Obligation Upon Termination.** Upon expiration or termination of this Agreement, Coach shall return all materials or articles of information, including without limitation, keys, keycards, cell phones, computers, electronic equipment, equipment, parking passes, unused athletic event tickets and the like, automobiles, personnel records, recruiting records, team information, video, statistics, financial records, passwords, club memberships, intellectual property, or any other material documents or data furnished to Coach by ICAA and/or WSU or developed by Coach, whether directly or by others under his supervision and control, on behalf of ICAA and/or WSU or otherwise in connection with Coach's employment ("ICAA Property"). All ICAA Property shall remain the sole property of ICAA. Coach shall cause any and all ICAA Property in his possession or control to be delivered to ICAA by or before close of business on the date of termination or expiration of this Agreement. This provision shall apply equally to written and electronic ICAA Property. Coach understands that Coach will be responsible to pay for any lost, damaged or unreturned ICAA Property by or before close of business on the date of termination or expiration of this Agreement. ICAA will not distribute Coach's last paycheck until such time as Coach has returned all ICAA Property.

**24. Liability of ICAA.** In no case shall ICAA and/or WSU be liable to Coach for any loss of collateral business opportunities or any other benefits, perquisites, or income from any other sources.

**25. Taxes.** The Parties intend for all payments and benefits under this Agreement to comply with or be exempt from all applicable provisions of the Internal Revenue Code and the regulations and guidance promulgated thereunder, including but not limited to Code Sections 409A and 457(f) (the "Tax Rules"). Coach acknowledges and understands that any additional tax and/or penalties for noncompliance with the Tax Rules will be assessed against Coach and not ICAA. ICAA will not provide tax advice to Coach regarding the tax effects of this Agreement. ICAA recommends that Coach consult with Coach's own tax advisors concerning the federal, state, or local tax implications resulting from this Agreement.



- 26. Hold Harmless.** Coach agrees to and shall indemnify and hold harmless the ICAA Indemnitees from and against any and all suits, claims, demands, damages, liability, costs, and expenses, including reasonable attorneys' fees (collectively, "Claims"), incurred by the ICAA Indemnitees because of Coach's intentional or clearly negligent acts or omissions arising out of matters related to this Agreement, except for such Claims in which Coach seeks to compel ICAA to comply with its obligations under this Agreement or in which Coach seeks to enforce any remedies under this Agreement. These indemnification obligations shall continue after termination or expiration of this Agreement.
- 27. State Entity.** WSU, and ICAA, as a controlled affiliated entity of WSU, are agencies of the State of Kansas and, as such, no provision of this Agreement is intended to operate as a waiver or relinquishment of any right, privilege, or defense, including the defense of sovereign immunity, afforded to ICAA and WSU under constitutional provision or law or any other state or federal law.
- 28. Approvals.** This Agreement is subject to any approvals that must be obtained in accordance with law or any University Rule.
- 29. Amendment.** Except as otherwise expressly provided in this Agreement, no amendment, supplement, modification or variation of or to the terms of this Agreement shall be valid unless in writing and signed by the authorized representative(s) of ICAA and Coach.
- 30. Choice of Law/Venue.** The Parties agree that any matter related to or arising out of this Agreement shall be resolved in accordance with the laws of the State of Kansas, without giving effect to its conflicts of laws provisions, and venue for any proceedings shall be solely and exclusively in Sedgwick County, Kansas.
- 31. Assignment.** Neither Party may assign any obligations, rights, or duties set forth in this Agreement without the mutual, written consent of both Parties. Notwithstanding the foregoing, ICAA may assign this Agreement to WSU without the consent of Coach. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and assigns.
- 32. Notices.** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either Party to the other shall be **IN WRITING** and sent by certified mail or overnight traceable delivery and addressed as follows, unless any other person or address may be designated by notice from one Party to the other:

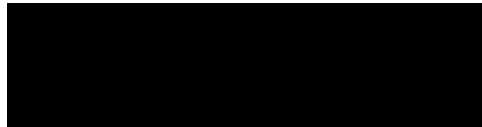
If to ICAA:

Attn: Director of Athletics  
Wichita State University  
1845 Fairmount Street  
Wichita, Kansas 67260-0018

With a copy to:

Attn: General Counsel  
Wichita State University  
1845 Fairmount Street  
Wichita, KS 67260-0205

If to Coach:



With a copy to:



- 33. Confidentiality.** Coach acknowledges and agrees that ICAA is required to comply with the Kansas Open Records Act (“KORA”) and that this Agreement is not confidential and is subject to disclosure under KORA.
- 34. Employment Matters.** This Agreement sets forth all the terms of Coach’s employment and rights to such employment. This Agreement is intended as the sole source of Coach’s employment rights, irrespective of any statement contained in any ICAA and/or WSU employment manual, staff manual, or other similar document pertaining to ICAA and/or WSU staff or faculty. This provision is not intended in any way or manner to obviate Coach’s duties and obligations to comply with all University Rules.
- 35. Complete Agreement.** This Agreement sets forth the complete terms of Coach’s employment and supersedes any prior agreements between Coach and ICAA, whether written or oral.
- 36. Counterparts/Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via “wet” signature, authorized signature stamp or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means. The Parties agree that this Agreement may be signed with electronic signatures. Whenever either Party executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature and shall be legally binding equivalent. The Parties agree that neither Party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.

[signature page to follow]

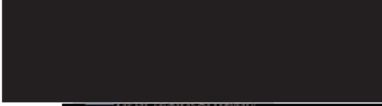




IN WITNESS WHEREOF, the Parties hereto have executed this Agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures.

WICHITA STATE UNIVERSITY INTERCOLLEGIATE ATHLETIC ASSOCIATION, INC.

COLIN FOSTER



SIGNATURE

SIGNATURE

Kevin Saa1

Colin Foster

PRINTED NAME

PRINTED NAME

Director of Athletics

Head Coach, Women's Tennis

TITLE

TITLE

7/24/2023

7/24/2023

DATE

DATE



**APPENDIX A**  
**DUTIES OF HEAD WOMEN'S TENNIS COACH**

As Head Women's Tennis Coach, Coach's duties and responsibilities include, without limitation:

1. Lead, supervise, evaluate, recruit, train, condition, discipline, educate, develop, promote, and coach the University's Women's Tennis team to compete successfully in the AAC and nationally.
2. Support the University's educational mission by maintaining an environment in which the pursuit of higher education is a priority as may be reflected by women's tennis student-athletes' class attendance, grade point averages, graduation rates, and NCAA Academic Progress Rates.
3. Subject to departmental budgetary limitations, University hiring practices, and the final approval of the Director of Athletics, the recruitment, hiring, supervision, disciplining, termination and evaluation of the performance of assistant coaches.
4. Make best efforts to perform his duties and personally comport himself at all times in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, conduct, and academic standards of ICAA and/or the University. At all times, Coach shall exercise his best reasonable efforts to ensure that all employees and students under his direct supervision, or subject to his direct or indirect control comport themselves in a like manner on and off the court.
5. Promote and advance institutional control over every aspect of the women's tennis program; promote and maintain an atmosphere of compliance with Governing Athletics Rules and University Rules within the women's tennis program; monitor all employees who report directly or indirectly to Coach, and students on the women's tennis team under Coach's supervision, and take other reasonable steps to ensure that such persons know and strictly comply with the Governing Athletics Rules and University Rules including, but not limited to, requiring them to attend compliance education sessions, encouraging them to seek interpretations as necessary, taking compliance into account when evaluating their performance, and applying appropriate disciplinary measures in the event of a violation.
6. Engage in reasonable actions in the development, implementation, management, and monitoring of all aspects of prospective women's tennis student-athlete recruiting, including but not limited to: recruiting contacts, evaluations, official visits, telephone calls and other communications, improper benefits, and any travel-related activities of prospective student-athletes and the women's tennis program's coaching staff; and develop and implement effective plans and strategies to recruit academically qualified student-athletes who possess the talent necessary to ensure the women's tennis team is competitive in the AAC and who possess the personal characteristics necessary to be well-regarded representatives of the University.
7. Report promptly to the Director or Athletics or the staff member in the Athletics Department with primary responsibility for compliance any actual knowledge of or reasonable cause to believe that one or more violations of Governing Athletics Rules or University Rules have been committed by Coach and/ or any other person under his direct supervision.
8. Cooperate fully in any investigation of any aspect of the women's tennis program or the intercollegiate athletics program, whether by the NCAA, the AAC, ICAA, or the University.
9. Work cooperatively with the Athletics Compliance Office on compliance matters and Governing Athletics Rules education.

10. Provide substantive input and work in good faith with the Director of Athletics to schedule future opponents, support in good faith the Director of Athletics' negotiations and other efforts to schedule future opponents, and not unreasonably object to any such future opponents. The Director of Athletics is the final decision maker on scheduling.
11. Make diligent, good faith efforts to maintain and cultivate positive and effective working relations with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, staff, and friends of the University.
12. Under the direction of the Director or Athletics, make diligent, good faith efforts to maintain responsibility for the fiscal and budgetary functions associated with the women's tennis program.
13. Encourage and support all student-athletes with regard to personal, physical, and intellectual development, activities, and achievements, including an emphasis on each student-athlete's completion of an undergraduate degree program.
14. Create, promote, and maintain, and assure that every employee, including assistant coaches, under his supervision create, promote and maintain, a safe, inclusive, respectful, and positive environment for all student-athletes including, but not limited to women's tennis student-athletes.
15. Engage in, and assure that every employee, including assistant coaches, under his supervision engages in fair, safe, and responsible treatment of student-athletes and avoid behavior that could, in any way, jeopardize a student-athlete's health, safety, and welfare (whether physical, emotional, or mental), or that could otherwise cause harm or risk causing harm to a student-athlete (outside of the risks inherent to the sport of tennis).
16. Maintain and project an attitude of good sportsmanship and be a role model for all student-athletes.
17. Work with all ICAA and/or University employees to create, promote, and maintain a safe, inclusive, respectful, and positive environment throughout the University's intercollegiate athletics programs.

**APPENDIX B  
GUARANTEED COMPENSATION**

<b>Contract Year</b>	<b>Annualized Guaranteed Compensation</b>
1 (July 1, 2023 – June 30, 2024)	\$89,989
2 (July 1, 2024 – June 30, 2025)	\$89,989
3 (July 1, 2025 – June 30, 2026)	\$89,989

**APPENDIX C  
PERFORMANCE INCENTIVES**

Performance Goal	Incentive Compensation
<b>Regular Season Performance (Cumulative)</b>	
Top 50 ITA ranking (Final Ranking)	\$1,000.00
NCAA Individual Qualifier (doubles team counts as 1)	\$750/qualifier
NCAA Individual (doubles team counts as 1) All-American Status	\$2,000.00/each All-American
NCAA Individual Champion (doubles team will count as 1)	\$3,000.00
Either Conference or Regional Coach of the Year	\$1,000.00
National Coach of the Year	\$2,500.00
<b>Post-Season Performance (Non-Cumulative)</b>	
#1 Seed at Conference Championship	\$1,000.00
Conference Tournament Championship Win	\$5,000.00
Team Qualifies for NCAA Championship	\$2,500.00
Team is one of Final 16 Teams in NCAA Championship	\$7,500.00
Team is one of Final 4 Teams in NCAA Championship	\$10,000.00
NCAA Championship Win	\$20,000.00
<b>Academic Performance (GPA Non-Cumulative)</b>	
Multi-Year APR of .985 or better	\$1,000.00
GPA of 3.25 – 3.49 (per semester)	\$375.00
GPA of 3.50 – 3.74 (per semester)	\$500.00
GPA of 3.75 and above (per semester)	\$750.00