

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 21-22, 2005**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>IDAHO STATE UNIVERSITY</b> Head Football Coach Contract	Motion to approve
<b>2</b>	<b>UNIVERSITY OF IDAHO</b> Interim Vice President for Finance & Administration	Motion to approve

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**INSTITUTION / AGENCY AGENDA**  
**IDAHO STATE UNIVERSITY**

**SUBJECT**

Idaho State University (ISU) requests approval of a multi-year Employment Agreement with its Head Football Coach, John Larry Lewis.

**APPLICABLE STATUTE, RULE OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Section II.H.1.

**DISCUSSION**

Coach Lewis commenced his employment as Head Football Coach at ISU in November, 1998, recently completing his sixth full season. While the 2004 season was disappointing in terms of the win-loss record, Coach Lewis has brought stability to a program that had previously seen frequent coaching changes. Among the achievements of Coach Lewis and his staff are: three of the five winning ISU football seasons for the past twenty years; a five-year rolling average player retention rate of 77%; the only back-to-back eight win seasons in the 100+ year history of the institution (and its predecessors); the only ISU football coach who has won or tied for the conference championship in the past twenty years; he has recruited and signed a number of Idaho players (nine for the 2005 class).

As the red-line version of the Employment Agreement (Exhibit B) reflects, the model agreement is generally followed, although all areas of supplemental compensation are incorporated into the body of the agreement rather than by way of attachment. ISU believes the incentives are reasonable and designed to produce measurable results. As Exhibit C reflects, the goals established as incentives do indeed heighten requirements and are not designed to be routinely met. The annuity incentive (Section 3.2.12.), is substituted for the liquidated damages clause (5.3. in the model). ISU believes the liquidated damage clause is intended to discourage short-term tenures by head coaches, and that Coach Lewis has demonstrated his commitment to a long-term relationship by his six years of service to ISU. It is believed the annuity, which only vests upon service for the entire four-year period (or on a pro-rata basis if the University terminates the agreement for its convenience), is a fair and reasonable method of creating a positive incentive for the Coach to remain in the position for the entire four-year period.

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**INSTITUTION / AGENCY AGENDA**  
**IDAHO STATE UNIVERSITY-continued**

**DOCUMENTS**

Documents relating to the proposed multi-year Employment Agreement are as follows:

Spreadsheet	J. Lawrence Lewis, Head Football Coach - Multi-Year Contract Changes
Exhibit A	Employment Agreement (clean version)
Exhibit B	Employment Agreement (red-line version)
Exhibit C	Supplemental Compensation – History & Summary (prepared by Athletic Director)

**IMPACT**

The proposed Employment Agreement establishes a base annual salary of \$100,000 for the period January 29, 2005 through January 28, 2009, and provides the opportunity for the Coach to earn supplemental compensation in various amounts for the academic and competitive performance of the ISU football team, for media appearances, summer football camps, etc., as set forth in Exhibits A, B, and C.

**STAFF AND COMMENTS AND RECOMMENDATIONS**

Staff has reviewed the proposed contract for conformance with Board policy and recommends approval.

**BOARD ACTION**

A motion to approve the request by Idaho State University for a multi-year employment agreement for the Head Football Coach (1.0 FTE), Department of Intercollegiate Athletics, supported by state funds.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

## J. LAWRENCE LEWIS, HEAD FOOTBALL COACH - MULTI-YEAR CONTRACT CHANGES

	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	3.1 Regular Compensation	3.1.1 (d)	Provides that Coach receives courtesy car through Courtesy Car Program
2	3.2 Supplemental Compensation	3.2 Supplemental Compensation	Provides that supplemental compensation is cumulative but ceases upon termination except to the extent actually earned prior to termination. (Note: All forms of supplemental compensation are included in body of agreement - instead of addendum).
3		3.2.1	Incentive for winning or tying for conference championship (amount equal to 1 week's pay)
4		3.2.2	Incentives for advancing to NCAA 1-AA playoffs and incremental incentives for winning playoff games, up to and including national championship
5		3.2.3	Incentive for ranking in national polls
6		3.2.4	Incentives for number of season wins - beginning with a minimum 7 wins
7		3.2.5	Incentive for wins against Division 1-A opponents
8		3.2.6	Incentive for Coach being named Big Sky coach of the year
9		3.2.7	Measurable incentives for Team's academic performance and conduct
10		3.2.8	Summer camps - ISU permits only University operated summer camps
11		3.2.10	Compensation for weekly radio show
12		3.2.11	Compensation for weekly television show
13		3.2.12	Annuity incentive for Coach remaining entire 4 year period of agreement. This replaces the model liquidated damages provision (5.3.3). Coach has completed six seasons at ISU.
14	4.6 Other Opportunities	4.6 Other Opportunities; language added	Requires Athletic Director or designee to respond within 3 business days to request for approval by Coach to interview with other prospective employers
15	5.1.1. (c)	5.1.1. (c) Language changed	For clarification, changes "A deliberate or major" to "significant or repetitive" in relation to violations
16	5.1.1. (d)	5.1.1. (d) Language added	Adds language excepting "illness or injury" from absence cause for dismissal
17	5.3.4. Counsel	5.3.4. Revised	Reference to consultation with attorney deleted in light of 6.16
18	6.8 Force Majeure	6.8 Language added	Adds language to include "financial circumstances beyond the University's control" within the force majeure clause

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and J. Lawrence Lewis, Head Football Coach (Coach).

**ARTICLE 1**

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the Head Coach of its intercollegiate Football team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Director of Athletics (Director) or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.12 shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on January 29, 2005, and terminating, without further notice to Coach, on January 28, 2009, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

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ARTICLE 3

3.1. Regular Compensation.

3.1.1. In consideration of Coach's services and satisfactory performance of this Agreement, the University shall provide to Coach:

- a) An annual salary of \$100,000.00 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees;
- c) The opportunity to receive such employee benefits, as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits; and
- d) A courtesy car will be provided to Coach during employment as Head Football Coach through the Courtesy Car Program as assigned by the Director.

3.2. Supplemental Compensation. The following described supplemental compensation shall be cumulative. In the event this Employment Agreement is terminated, such supplemental compensation shall cease as of the date of said termination, except to the extent Coach has actually earned such supplemental compensation prior to the date of termination.

3.2.1. Each year the Team wins or ties for the regular Big Sky Conference Championship, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

3.2.2. Each year the Team receives the automatic conference berth or an at-large berth to the NCAA 1-AA Playoffs, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

In the event the Team, either by automatic qualification or as an at-large choice competes in the NCAA 1-AA Playoffs, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	16 teams	1 <sup>st</sup> win	\$2,000	
Round 2	8 teams	2 <sup>nd</sup> win		\$4,000



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Round 3      4 teams      3<sup>rd</sup> win \$6,000  
Round 4      2 teams      4<sup>th</sup> win \$8,000  
Possible bonus computation total \$20,000  
for winning National Championship.

3.2.3. Each year the Team is ranked in the top 10 in the final CSTV/Sports Network or ESPN/USA Today Coaches poll, the University shall pay Coach supplemental compensation in an amount equal to one week's pay of Coach's annual salary in effect on the date of the final poll.

3.2.4. Coach shall receive supplemental compensation for the following number of wins during each season:

7 wins	\$1,000
8 wins	\$2,000
9 wins	\$3,000
10 wins	\$4,000
11 wins	\$5,000
12 wins	<u>\$6,000</u>

Total Compensation possible                      \$21,000

3.2.5. Each year Team wins a game against a Division 1-A opponent Coach will receive as supplemental compensation an amount equal to one week's pay.

3.2.6. Each year that Coach is chosen as a Big Sky Conference Coach of the Year he shall receive as supplemental compensation an amount equal to one week's pay.

3.2.7. Each year Coach shall be eligible to receive as supplemental compensation an amount equal to one week's pay for each of the following academic achievements of Team members:

(1) the cumulative GPA of the entire Team as computed at the end of the academic year is 2.65 or higher; (2) the retention rate for all freshman through junior Team members who are scholarship athletes is 75% or higher; (3) the graduation rate is 70% or higher for all Team members who have exhausted eligibility in any given academic year; (4) acceptable conduct of all team members on the University campus, at University activities, in the community and elsewhere, as determined in the sole discretion of the President in consultation with the Director. Any such supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.

3.2.8. Summer Camp Operated by University. Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administrating University's camps in

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Coach's capacity as a University employee. Coach hereby agrees to direct the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach the net revenues resulting from each summer camp as supplemental compensation during each year of his employment as Head Football Coach at the University. This amount shall be paid within 30 days of the end of each summer camp. Alternatively, Coach may direct that such net revenues be used to enhance the budget of the football program.

In the event of termination of this Agreement, suspension, or reassignment, University shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University shall be released from all obligations relating hereto.

3.2.9. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning company's product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by such company, or give a lecture at an event sponsored in whole or in part by such company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as Head Football Coach. In order to avoid entering into an agreement with a competitor of such company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, equipment, and products, including such company, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.2.10. Coach shall participate in the Athletic Departments weekly coaches radio broadcast and shall receive supplemental compensation as follows:

2005	\$10,000
2006	\$10,500
2007	\$11,000
2008	\$11,500

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Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University=s designated media outlets.

3.2.11. Coach shall participate in the Athletic Departments weekly coaches television show (Bengal Review) and receive supplemental compensation as follows:

2005	\$1,500
2006	\$2,000
2007	\$2,500
2008	\$3,000

3.2.12. Coach shall receive in supplemental compensation a deferred income annuity with a cash value of \$100,000 after the successful completion of this Employment Agreement. Coach must fulfill the entire four (4) year period to be eligible to receive the proceeds of the annuity, and should he fail to fulfill the entire period, he will forfeit the entire amount. Provided, however, if Coach is terminated by the University for its convenience only, (Section 5.2), coach will be entitled to a pro-rata portion of the annuity proceeds to the date of such termination.

3.3. General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

**ARTICLE 4**

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and

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policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies and procedures of the Athletic Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference of which the University is a member.

4.2. Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3. NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

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4.4. Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees.

4.5. Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.

4.6. Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not be unreasonably withheld, and University's Director of Athletics or the Director's designee shall reply in writing within three business days of a request by Coach.

**ARTICLE 5**

5.1. Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations.

5.1.1. In addition to the definitions contained in applicable rules and regulations, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) Significant or repetitive violations by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty, except for illness or injury, without the University's consent;

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e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;

f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;

g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;

h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2. Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

5.1.3. In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4. If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. This section applies to

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violations occurring at the University or at previous institutions at which the Coach was employed.

5.2. Termination of Coach for Convenience of University

5.2.1. At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) days prior written notice to Coach.

5.2.2. In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonable comparable employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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5.3. Termination by Coach for Convenience.

5.3.1. The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2. The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3. If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination, including any obligation to pay any portion of the annuity set forth in Section 3.2.12.

5.3.4. Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4. Termination due to Disability or Death of Coach.

5.4.1. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

5.4.2. If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries thereunder.

5.4.3. If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.



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5.5. Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the University's student-athletes or otherwise obstruct the University's ability to transact business or operate its intercollegiate athletics program.

5.6. No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7. Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

6.1. Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the University's Board of Trustees and University's rules regarding financial exigency.

6.2. University Property. All personal property (excluding vehicle(s) provided through the University vehicle program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within

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twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3. Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4. Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7. Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial circumstance beyond the University's control), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9. Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10. Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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Director of Athletics  
Campus Box 8173  
Idaho State University  
Pocatello, ID 83209-8173

with a copy to:                   President  
Campus Box 8310  
Idaho State University  
Pocatello, ID 83209-8410

the Coach:           J. Lawrence Lewis                   or           Last known address on file with  
Campus Box 8173                                   University Human Resources  
Idaho State University  
Pocatello, ID 83209-8173

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12. Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13. Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14. No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by the University's Board of Trustees.

6.16. Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney and has not relied upon the advice of any legal counsel acting on behalf of the University.

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Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

UNIVERSITY

COACH

\_\_\_\_\_  
RICHARD L. BOWEN Date\_\_\_\_\_

\_\_\_\_\_  
J. Lawrence Lewis Date\_\_\_\_\_

Approved by the Board of Trustees on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and J. Lawrence Lewis, Head Football Coach (Coach).

**ARTICLE 1**

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the Head Coach of its intercollegiate Football team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Director of Athletics (Director) or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.12 shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on January 29, 2005, and terminating, without further notice to Coach, on January 28, 2009, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

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ARTICLE 3

3.1. Regular Compensation.

3.1.1. In consideration of Coach's services and satisfactory performance of this Agreement, the University shall provide to Coach:

- a) An annual salary of \$100,000.00 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees;
- c) The opportunity to receive such employee benefits, as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits; and
- d) A courtesy car will be provided to Coach during employment as Head Football Coach through the Courtesy Car Program as assigned by the Director.

3.2. Supplemental Compensation. The following described supplemental compensation shall be cumulative. In the event this Employment Agreement is terminated, such supplemental compensation shall cease as of the date of said termination, except to the extent Coach has actually earned such supplemental compensation prior to the date of termination.

3.2.1. Each year the Team wins or ties for the regular Big Sky Conference Championship, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

3.2.2. Each year the Team receives the automatic conference berth or an at-large berth to the NCAA 1-AA Playoffs, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

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In the event the Team, either by automatic qualification or as an at-large choice competes in the NCAA 1-AA Playoffs, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	16 teams	1 <sup>st</sup> win	\$2,000
Round 2	8 teams	2 <sup>nd</sup> win	\$4,000
Round 3	4 teams	3 <sup>rd</sup> win	\$6,000
Round 4	2 teams	4 <sup>th</sup> win	\$8,000
<u>Possible bonus computation total \$20,000</u>			
<u>for winning National Championship.</u>			

3.2.3. Each year the Team is ranked in the top 10 in the final CSTV/Sports Network or ESPN/USA Today Coaches poll, the University shall pay Coach supplemental compensation in an amount equal to one week's pay of Coach's annual salary in effect on the date of the final poll is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams); and if Coach continues to be employed as University's head football coach as of the ensuing July 1<sup>st</sup>, the University shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4. Each year Coach shall be eligible to receive supplemental compensation for the following number of wins during each season: in an amount up to (amount or computation) based on the overall development of the intercollegiate football program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director.

<u>7 wins</u>	<u>\$1,000</u>
<u>8 wins</u>	<u>\$2,000</u>
<u>9 wins</u>	<u>\$3,000</u>
<u>10 wins</u>	<u>\$4,000</u>
<u>11 wins</u>	<u>\$5,000</u>
<u>12 wins</u>	<u>\$6,000</u>

Total Compensation possible \$21,000

3.2.5. Each year Team wins a game against a Division 1-A opponent Coach will receive as supplemental compensation an amount equal to one week's pay.

3.2.6. Each year that Coach is chosen as a Big Sky Conference Coach of the Year he shall receive as supplemental compensation an amount equal to one week's pay.

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3.2.7. Each year Coach shall be eligible to receive as supplemental compensation an amount equal to one week's pay for each of the following academic achievements of Team members:

(1) the cumulative GPA of the entire Team as computed at the end of the academic year is 2.65 or higher; (2) the retention rate for all freshman through junior Team members who are scholarship athletes is 75% or higher; (3) the graduation rate is 70% or higher for all Team members who have exhausted eligibility in any given academic year; (4) acceptable conduct of all team members on the University campus, at University activities, in the community and elsewhere, as determined in the sole discretion of the President in consultation with the Director. ~~Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University as academically at-risk student; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.~~

3.2.8. Summer Camp Operated by University. Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administrating University's camps in Coach's capacity as a University employee. Coach hereby agrees to direct the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach the net revenues resulting from each summer camp as supplemental compensation during each year of his employment as Head Football Coach at the University. This amount shall be paid within 30 days of the end of each summer camp. Alternatively, Coach may direct that such net revenues be used to enhance the budget of the football program.

In the event of termination of this Agreement, suspension, or reassignment, University shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University shall be released from all obligations relating hereto.



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~~(SUMMER CAMP OPERATED BY COACH) Coach may operate a summer youth (Sport) camp at the University (College) under the following conditions:~~

- ~~a) The summer youth camp operation reflects positively on the University (College) and the Department;~~
- ~~b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University (College) personnel, equipment, or facilities without the prior written approval of the Director;~~
- ~~c) Assistant coaches at the University (College) are given priority when the Coach or the private enterprise selects coaches to participate;~~
- ~~d) The Coach complies with all NCAA (NAIA), Conference, and University (College) rules and regulations related, directly or indirectly, to the operation of summer youth camps;~~

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- e) ~~The Coach or the private enterprise enters into a contract with University (College) and \_\_\_\_\_ (campus concessionaire) for all campus goods and services required by the camp.~~
- f) ~~The Coach or private enterprise pays for use of University (College) facilities including the \_\_\_\_\_.~~
- g) ~~Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.~~
- h) ~~The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;~~
- i) ~~To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- j) ~~All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

~~In the event of termination of this Agreement, suspension, or reassignment, University (College) shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University (College) shall be released from all obligations relating thereto.~~

3.2.9. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or

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the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning company's product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by such company, or give a lecture at an event sponsored in whole or in part by such company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as Head Football Coach. In order to avoid entering into an agreement with a competitor of such company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, equipment, and products, including such company, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.2.10. Coach shall participate in the Athletic Departments weekly coaches radio broadcast and shall receive supplemental compensation as follows:

<u>2005</u>	<u>\$10,000</u>
<u>2006</u>	<u>\$10,500</u>
<u>2007</u>	<u>\$11,000</u>
<u>2008</u>	<u>\$11,500</u>

~~The Coach shall receive the sum of (amount or computation) from the University (College) or the University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment). Agreements requiring the Coach to participate in Programs related to his duties as an employee of University (College) are the property of the University (College). The University (College) shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach=s show, call in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial~~

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endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.11. Coach shall participate in the Athletic Departments weekly coaches television show (Bengal Review) and receive supplemental compensation as follows:

<u>2005</u>	<u>\$1,500</u>
<u>2006</u>	<u>\$2,000</u>
<u>2007</u>	<u>\$2,500</u>
<u>2008</u>	<u>\$3,000</u>

3.2.12. Coach shall receive in supplemental compensation a deferred income annuity with a cash value of \$100,000 after the successful completion of this Employment Agreement. Coach must fulfill the entire four (4) year period to be eligible to receive the proceeds of the annuity, and should he fail to fulfill the entire period, he will forfeit the entire amount. Provided, however, if Coach is terminated by the University for its convenience only, (Section 5.2), coach will be entitled to a pro-rata portion of the annuity proceeds to the date of such termination.

3.3. General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

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4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies and procedures of the Athletic Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference of which the University is a member.

4.2. Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3. NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

4.4. Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the

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Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees.

4.5. Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.

4.6. Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not be unreasonably withheld, and University's Director of Athletics or the Director's designee shall reply in writing within three business days of a request by Coach.

ARTICLE 5

5.1. Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently and, with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations.

5.1.1. In addition to the definitions contained in applicable rules and regulations, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) ~~A deliberate or major~~ Significant or repetitive violations by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty, except for illness or injury, without the University's consent;

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e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;

f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;

g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;

h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2. Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

5.1.3. In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4. If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. This section applies to violations occurring at the University or at previous institutions at which the Coach was employed.

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5.2. Termination of Coach for Convenience of University

5.2.1. At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) days prior written notice to Coach.

5.2.2. In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonable comparable employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

5.3. Termination by Coach for Convenience.

5.3.1. The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2. The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3. If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination, including any obligation to pay any portion of the annuity set forth in Section 3.2.12. ~~If the Coach terminates this Agreement for his convenience he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before \_\_\_\_\_, the sum of \$30,000.00; (b) if the Agreement is terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.~~



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~~5.3.4. The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University (College) will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University (College) shall constitute adequate and reasonable compensation to University (College) for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University (College).~~ 5.3.5. Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4. Termination due to Disability or Death of Coach.

5.4.1. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

5.4.2. If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries thereunder.

5.4.3. If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.5. Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the University's student-athletes or otherwise obstruct the University's ability to transact business or operate its intercollegiate athletics program.

5.6. No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party

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or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7. Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

6.1. Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the University's Board of Trustees and University's rules regarding financial exigency.

6.2. University Property. All personal property (excluding vehicle(s) provided through the University vehicle program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3. Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 21-22, 2005**

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6.4. Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7. Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial circumstance beyond the University's control), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9. Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10. Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Director of Athletics  
Campus Box 8173  
Idaho State University  
Pocatello, ID 83209-8173

with a copy to:                      President

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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Campus Box 8310  
Idaho State University  
Pocatello, ID 83209-8410

the Coach:	J. Lawrence Lewis Campus Box 8173 Idaho State University Pocatello, ID 83209-8173	or	Last known address on file with University Human Resources
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Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12. Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13. Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14. No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by the University's Board of Trustees.

6.16. Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney and has not relied upon the advice of any legal counsel acting on behalf of the University. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 21-22, 2005**

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UNIVERSITY

COACH

\_\_\_\_\_  
RICHARD L. BOWEN Date\_\_\_\_\_

\_\_\_\_\_  
J. Lawrence Lewis Date\_\_\_\_\_

Approved by the Board of Trustees on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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**INSTITUTION/AGENCY AGENDA**  
**IDAHO STATE UNIVERSITY-continued**

**Exhibit C**

Supplemental Compensation - Coach Larry Lewis  
History and Summary

**3.2**    Supplemental Compensation

- 3.2.1 This has happened only one time in the last 20 years. 2002—tie—Larry Lewis, Coach.
- 3.2.2 This has not happened during the last 20 years.
- 3.2.3 This has not happened during the last 20 years.
- 3.2.4 This has happened two times in the last 20 years; 2002 and 2003. Head Coach, Larry Lewis.
- 3.2.5 ISU is 3-21 vs. Division I-A opponents since 1978. Larry Lewis is the only coach to beat an I-A opponent in the last 20 years; 2000 vs. Utah State.
- 3.2.6 This feat has only been accomplished two times in ISU history; 1963, Babe Caccia, and 1981, Dave Kragthorpe.
- 3.2.7 (1) GPA – Goal has not been reached the past five years.  
(2) Retention Rate – Goal has been met three times during Coach Lewis' first five years.  
(3) Graduation Rates – Goal has been met one time during the last five years.  
(4) New goal.
- 3.2.10 Coach has been receiving \$5,000 from radio rights fee holder in the past. There has been no increase in this in five years.
- 3.2.11 Coach has been receiving \$1,500 from television coaches show in the past. There has been no increase in this in five years.
- 3.2.12 The establishment of this annuity would replace the liquidated damages clause. If Coach Lewis does not fulfill the entire four years he will forfeit the annuity.

Deposits made into the annuity increase over the four years, thus increasing likelihood of coach to stay through the contract's life because he has more to lose.

**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors April 2002

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**H. Policies Regarding Coaching Personnel and Athletic Directors  
(Institution Employees Only)**

1. Agreements Longer Than One Year

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board as to the terms, conditions, and compensation thereunder, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 21-22, 2005**

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**INSTITUTION / AGENCY AGENDA**  
**UNIVERSITY OF IDAHO**

**SUBJECT**

A request by the University of Idaho for approval of one interim position.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures Section II. B.3.  
Idaho State Board of Education Governing Policies & Procedures Section II.  
F.2.(b)(2).

**DISCUSSION**

The University of Idaho requests approval for:

- One (1) position with a salary greater than 75% of the Chief Executive Officer base salary: Interim Vice President for Finance and Administration.

**IMPACT**

Once approved the change can be processed on the State Employee Information System.

**STAFF COMMENTS AND RECOMMENDATIONS**

The university notes on the following page the salary for Mr. Chichester will be \$20,000 per month. The university intends for Mr. Chichester to serve in this position for approximately six months. Justification for the position is for a person to assume responsibilities for the position until the search process results in a permanent appointment.

Board policy (II.F.2.b.(2)) states that "appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees' salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent's rate, whichever is greater." However, this policy appears to have been written to cover incumbent employees being promoted on a temporary basis. Staff does not believe this is the situation present.

Staff has reviewed this request and recommends approval.

**BOARD ACTION**

A motion to approve the request by the University of Idaho to appoint David Chichester to the position of Interim Vice President for Finance and Administration, at a salary greater than 75% of the Chief Executive Officer's base salary.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
APRIL 21-22, 2005**

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**INSTITUTION / AGENCY AGENDA  
UNIVERSITY OF IDAHO – continued**

**SALARY EQUAL TO/GREATER THAN 75% OF CHIEF EXECUTIVE OFFICER BASE  
SALARY**

David N. Chichester	Interim Vice President for Finance and Administration
FTE	1.0
Term of Appointment	March 23, 2005 and until position is filled
Effective Date	March 23, 2005
Annual Salary	\$20,000.00/month
Funding Source	Appropriated funds
Area/Department of Assignment	Finance and Administration
Justification	Interim appointment



## ATTACHMENT 1

### **Tatum CFO Partners, LLP Interim Executive Services Agreement**

March 21, 2005

Timothy P. White, Ph.D.  
President  
University of Idaho  
Administration Building  
Room 105  
P.O. Box 443151  
Moscow, ID 83844-3151

Dear Tim:

Tatum CFO Partners, LLP ("Tatum") understands that the University of Idaho ("the University") desires to engage a partner of Tatum to serve as Interim Vice President for Finance and Administration. This Interim Executive Services Agreement sets forth the conditions under which such services will be provided.

#### Services; Fees

Tatum will make available to the University David N. Chichester (the "Tatum Partner"), who will serve as Interim Vice President for Finance and Administration of the University. The Tatum Partner will become an employee and, if applicable, a duly elected or appointed officer of the University and subject to the supervision and direction of the President of the University, the board of directors of the University, or both. Tatum will have no control or supervision over the Tatum Partner.

The University will pay the Tatum Partner directly a salary of \$20,000 a month ("Salary"). This salary will be paid on the regular bi-weekly paydays of the University in accordance with standard University procedures and will be subject to applicable federal and state withholdings and deductions. To calculate bi-weekly payroll amounts, the University determines an annual salary and divides that amount by the number of pay periods in the year (26). Based on this calculation, the Tatum Partner's bi-weekly pay will be \$9,230.77, minus applicable deductions and withholdings.

In addition, the University will pay directly to Tatum a fee of \$5,000 a month ("Fees") as partial compensation for resources provided.

The University will have no obligation to provide the Tatum Partner any health or major medical benefits, stock, or bonus payments. The Tatum Partner will remain on his or her current medical plan.

As an employee, the Tatum Partner will be eligible for any University employee retirement and/or 401(k) plan and for vacation and holidays consistent with the University's policy as it applies to senior management, and the Tatum Partner will be exempt from any delay periods otherwise required for eligibility.



Except as expressly provided in this Agreement, the Tatum Partner will be subject to and will comply with all University and Regents' policies generally applicable to employees of the same classification. The Tatum Partner will be classified as a temporary, non-faculty exempt University employee.

#### Payments; Deposit

Payments to Tatum should be made by direct deposit through the University's payroll, or by an automated clearing house ("ACH") payment at the same time as payments are made to the Employee. If such payment method is not available and payments are made by check, Tatum will issue invoices to the University, and the University agrees to pay such invoices no later than ten (10) days after receipt of invoices.

The University will reimburse the Tatum Partner directly for all out-of-pocket expenses incurred by the Tatum Partner in providing services hereunder to the same extent that the University is responsible for such expenses of senior managers of the University. In addition, the University will provide the Tatum Partner temporary housing and an automobile or, alternatively, will reimburse him directly for the reasonable cost of temporary housing and for the rental of an automobile. The Tatum Partner will reimburse University for personal automobile trips beyond the 10-mile radius around the University's Moscow campus at a rate of \$.40 per mile. The University will pay for or reimburse the Tatum Partner directly for the cost of air fare and related ground transportation for up to three (3) roundtrips per month between the University and his home on Bainbridge Island, Washington.

University agrees to pay Tatum and to maintain a security deposit of \$25,000 for the University's future payment obligations to both Tatum and the Tatum Partner under this agreement (the "Deposit"). If the University breaches this agreement and fails to cure such breach as provided in this agreement, Tatum will be entitled to apply the Deposit to its damages resulting from such breach. Upon termination or expiration of this agreement, Tatum will return to the University the balance of the Deposit remaining after application of any amounts to unfulfilled payment obligations of the University to Tatum or the Tatum Partner as provided for in this agreement.

#### Converting Interim to Permanent

The University will have the opportunity to make the Tatum Partner (or another Tatum partner) a permanent member of University management at any time during the term of this agreement by entering into another form of Tatum agreement, the terms of which will be negotiated at such time.

#### Hiring Tatum Partner Outside of Agreement

During the twelve (12)-month period following termination or expiration of this agreement, other than in connection with another Tatum agreement, the University will not employ the Tatum Partner, or engage the Tatum Partner as an independent contractor, to render services of substantially the same nature as those to be performed by the Tatum Partner as contemplated by this agreement. The parties recognize and agree that a breach by the University of this provision would result in the loss to Tatum of the Tatum Partner's valuable expertise and revenue potential and that such injury will be impossible or very difficult to ascertain. Therefore, in the event this provision is breached, Tatum will be entitled to receive as liquidated damages an amount equal to twenty-five percent (25%) of the Tatum Partner's Annualized Compensation (as defined below), which amount the parties agree is reasonably proportionate to the probable loss to Tatum and is not intended as a penalty. If, however, a court or arbitrator, as applicable, determines that



liquidated damages are not appropriate for such breach, Tatum will have the right to seek actual damages. The amount will be due and payable to Tatum upon written demand to the University.

For this purpose, "Annualized Compensation" will mean monthly Salary equivalent to what the Tatum Partner would receive on a full-time basis multiplied by twelve (12), plus the maximum amount of any bonus for which the Tatum Partner was eligible with respect to the then current bonus year.

### Term & Termination

Effective upon thirty (30) days' advance written notice, either party may terminate this agreement and the employment of the Tatum Partner, such termination to be effective on the date specified in the notice, provided that such date is no earlier than thirty (30) days after the date of delivery of the notice. Tatum will continue to render services and will be paid during such notice period.

Tatum retains the right to terminate this agreement immediately if (1) the University is engaged in or asks the Tatum Partner to engage in or to ignore any illegal or unethical activity, (2) the Tatum Partner dies or becomes disabled, (3) the Tatum Partner ceases to be a partner of Tatum for any other reason, or (4) upon written notice by Tatum of non-payment by the University of amounts due under this agreement. For purposes of this agreement, disability will be as defined by the applicable policy of disability insurance or, in the absence of such insurance, by Tatum's management acting in good faith.

In the event that either party commits a breach of this agreement, other than for reasons described in the above paragraph, and fails to cure the same within seven (7) days following delivery by the non-breaching party of written notice specifying the nature of the breach, the non-breaching party will have the right to terminate this agreement immediately effective upon written notice of such termination.

### Insurance

To the extent the University has directors' and officers' liability insurance in effect, the University will provide such insurance coverage for the Tatum Partner, along with written evidence to Tatum or the Tatum Partner that the Tatum Partner is covered by such insurance. Furthermore, to the extent the University has directors' and officers' liability insurance in effect, the University will maintain such insurance coverage with respect to occurrences arising during the term of this agreement for at least three years following the termination or expiration of this agreement or will purchase a directors' and officers' extended reporting period, or "tail," policy to cover the Tatum Partner.

### Disclaimers, Limitations of Liability & Indemnity

Tatum assumes no responsibility or liability under this agreement other than to render the services called for hereunder and will not be responsible for any action taken by the University in following or declining to follow any of Tatum's advice or recommendations. Tatum represents to the University that Tatum has conducted its standard screening and investigation procedures with respect to the Tatum Partner becoming a partner in Tatum, and the results of the same were satisfactory to Tatum. Tatum disclaims all other warranties, either express or implied. Without limiting the foregoing, Tatum makes no representation or warranty as to the accuracy or reliability of reports, projections, forecasts, or any other information derived from use of Tatum's resources, and Tatum will not be liable for any claims of reliance on such reports, projections, forecasts, or information. Tatum will not be liable for any non-compliance of reports, projections,



forecasts, or information or services with federal, state, or local laws or regulations. Such reports, projections, forecasts, or information or services are for the sole benefit of the University and not any unnamed third parties.

In the event that any partner of Tatum (including without limitation the Tatum Partner to the extent not otherwise entitled in his or her capacity as an officer of the University) is subpoenaed or otherwise required to appear as a witness or Tatum or such partner is required to provide evidence, in either case in connection with any action, suit, or other proceeding initiated by a third party or by the University against a third party, then the University shall reimburse Tatum for the costs and expenses (including reasonable attorneys' fees) actually incurred by Tatum or such partner and provide Tatum with compensation at Tatum's customary rate for the time incurred.

The University agrees that, with respect to any claims the University may assert against Tatum in connection with this agreement or the relationship arising hereunder, Tatum's total liability will not exceed two (2) months of Fees.

As a condition for recovery of any liability, the University must assert any claim against Tatum within three (3) months after discovery or sixty (60) days after the termination or expiration of this agreement, whichever is earlier.

Tatum will not be liable in any event for incidental, consequential, punitive, or special damages, including without limitation, any interruption of business or loss of business, profit, or goodwill.

#### Arbitration

If the parties are unable to resolve any dispute arising out of or in connection with this agreement, either party may refer the dispute to arbitration by a single arbitrator selected by the parties according to the rules of the American Arbitration Association ("AAA"), and the decision of the arbitrator will be final and binding on both parties. Such arbitration will be conducted by the Atlanta, Georgia, office of the AAA. In the event that the parties fail to agree on the selection of the arbitrator within thirty (30) days after either party's request for arbitration under this paragraph, the arbitrator will be chosen by AAA. The arbitrator may in his discretion order documentary discovery but shall not allow depositions without a showing of compelling need. The arbitrator will render his decision within ninety (90) days after the call for arbitration. The arbitrator will have no authority to award punitive damages. Judgment on the award of the arbitrator may be entered in and enforced by any court of competent jurisdiction. The arbitrator will have no authority to award damages in excess or in contravention of this agreement and may not amend or disregard any provision of this agreement, including this paragraph. Notwithstanding the foregoing, either party may seek appropriate injunctive relief from a court of competent jurisdiction, and either party may seek injunctive relief in any court of competent jurisdiction.

#### Miscellaneous

Tatum will be entitled to receive all reasonable costs and expenses incidental to the collection of overdue amounts under this Resources Agreement, including but not limited to attorneys' fees actually incurred.

Neither the University nor Tatum will be deemed to have waived any rights or remedies accruing under this agreement unless such waiver is in writing and signed by the party electing to waive



the right or remedy. This agreement binds and benefits the respective successors of Tatum and the University.

Neither party will be liable for any delay or failure to perform under this agreement (other than with respect to payment obligations) to the extent such delay or failure is a result of an act of God, war, earthquake, civil disobedience, court order, labor dispute, or other cause beyond such party's reasonable control.

The provisions concerning payment of compensation and reimbursement of costs and expenses, limitation of liability, directors' and officers' insurance, and arbitration will survive the expiration or any termination of this agreement.

This agreement will be governed by and construed in all respects in accordance with the laws of the State of Idaho, without giving effect to conflicts-of-laws principles.

The terms of this agreement are severable and may not be amended except in writing signed by the party to be bound. If any portion of this agreement is found to be unenforceable, the rest of the agreement will be enforceable except to the extent that the severed provision deprives either party of a substantial benefit of its bargain.

Nothing in this agreement shall confer any rights upon any person or entity other than the parties hereto and their respective successors and permitted assigns and the Tatum Partner.

Each person signing below is authorized to sign on behalf of the party indicated, and in each case such signature is the only one necessary.

Bank Lockbox Mailing Address for Deposit and Fees:

Tatum CFO Partners, LLP  
P.O. Box 403291  
Atlanta, GA 30384-3291

Electronic Payment Instructions for Deposit and Fees:

Bank Name: Bank of America  
Branch: Atlanta  
Routing Number: For ACH Payments: 061 000 052  
For Wires: 026 009 593  
Account Name: Tatum CFO Partners, LLP  
Account Number: 003 279 247 763  
Please reference **University of Idaho** in the body of the wire.

Please sign below and return a signed copy of this letter to indicate the University's agreement with its terms and conditions.

We look forward to serving you.



Sincerely yours,

**TATUM CFO PARTNERS, LLP**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print name)

Area Managing Partner for TATUM CFO  
PARTNERS, LLP

Acknowledged and agreed by:

**UNIVERSITY OF IDAHO**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)



**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY**

**Idaho State Board of Education**

**GOVERNING POLICIES AND PROCEDURES**

**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES**

**B. Appointment Authority and Procedures**

**August 2002**

**B. Appointment Authority and Procedures**

1. Nothing herein may be construed to be in limitation of the powers of the Board as defined by Sections 33-3006, 33-3104, 33-2806, and 33-4005, Idaho Code, or as otherwise defined in the Idaho Constitution or Code.

2. **Delegation of Authority**

The Board delegates all authority for personnel management not specifically retained to the executive director and the chief executive officers consistent with the personnel policies and procedures adopted by the Board. In fulfilling this responsibility, the executive director and chief executive officers, or their designees, may exercise their authority consistent with these policies and procedures. Provided, however, that the Board retains the authority for taking final action on any matter so identified anywhere in these policies and procedures.

3. **Specifically Reserved Board Authority**

(Note: This is not an exclusive or exhaustive list and other reservations of Board authority may be found in other areas of these policies and procedures.) Board approval is required for the following:

a. **Position Authorizations**

(1) Any permanent new position, regardless of funding source, requires Board approval. Agenda Item Format: Requests for new position authorizations must include the following information:

- (a) position title;
- (b) type of position;
- (c) FTE
- (d) Term of appointment;
- (e) Effective date;
- (f) approximate salary range;
- (g) funding source;
- (h) area or department of assignment;
- (i) a description of the duties and responsibilities of the position; and
- (j) a complete justification for the position

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 21-22, 2005**

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(2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.

c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.

d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.

e. The procedures established for periodic performance review of tenured faculty members. (see subsection G.)