

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 16-17, 2005**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<hr/>		
	<b>BOISE STATE UNIVERSITY</b>	
<b>1</b>	Associate Dean of Research, College of Engineering - Appointment	Motion to approve
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	<b>IDAHO STATE UNIVERSITY</b>	
<b>2</b>	Vice President for Academic Affairs – Appointment	Motion to approve
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	<b>UNIVERSITY OF IDAHO</b>	
<b>3</b>	Head Women's Basketball Coach Contract Head Men & Women's Golf Coach Contract	Motions to approve
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	<b>UNIVERSITY OF IDAHO</b>	
<b>4</b>	Personnel Issue	Motion to approve
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<b>5</b>	<b>FY06 PRESIDENTIAL SALARIES</b>	Motion to approve
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	<b>UNIVERSITY OF IDAHO</b>	
<b>6</b>	Provost / Executive Vice President – Appointment	Motion to approve
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**INSTITUTION / AGENCY AGENDA**  
**BOISE STATE UNIVERSITY**

**SUBJECT**

A request by Boise State University to create and fill a position as Associate Dean for Research, College of Engineering, that is equal to or greater than 75 percent of the chief executive officer's base salary.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Section II. B.3.b., and Section II.F.2.b(1).

**BACKGROUND**

Items submitted for review and approval according to Board Policy Section II. B.3.

**DISCUSSION**

Boise State University requests approval to:

- Create and fill a position of Associate Dean for Research, College of Engineering (1.0 FTE) supported by appropriated funds.

**IMPACT**

Once this position is approved, the position can be processed on the State Employee Information System to be effective August 1, 2005.

**STAFF COMMENTS AND RECOMMENDATIONS**

BSU has been asked to provide a comparison of the proposed salary in accordance with Board Policy II.F.2.b.(1), which states:

"Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA), or its equivalent, without prior Board approval."

Staff recommends approval of this request if the proposed salary is no greater than the CUPA median rate for this position. Should the proposed salary be greater than the median, BSU should provide the Board with adequate justification.

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

**BOARD ACTION**

A motion to approve the request by Boise State to create a position of Associate Dean, College of Engineering.

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

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

**NEW POSITION -Salary Equal to or Greater Than the CEO Base Salary**

Position Title	Associate Dean for Research
Type of Position	Faculty
FTE	1.0 FTE
Term of Appointment	11 month
Effective Date	July 1, 2005
Salary Range	\$118,851
Funding Source	Appropriated
Area/Department of Assignment	College of Engineering
Duties and Responsibilities	Administrative management of research and the policies and procedures regarding research within the College of Engineering.
Justification of Position	The increase in external research funding and the demands placed upon research within the college have required the establishment of this position. John Owens will transfer from the Vice President for Research to this position. Salary is comparable to the other Associate Dean salary in the College of Engineering and the salaries of the Associate Deans in the College of Business and Economics.

**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

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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.)

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

**SUBJECT**

Idaho State University (ISU) requests approval to appoint Dr. Robert A. Wharton as Vice President for Academic Affairs.

**REFERENCE**

April 21, 2005                      SBOE approval given to appoint Dr. Robert A. Wharton as Interim Vice President for Academic Affairs

**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND**

At the April 21-22, 2005 SBOE meeting, approval was given to appoint Dr. Robert A. Wharton as Interim Vice President for Academic Affairs at an annual salary of \$154,000. Prior to this appointment, Dr. Wharton served as the Chief Research Officer for the University (since September 2004) and was identified as one of the five finalists by the search committee for the vice president for academic affairs before the search was canceled. Dr. Wharton has previously served in various executive positions at the National Science Foundation, Institute for Management Studies (Reno, NV), National Aeronautics and Space Administration, and was Vice President for Research at the Desert Research Institute (Reno, NV).

**DISCUSSION / IMPACT**

The salary for this appointment, at \$189,987, exceeds 75% of the chief executive officer's salary and is below the College and University Professional Association for Human Resources (CUPA) median for institutions within Idaho State's budget quartile of \$198,029. In accordance with Board policy, this salary requires Board approval before the appointment can be official.

**STAFF COMMENTS AND RECOMMENDATIONS**

ISU correctly put forth the CUPA comparison, as required by Board policy.

**BOARD ACTION**

A motion to approve the request by Idaho State University to appoint Dr. Robert A. Wharton as Vice President for Academic Affairs at a salary of \$189,987.

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

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

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: B. Appointment Authority and Procedures**

**August 2002**

**Subsection: F. Policies Regarding Nonclassified Employees**

**April 2002**

**B. APPOINTMENT AUTHORITY AND PROCEDURES**

2. 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
  - 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.

**F. POLICIES REGARDING NONCLASSIFIED EMPLOYEES**

2. Compensation
  - b. Salaries, Salary Increases and Other Compensation Related Items
    - (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA), or its equivalent, without prior Board approval.
    - (2) 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.

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

**SUBJECT**

A request by the University of Idaho for approval of the renewal of two Athletic contracts

**APPLICABLE STATUTE, RULE, OR POLICY**

Items submitted for review and approval according to Board Policy Section II. B. 3.

**DISCUSSION**

The University of Idaho is requesting approval for:

- The renewal of the contract for Mike Divilbiliss, Head Women's Basketball Coach, supported by appropriated funds
- The renewal of the contract for Brad Rickel, Head Men's and Women's Golf Coach supported by appropriated funds

**IMPACT**

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

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has reviewed these two requests for compliance with Board policy and recommends approval.

**BOARD ACTION**

A motion by the State Board of Education/Regents of the University of Idaho to approve the renewal of the contract for Mike Divilbiliss, Head Women's Basketball Coach, supported by appropriated funds.

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

**AND**

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A motion by the State Board of Education/Regents of the University of Idaho to approve the renewal of the contract for Brad Rickel, Head Men's and Women's Golf Coach supported by appropriated funds.

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

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

**HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENTS**

Mike Divilbiss, Head Women's Basketball Coach (Attachments 1-a, 1-b and 1-c)

FTE	1.0
Term of Appointment	12 months
Effective	August 15, 2005
Annual Salary	\$84,011.20
Funding Source	Appropriated Funds
Area/Department of Assignment	Athletics
Additional Compensation	Standard UI and Athletics Department fringe benefits; \$15,000 per year for media and public appearance; 1/13 of salary if championship and NCAA tournament eligibility is achieved; 1/13 of salary if team is ranked in top 25 in any published national final poll; 1/13 of salary based on the academic achievement and behavior of team; \$5,000 each year the coach is named Conference Coach of the Year and 25% of gate receipts that exceed \$15,000 and 50% of gate receipts that exceed \$25,000
Justification:	Contract Extension

Brad Rickel, Head Men's and Women's Golf Coach (Attachments 2a, 2b, and 2c)

FTE	1.0
Term of Appointment	12 months
Effective	July 1, 2005
Annual Salary	\$40,456.00
Funding Source	Appropriated Funds
Area/Department of Assignment	Athletics
Additional Compensation	Standard UI and Athletics Department fringe benefits; \$5,500 per year for media and public appearance; 1/13 of salary if championship and NCAA tournament eligibility is achieved; 2/13 of salary if both teams qualify for NCAA tournament eligibility; 1/13 of salary based on the academic achievement and behavior of team and \$2,000 each year the coach is named Conference Coach of the Year
Justification:	Contract Extension

1	<b>MIKE DIVILBISS, HEAD WOMEN'S BASKETBALL COACH - MULTI-YEAR CONTRACT</b>		
2	<b>MODEL CONTRACT SECTION</b>	<b>UI CONTRACT SECTION</b>	<b>JUSTIFICATION FOR MODIFICATION</b>
3	3.2 Supplemental Compensation	3.2.4 Supplemental Compensation; language modified	Language includes supplemental compensation if the Coach is named Conference Coach of the Year.
4	3.2 Supplemental Compensation	3.2.5 Supplemental Compensation; language modified	Language includes supplemental compensation of media payment contingent upon compliance with UI's financial stewardship policies.
5	3.2 Supplemental Compensation	3.2.6 Supplemental Compensation; language added	Language includes payment of 25 percent for gate receipts exceeding \$15,000 and 50 percent for gate receipts exceeding \$25,000.

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Mike Divilbiss (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 women's basketball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.8 shall cease.

**ARTICLE 2**

2.1 Term. This Agreement is for a fixed-term appointment of five ( 5 ) years, commencing on August 15, 2005 and terminating, without further notice to Coach, on August 15, 2010, 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 University's Board of Regents. 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.

**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 \$84,011.20 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 Regents;
- b)     The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- 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.

**3.2    Supplemental Compensation**

3.2.1 Each year the Team is the conference champion or co-champion and also becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's annual salary during the fiscal year in which the championship and NCAA tournament eligibility are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year the Team is ranked in the top 25 in any published national final poll of intercollegiate women's basketball teams, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/13) 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.

3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up equal to one-thirteenth (1/13) of Coach's annual salary based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation



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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 students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

3.2.4 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5 The Coach shall receive the sum of \$15,000 from the University or the University'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). Each year, one-half of this sum shall be paid prior to the first regular season women's basketball game, and one-half shall be paid no later than two weeks after the last regular season women's basketball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and is contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University 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 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 endorsements which are broadcast on radio or

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television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Each year gate receipts for women's basketball exceed \$15,000, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of 25% of the gate receipts that exceed \$15,000 and 50% of the gate receipts that exceed \$25,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7 Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth basketball 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 youth basketball camps, the University shall pay Coach the remaining income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

3.2.8 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 recognizes that the University negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, 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 women's basketball coach. In order to avoid entering into an agreement with a competitor of Adidas, 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 and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

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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

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 A. 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 of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the women's basketball conference of which the University is a member.

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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 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 Regents.

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 unreasonably be withheld.

**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 violation 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 without the University's consent;
- 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

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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.

**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 reasonably

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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.

5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

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. If the Coach terminates this Agreement for his convenience he shall pay to the University, 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 August 15, 2006, the sum of \$30,000.00; (b) if the Agreement is terminated between August 16, 2007 and August 15, 2008 inclusive, the sum of \$25,000.00; (c) if the Agreement is terminated between August 16, 2008 and August 15, 2009 inclusive, the sum of \$20,000.00; (d) if the Agreement is terminated between August 16, 2009 and August 15, 2010 inclusive, the sum of \$15,000. 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.

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 will incur administrative and recruiting costs in obtaining a replacement for

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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 shall constitute adequate and reasonable compensation to University 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.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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 of the University's Board of Regents 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 Regents, 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 Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels 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.

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

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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 inability), 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:

the University:                      Director of Athletics  
    University of Idaho  
    P.O. Box 442302  
    Moscow, Idaho 83844-2302

with a copy to:                      President  
    University of Idaho  
    P.O. Box 443151  
    Moscow, ID 83844-3151

the Coach:                              Mike Divilbiss  
    Last known address on file with  
    University's Human Resource Services

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

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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 University's Board of Regents.

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. 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

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Timothy White, President    Date

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Mike Divilbiss

Date

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**Exhibit A**

Below are the coaches that Mike Divilbiss has supervisory authority over:

Debbie Roueche, Assistant Coach  
Jeff Crouse, Assistant Coach

**ATTACHMENT 1c – Redline Version**

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Mike Divilbiss (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 women's basketball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.86 shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of ~~four~~ five ( ~~4~~ 5 ) years, commencing on August 15, 2005~~4~~ and terminating, without further notice to Coach, on August 15, 2010~~08~~, 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 University's Board of Regents. 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.

**ARTICLE 3**

3.1 Regular Compensation.

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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 \$840,017.260 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 Regents;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- 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.

~~Coach understands and agrees that University is in the process of reviewing and clarifying policies and procedures regarding leave without pay, or temporary furlough, when warranted by financial conditions. If leave without pay or temporary furlough were imposed, Coach's actual salary would be lower than the annual salary set forth in Paragraph 3.1.1 (a) above. In no event would mandatory leave without pay or temporary furlough exceed fifteen (15) days per year.~~

**3.2 Supplemental Compensation**

3.2.1. Each year the Team is the conference champion or co-champion and also becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's annual salary during the fiscal year in which the championship and NCAA tournament eligibility are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year the Team is ranked in the top 25 in any published national final poll of intercollegiate women's basketball teams, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/13) 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.

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3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up equal to one-thirteenth (1/13) of Coach's annual salary 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 students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

3.2.4 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head ~~women's~~~~men's~~ basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5~~4~~ The Coach shall receive the sum of \$1~~50~~,000 from the University or the University'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). Each year, one-half of this sum shall be paid prior to the first regular season women's basketball game, and one-half shall be paid no later than two weeks after the last regular season women's basketball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and is contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University 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 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

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is received. 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.

3.2.6 Each year gate receipts for women's basketball exceed \$15,000, and if Coach continues to be employed as University's head women's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of 25% of the gate receipts that exceed \$15,000 and 50% of the gate receipts that exceed \$25,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.~~7~~<sup>6</sup> Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth basketball 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 youth basketball camps, the University shall pay Coach the remaining income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

3.2.~~8~~<sup>7</sup> 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 recognizes that the University negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, 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 women's basketball coach. In order to avoid entering into an agreement with a competitor of Adidas, 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 and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the



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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

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 [AC](#). 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 of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the women's basketball 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

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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 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 Regents.

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 unreasonably be withheld.

**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.

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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 violation 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 without the University's consent;
- 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

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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.

**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 reasonably 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.

5.2.3 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 Coach may lose certain

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benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

**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. If the Coach terminates this Agreement for his convenience he shall pay to the University, 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 August 15, 200~~6~~<sup>5</sup>, the sum of \$30~~0~~<sup>9</sup>,000.00; (b) if the Agreement is terminated between August 16, 200~~7~~<sup>5</sup> and August 15, 200~~8~~<sup>6</sup> inclusive, the sum of \$25~~2~~<sup>5</sup>,000.00; (c) if the Agreement is terminated between August 16, 200~~8~~<sup>6</sup> and August 15, 200~~9~~<sup>7</sup> inclusive, the sum of \$20~~0~~<sup>9</sup>,000.00; (d) if the Agreement is terminated between August 16, 200~~9~~<sup>7</sup> and August 15, 20~~10~~<sup>08</sup> inclusive, the sum of \$15~~0~~<sup>9</sup>,000. 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.

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 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 shall constitute adequate and reasonable compensation to University 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.

5.3.5 Except as provide elsewhere in this Agreement, if Coach

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terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

**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 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.

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**ARTICLE 6**

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Regents 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 Regents, 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 Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels 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.

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





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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 University's Board of Regents.

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. 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

\_\_\_\_\_  
Timothy White, President    Date

\_\_\_\_\_  
Mike Divilbiss,                      Date

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1	<b>BRAD RICKEL, HEAD MEN'S AND WOMEN'S GOLF COACH - MULTI-YEAR CONTRACT</b>		
2	<b>MODEL CONTRACT SECTION</b>	<b>UI CONTRACT SECTION</b>	<b>JUSTIFICATION FOR MODIFICATION</b>
3	3.2 Supplemental Compensation	3.2.1 Supplemental Compensation; language modified	Language includes supplemental compensation if both teams are conference champions or qualify for the regional tournament.
4	3.2 Supplemental Compensation	3.2.2 Supplemental Compensation; language modified	Language includes supplemental compensation if both teams have acceptable academic performance.
5	3.2 Supplemental Compensation	3.2.3 Supplemental Compensation; language modified	Language includes added supplemental compensation for being named Conference Coach of the Year.
6	3.2 Supplemental Compensation	3.2.4 Supplemental Compensation; language modified	Language includes payment of \$5,500 from media outlets contingent on compliance with UI's financial stewardship policies.

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Brad Rickel (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 men's and women's golf teams. 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.5 shall cease.

**ARTICLE 2**

2.1 Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on July 1, 2005, and terminating, without further notice to Coach, on July 1, 2010, 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 University's Board of Regents. 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.

**ARTICLE 3**

3.1 Regular Compensation.

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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 \$40,456 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 Regents;

b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and

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.

**3.2 Supplemental Compensation**

3.2.1 Each year the men's or women's golf team is the conference champion or co-champion or becomes eligible for the NCAA regional tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head men's or women's golf coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's annual salary during the fiscal year in which the championship and NCAA tournament eligibility are achieved. In the event both teams qualify for the NCAA regional tournament the University shall pay to Coach supplemental compensation in an amount equal to two-thirteenths (2/13) of Coach's annual salary (1/13 for each team). The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year Coach shall be eligible to receive supplemental compensation in an amount up equal to one-thirteenth (1/13) of Coach's annual salary based on the academic achievement and behavior of Team members. Both teams must demonstrate acceptable academic performance and behavior for Coach to receive supplemental compensation. 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 students; the conduct of Team members on the University campus, at authorized University activities, in the community, and

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elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

3.2.3 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University's head men's or women's golf coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$2,000. If the Coach is named Conference Coach of the Year or Conference Co-Coach of the year for both the men's and women's golf teams, Coach will receive \$2,000 for each award. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4 The Coach shall receive the sum of \$5,500 from the University or the University'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). Each year, one-half of this sum shall be paid in July and one-half shall be paid after the last date of competition. Coach's right to receive the second half of such payment shall vest on the date of the Teams' last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University 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 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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.5 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,

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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 recognizes that the University negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, 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 men's or women's golf coach. In order to avoid entering into an agreement with a competitor of Adidas, 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 and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 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



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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 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 of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the women's basketball 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

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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 Regents.

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 unreasonably be withheld.

**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 violation 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 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.

**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 reasonably 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.

5.2.3    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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

**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. If the Coach terminates this Agreement for his convenience he shall

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pay to the University, 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 August 15, 2006, the sum of \$10,000.00; (b) if the Agreement is terminated between August 16, 2007 and August 15, 2008 inclusive, the sum of \$8,000.00; (c) if the Agreement is terminated between August 16, 2008 and August 15, 2009 inclusive, the sum of \$5,000.00; (d) if the Agreement is terminated between August 16, 2009 and August 15, 2010 inclusive, the sum of \$2,000. 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.

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 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 shall constitute adequate and reasonable compensation to University 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.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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

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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 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 of the University's Board of Regents 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 Regents, 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 Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels 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

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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 inability), 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:

the University:                      Director of Athletics

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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University of Idaho  
P.O. Box 442302  
Moscow, Idaho 83844-2302

with a copy to:                      President  
   University of Idaho  
   P.O. Box 443151  
   Moscow, ID 83844-3151

the Coach:                              Brad Rickel  
   Last known address on file with  
   University's Human Resource Services

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 University's Board of Regents.

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. 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**  
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UNIVERSITY

COACH

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Timothy White, President    Date

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Brad Rickel,    Date

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**ATTACHMENT 2c – Redline Version**

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Brad Rickel (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 men's and women's golf teams. 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.56 shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on July 1, 2005, and terminating, without further notice to Coach, on July 1, 2010~~ne 30, 2010~~, 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 University's Board of Regents. 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.

**ARTICLE 3**

3.1 Regular Compensation.

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**JUNE 16-17, 2005**

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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 \$40,456 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 Regents;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- 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.

~~Coach understands and agrees that University is in the process of reviewing and clarifying policies and procedures regarding leave without pay, or temporary furlough, when warranted by financial conditions. If leave without pay or temporary furlough were imposed, Coach's actual salary would be lower than the annual salary set forth in Paragraph 3.1.1 (a) above. In no event would mandatory leave without pay or temporary furlough exceed fifteen (15) days per year.~~

**3.2 Supplemental Compensation**

3.2.1. Each year the men's or women's golf team ~~Team i~~ is the conference champion or co-champion or becomes eligible for the NCAA regional tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head men's or women's golf ~~coach~~ as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's annual salary during the fiscal year in which the championship and NCAA tournament eligibility are achieved. In the event both teams qualify for the NCAA regional tournament the University shall pay to Coach supplemental compensation in an amount equal to two~~one~~-thirteenths (2~~1~~/13) of Coach's annual salary ~~for both teams~~ (1/13 for each team). The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year Coach shall be eligible to receive supplemental compensation in an amount up equal to one-thirteenth (1/13) of Coach's annual salary based on the academic achievement and behavior of ~~T~~-Team members. Both teams must demonstrate acceptable academic performance and behavior for Coach to receive

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supplemental compensation.— 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 students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

3.2.3 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University's head men's or women's golf coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$2,000. If the Coach is named Conference Coach of the Year or Conference Co-Coach of the year for both the men's and women's golf teams, Coach will receive \$2,000e for each award. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4 The Coach shall receive the sum of \$5,500 from the University or the University'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). Each year, one-half of this sum shall be paid in July and one-half shall be paid ~~in~~ after the last date of competition. ~~January.~~ Coach's right to receive the second half of such payment shall vest on the date of the Teams' last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University 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 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

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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.

3.2.5 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 recognizes that the University negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, 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 men's or women's golf coach. In order to avoid entering into an agreement with a competitor of Adidas, 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 and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 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;

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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

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 of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the women's basketball 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,

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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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 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 Regents.

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 unreasonably be withheld.

**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 violation 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



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employment of Coach at another NCAA or NAIA member institution;

- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- 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.

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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.

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 reasonably 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.

5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

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.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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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. If the Coach terminates this Agreement for his convenience he shall pay to the University, 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 August 15, 2006, the sum of \$10,000.00; (b) if the Agreement is terminated between August 16, 2007 and August 15, 2008 inclusive, the sum of \$8,000.00; (c) if the Agreement is terminated between August 16, 2008 and August 15, 2009 inclusive, the sum of \$5,000.00; (d) if the Agreement is terminated between August 16, 2009 and August 15, 2010 inclusive, the sum of \$2,000. 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.

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 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 shall constitute adequate and reasonable compensation to University 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.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

**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.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 16-17, 2005**

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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 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 of the University's Board of Regents 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 Regents, 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 Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels 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

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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 inability), 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:

the University:

Director of Athletics



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\_\_\_\_\_  
Timothy White, President    Date

\_\_\_\_\_  
Brad Rickel,    Date

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**JUNE 16-17, 2005**

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

**SUBJECT**

Personnel issue.

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**INSTITUTION / AGENCY AGENDA**

**SUBJECT**

Setting of compensation for Presidents and Executive Director for Fiscal Year 2006.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section I.E.2.d.

**BACKGROUND**

At their May meeting, Board members review the prior year performance of each institutional President and subsequently provide a compensation increase, if any, to each President.

**DISCUSSION**

Included below are individual motions for each President and the Executive Director.

**IMPACT**

Board action will allow the Presidents to receive additional state compensation based upon their individual performance reviews.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has prepared the current compensation information for each President in the Executive and Regular sessions.

**BOARD ACTION**

A motion to approve the reappointment of Dr. Robert Kustra as President of Boise State University effective July 1, 2005 through June 30, 2006 at a state salary of \$\_\_\_\_\_

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

AND

To approve the reappointment of Dr. Richard Bowen as President of Idaho State University effective July 1, 2005 through June 30, 2006 at a state salary of \$\_\_\_\_\_

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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AND

To approve the reappointment of Dr. Timothy White as President of the University of Idaho effective July 1, 2005 through June 30, 2006 at a state salary of \$\_\_\_\_\_

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

AND

To approve the reappointment of Dr. Dene Thomas as President of Lewis-Clark State College effective July 1, 2005 through June 30, 2006 at a state salary of \$\_\_\_\_\_

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

AND

To approve the reappointment of William Robertson as President of Eastern Idaho Technical College effective July 1, 2005 through June 30, 2006 at a state salary of \$\_\_\_\_\_

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

AND

To approve the reappointment of Gary Stivers as Executive Director for the State Board of Education effective July 1, 2005 through June 30, 2006 at a state salary of \$\_\_\_\_\_

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

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

**Idaho State Board of Education**  
**GOVERNING POLICIES AND PROCEDURES**

**SECTION: I GOVERNING POLICIES AND PROCEDURES**

**Subsection E: Executive Officers**

**April, 2002**

**2. Presidents/Agency Heads/Superintendent (also referred to as chief executive officers)**

**d. Compensation and Benefits**

The chief executive officer's annual salary shall be set and approved by the Board. The chief executive officers shall not receive personal salary or benefits or supplements from institutional foundations or other affiliated organizations except as allowed for institutional presidents pursuant to topic 3, subtopic e, below and as such is specifically approved by the Board in each instance. Additionally, the chief executive officer may not receive personal salary or benefits or supplements from other outside sources without prior Board approval.

In addition to the salary referred to above, the chief executive officer shall receive the usual and ordinary medical, retirement, leave, educational, and other benefits available to all institutional, school and agency employees.

e. The chief executive officer shall receive reasonable and adequate liability insurance coverage under the state's risk management program. In addition, the institutional foundations and other affiliates shall provide the necessary directors and officers insurance for the chief executive officer.

f. Relocation and moving expenses incurred by the chief executive officer will be paid in accordance with the policies and rates established by the State Board of Examiners.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 16-17, 2005**

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

**SUBJECT**

A request by the University of Idaho for approval of one position with a salary equal to/greater than 75% of the Chief Executive base salary

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.B.3.b and Section II.F.2.b.1.

**BACKGROUND**

The University of Idaho has recently completed a national search for a Provost and Executive Vice President. Four finalists for the position were identified in the search process and participated in broad university-wide interviews with a variety of constituencies. Out of this finalist group, Douglas Baker was selected as the best qualified person for this important leadership position at the university.

Baker has held numerous academic leadership positions throughout his 24-year career at Washington State University. His experience includes supervising academic program review, assessment, accountability, and accreditation processes to improve teaching and learning, technology-mediated education, curriculum development and faculty review procedures. He is seasoned in private fundraising, general education designs and mediation between faculty, staff, and students. He has led initiatives to improve undergraduate education, including living-learning communities, student retention, and service learning.

Baker holds a doctoral degree in business organizational behavior and theory from the University of Nebraska and master's and baccalaureate degrees in management from Colorado State University.

**DISCUSSION**

This request is forwarded for Board approval since the salary for this appointment is equal to/greater than 75% of the Chief Executive Officer base salary.

**IMPACT**

The salary for this appointment is \$189,987.20. The College and University Professional Association (CUPA) median salaries for comparable positions at institutions within the University of Idaho's quartile are as follows: The CUPA median for the Chief Academic Officer is \$198,029, and the CUPA median for Executive Vice President is \$220,528. Dr. Baker's salary is below both CUPA medians for comparable positions.

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

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has reviewed this item for conformance with Board policy and recommends approval.

**BOARD ACTION**

A motion to approve the appointment of Douglas D. Baker as Provost and Executive Vice President of the University of Idaho at an annual salary of \$189,987.20.

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



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 16-17, 2005**

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

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

Douglas D. Baker	Provost and Executive Vice President
FTE	1.0
Term of Appointment	12 month
Effective Date	August 8, 2005
Annual Salary	\$189,987.20
Funding Source	Appropriated funds
Area/Department of Assignment	Provost's Office
Justification	Appointment

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

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: B. Appointment Authority and Procedures**

January 2005

**B. Appointment Authority 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:

- 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.

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**Subsection: F. Policies Regarding Nonclassified Employees**

April 2002

**F. Policies Regarding Nonclassified Employees**

**b. Employment Contracts**

- (1) An institution or school may provide employment contracts to its nonclassified employees. If an institution or school chooses to offer employment contracts to its nonclassified employees, the employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution or school may elect to include in order to define the contract of employment. Nonclassified employees have no continued expectation of employment beyond their current contract of employment.