

**BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009**

TAB	DESCRIPTION	ACTION
1	BOISE STATE UNIVERSITY Head Women's Volleyball Coach Contract	Motion to approve
2	IDAHO STATE UNIVERSITY Head Softball Coach Contract	Motion to approve
3	UNIVERSITY OF IDAHO Coaches Contract Modifications	Motion to approve
4	PRESIDENTIAL COMPENSATION	Motion to approve
5	PROPOSED AMENDMENTS TO BOARD POLICY – Section II.G.2.b.(2) Faculty Compensation- 1st Reading	Motion to approve
6	OFFICE OF THE STATE BOARD OF EDUCATION Chief Fiscal Officer	Motion to approve

THIS PAGE INTENTIONALLY LEFT BLANK

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

BOISE STATE UNIVERSITY

SUBJECT

Contract for new Head Women's Volleyball Coach

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a multi-year contract for its new Head Women's Volleyball Coach. The contract will be for three and one-half years (due to the timing of the end of the volleyball competitive season). The salary is \$75,000 per year with incentives as follows:

Athletic Incentive Pay may be earned as follows:

- | | |
|--|------------|
| – Conference Championships | \$5,000 |
| – or – | (Only One) |
| – Qualify Team for NCAA Tournament | \$3,000 |
| – Top 25 National Ranking at End of Season | \$2,500 |
| – NCAA Regional Coach of the Year | \$3,000 |
| – NCAA National Coach of the Year | \$5,000 |
| – Conference Coach of the Year | \$3,000 |
| – Winning Record | \$1,500 |

Academic Incentive Pay may be earned as follows:

National Score Within Sport		
970 – 974	=	\$1,400
975 – 979	=	\$1,600
980 – 984	=	\$1,800
985 and above	=	\$2,000

IMPACT

The Contract is similar to the standard issued by Boise State University. The University did not demand liquidated damages due to its shorter duration and the relative size of the amounts at issue.

ATTACHMENTS

Attachment 1 – Proposed Contract	Page 3
Attachment 2 – Proposed Addendum #1	Page 17
Attachment 3 – Matrix	Page 21

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

STAFF COMMENTS AND RECOMMENDATIONS

The agreement does not include liquidated damages for coach's termination for convenience even though there are liquidated damages if the University terminates for convenience.

Staff recommends approval.

BOARD ACTION

A motion to approve the request by Boise State University to enter into a three and one-half (3 ½) year employment contract with Shawn Garus, Head Women's Volleyball Coach as submitted.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (University) and Shawn Garus (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 volleyball team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. Coach shall, to the best of his ability and consistent with University policies, perform all duties and responsibilities customarily associated with a Division I head women's volleyball coach.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three and a half (3 1/2) years, commencing on June 30, 2009 and terminating, without further notice to Coach, on January 31, 2013 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 Trustees. 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) A salary as set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" 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. As set forth in the attached Addendum.

3.2.1 Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.

3.2.2 The Coach may receive the compensation hereunder 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). 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.

3.2.3 SUMMER CAMP—OPERATED BY UNIVERSITY. Coach agrees that the University has the exclusive right to operate youth women's volleyball 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 women's volleyball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer women's volleyball camps, the University shall pay Coach supplemental compensation during each year of his employment as head women's volleyball coach at the University.

3.2.4 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. In order to avoid entering into an agreement with a competitor of any University selected vendors, 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, 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 and paid from the University to Coach, 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 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 Policy 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 volleyball conference of which the University is a member.

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

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related

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

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

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 policies, 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 employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision

of the violation and could have prevented it by such 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 to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of

this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, 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 written notice is given to the University. Such termination must occur at a time outside the women's volleyball playing season (including NCAA post-season competition) so as to minimize the impact on the program.

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.

5.3.4 The parties have both been represented by, or had the opportunity to consult with, 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 and lose the benefit of its investment in the 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.

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

5.4 Termination due to Disability or Death of Coach.

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

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

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 suspension, reassignment or termination, 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 Policies or 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 Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Trustees and University's rules or policies regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the women's volleyball 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 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 Non-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
1910 University Drive
Boise, Idaho 83725-1020

with a copy to: President
1910 University Drive
Boise, Idaho 83725-1000

the Coach: Shawn Garus
1910 University Drive
Boise, Idaho 83725-1025

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 whoever 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 Trustees.

6.16 Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney. 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

Gene Bleymaier Date
Director of Athletics

Shawn Garus Date

Robert Kustra, President Date

Approved by the Board on the ____ day of _____, 2009.

THIS PAGE INTENTIONALLY LEFT BLANK

ADDENDUM #1 TO EMPLOYMENT AGREEMENT

1. This is an Addendum to the Employment Agreement (Agreement) between BOISE STATE UNIVERSITY (BSU) and Shawn Garus (COACH) dated and effective the 30th day of June, 2009 subject to the approval of the State Board of Education.

2. The COACH is being hired for the position of Head Women's Volleyball Coach.

3. Accordingly, the following terms as used in the Agreement will be defined as indicated:

- a. "Position" will mean the position described in paragraph 2, above.
- b. "Relevant season" will mean the Women's Volleyball season commencing on the first day of fall practice and ending with the last game of the season, including any post season competition.
- c. "Program" shall mean the Women's Volleyball program.
- d. "Applicable conference" as of the date of this Addendum means the Western Athletic Conference.
- e. "NCAA" means the National Collegiate Athletic Association.
 - 1. "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
- f. "Athletic Director" means the BSU Director of Athletics or his designee.
- g. "Coaching" means to direct and supervise the athletes participating in the program.
- h. "BAA" means the Bronco Athletic Association.
- i. "Post-season" means participation in the NCAA tournament or other sanctioned tournament.

4. The term of this Agreement (as set forth in Section 2.1 of the Agreement) shall commence June 30th, 2009 and shall continue until the Agreement terminates on the 31st day of January, 2013, provided, however, that this provision is subject to the terms and conditions of Article V of the Agreement concerning termination. Neither party shall have the right to terminate the Agreement prior to its date of expiration except as provided therein.

5. Specific duties and responsibilities of COACH. In addition to those set forth in the Agreement, the COACH is expected to devote full-time to coaching and recruitment involving the Women's Volleyball team as the Head Coach. Additional duties and responsibilities not listed will be those customarily attendant to the position of a Head Women's Volleyball Coach at a Division 1-A university. If COACH is required to perform any such additional duties that are not defined in the contract, COACH will be notified of his responsibility to perform these duties within a reasonable time frame.

COACH will attend all staff meetings, public relation functions, dinners, awards banquets and make appearances as directed by the Director of Athletics unless excused by the Director of Athletics. The Athletic Director shall not unreasonably withhold approval for non-attendance. Such functions shall include, but are not limited to the following:

- ◆ The annual BAA Bar-b-que
- ◆ The annual BAA Endowment Dinner
- ◆ The BSU Athletic Hall of Fame Dinner
- ◆ The BAA Bronze Bronco Award Banquet
- ◆ The BAA/Alumni Auction Dinner
- ◆ All Athletic Department staff meetings called by the Director of Athletics
- ◆ Athletic Department Graduation Reception
- ◆ Bronco Golf Series Tournaments

6. Compensation: COACH will be compensated for services under the Agreement more specifically as follows:

a. Base salary (state appropriated funds) as referred to in paragraph 3.1 of the Agreement shall be as follows:

<u>YEAR</u>		<u>COMPENSATION</u>
June 30, 2009 – January 31 st , 2010	\$75,000	(Annual)

7. Employee shall not use, directly or by implication, the Boise State name or logo in the endorsement of commercial products or services for personal gain without prior written approval from the President and the Athletic Director.

8. Employee shall not accept, prior to receiving approval in writing from the University President and the Athletic Director, compensation or gratuities from an athletics shoe, apparel, or equipment manufacturer in exchange for the use of such merchandise during practice or competition by Boise State's student-athletes.

9. In the event of non-renewal or termination, employee will use all accumulated annual leave prior to end of contract period.

10. Athletic Incentive Pay may be earned as follows:
- Conference Championships \$5,000
– or – (Only One)
 - Qualify Team for NCAA Tournament \$3,000
 - Top 25 National Ranking at End of Season \$2,500
 - NCAA Regional Coach of the Year \$3,000
 - NCAA National Coach of the Year \$5,000
 - Conference Coach of the Year \$3,000
 - Winning Record \$1,500

Any supplemental pay earned pursuant to this paragraph shall be paid on February 1st, of each year if the coach is still employed by the University on that date.

11. Academic Incentive Pay may be earned if your annual team APR score is as follows:

National Score Within Sport		
970 – 974	=	\$1,400
975 – 979	=	\$1,600
980 – 984	=	\$1,800
985 and above	=	\$2,000

Any supplemental pay earned pursuant to this paragraph shall be paid on October 1st, of each year if the coach is still employed by the University on that date.

COACH

Shawn Garus
Head Women's Volleyball Coach

Date

BOISE STATE UNIVERSITY

By:_____
Gene Bleymaier
Director of Athletics

Date

By:_____
Dr. Robert Kustra
President

Date

Shawn Garus, Boise State University, Head Volleyball Coach – 2009 – Multi-Year Contract

	Model Contract Section	Contract Section	Justification for Modification
1.3	Duties	1.3 Duties	Deleted the reassignment clause and added language to define the duties of the Coach.
3.2	Supplemental Compensation	3.2.1 Supplemental Compensation; language added	Language provides specific criteria for athletic achievement supplemental compensation and is moved from the base contract to the addendum.
3.2	Supplemental Compensation	3.2.2 & 3.2.3 Supplemental Compensation; language added	Language provides specific criteria for academic achievement based on APR scores and is moved to the addendum.
3.2	Supplemental Compensation	3.2.4 Supplemental Compensation; language deleted	More details regarding the apparel contracts are found in the addendum.
3.2	Supplemental Compensation	3.2.6 Supplemental Compensation; summer camp	Language provides criteria applicable to coach's operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
4.7	Other Coaching Opportunities	4.7 Other Coaching Opportunities; language added	Language provides for specific duty that Coach cannot pursue other employment without prior notice.
5.3	Termination by coach for convenience	5.3.2, 5.3.3, 5.3.4, Termination by coach for convenience; language added	Language provides that the termination cannot occur during the season; there is no liquidated damages provided.
	General	Addendum	The addendum contains additional specific duties of the coach as well as sets forth all the compensation terms of the contract.

THIS PAGE INTENTIONALLY LEFT BLANK

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

IDAHO STATE UNIVERSITY

SUBJECT

Multi-year employment agreement for Andrea Wilson, Head Softball Coach

APPLICABLE STATUTE, RULE OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University is requesting approval for a three-year employment agreement for Andrea Wilson, Head Softball Coach (see Attachment 1). The employment agreement contains the duties, responsibilities and conditions of the employment. A model contract matrix of the employment agreement that identifies departures from the model contract form and provides justification for these changes is included as Attachment 2. The position is funded by state appropriated funds.

IMPACT

This contract will provide a stable coaching environment for the women's softball program as well as stability and consistency for the Athletic Department as a whole.

ATTACHMENTS

Attachment 1	Employment Agreement	Page 3
Attachment 2	Model Contract Matrix Changes	Page 21

STAFF AND COMMENTS AND RECOMMENDATIONS

This will shift the agreement from an annual to a multi-year contract.

Staff recommends approval.

BOARD ACTION

A motion to approve the request by Idaho State University for a three (3) year employment agreement as submitted for Andrea Wilson, Head Softball Coach (1.0 FTE).

Moved by _____ Seconded by _____ Carried Yes_____ No_____

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

HEAD COACH EMPLOYMENT AGREEMENT

Andrea Wilson	Attachments 1 and 2
Position Title	Head Softball Coach
FTE	1.0
Term	36 months
Term of Contract	July 1, 2009 – June 30, 2012
Annual Salary	\$45,000.00
Funding Source	State Funds
Area/Department of Assignment	Intercollegiate Athletics
Supplemental Compensation	See Attachment 1, Article III.C.

EMPLOYMENT AGREEMENT

This Agreement between Idaho State University (“*University*”) and Andrea Wilson, head softball coach (“*Coach*”) (each individually a “*Party*” and collectively, the “*Parties*”), takes effect on July 01, 2009 (“*Effective Date*”).

I. **Engagement.**A. Definitions.

1. “*Director*” means University’s director of athletics.
2. “*Head*” means head coach of the Team (defined below).
2. “*President*” means University’s president.
3. “*Team*” means University’s intercollegiate softball team.

B. Employment. Under this Agreement, the University appoints Coach as its Head under a fixed term described below. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.C. Reporting Relationship. Coach reports and is responsible directly to the Director or the Director’s designee. Coach is also under the general supervision of the President. Coach must:

1. abide by any reasonable instruction of Director or the Director's designee; and
2. confer with the Director or the Director’s designee on all administrative and technical matters.

D. Duties.1. *In General.* Coach must:

- a. manage and supervise the Team; and
- b. perform any other duty in the University’s athletic program that the Director assigns and as this Agreement elsewhere describes.

2. *Non-Team Activity.* The University at any time has a right to reassign Coach to any duty at the University other than as Head. That reassignment:

- a. does not affect Coach’s primary compensation and benefits, but
- b. does cease Coach’s opportunity to earn supplemental compensation as provided in sections III.C.1 through III.C.7.

E. Suspension; Reassignment. The University has discretion at any time to suspend Coach from part or all of Coach’s duties, temporarily or permanently, with or without pay, or to reassign Coach to other duties.

II. **Effective Period.**

A. Definitions.

1. “*Board*” means the Idaho State Board of Education.
2. “*Term*” means a period during which the Agreement is in effect.

B. Term. The Term is three years, beginning on Effective Date, and expiring, without further notice to Coach, on June 30, 2012, unless earlier terminated as set forth further below.

C. Extension and Renewal.

1. *Procedure.* 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 Board’s prior approval.
2. *No Tenure Right.* This Agreement in no way grants to Coach a claim to tenure in employment. Coach’s service under this Agreement does not count in any way toward tenure at the University.

III. **Financial Matters.**

A. Definitions.

1. “*Annual Salary*” means a primary compensation amount corresponding to each consecutive twelve month period during the Term.
2. “*APR*” means a measurement that the NCAA (defined below) uses to track academic progress of NCAA-eligible student athletes and NCAA athletic programs.
3. “*Conference*” means Pacific Coast conference.
4. “*Department*” means University’s athletics department.
5. “*NCAA*” means the National Collegiate Athletic Association.
6. “*Personnel*” means Coach’s assistant coaches, any other employee for whom Coach is administratively responsible and Team members.
7. “*Tournament*” means softball post-season tournament.
10. “*Youth Camp*” means a youth softball camp at any University facility.

B. Regular Compensation. In exchange for Coach’s services and satisfactory performance of this Agreement, the University during the Term must provide to Coach:

1. **\$46,000.00** per year as an Annual Salary, payable in biweekly installments according to normal University procedures, subject to increase upon:
 - a. appropriate Director and President determination; and
 - b. Board approval;

2. an opportunity to receive any employee benefit that the University makes generally available to its non-faculty exempt employees;
 3. an opportunity to receive any employee benefit that the Department makes generally available to its employees of a comparable level; and
- C. Supplemental Compensation. Subject to conditions stated below, Coach has an opportunity to obtain additional compensation during the Term.
1. *Eligibility*. As determined at the President's sole discretion in consultation with the Director, Coach's right to receive any compensation item set forth under this section V.C and its subsections is contingent on the Coach's and Personnel's acceptable conduct:
 - a. on the University campus;
 - b. at University activities;
 - c. in the surrounding community; and
 - d. generally elsewhere.
 2. *Regular Season Title Bonus*. The University must pay to Coach an additional one week's pay of Coach's Annual Salary (*i.e.*, $1/52 \times$ Annual Salary) for each year during which the Team wins a regular season Conference championship.
 3. *Tournament Bonuses*.
 - a. Pacific Coast. The University must pay to Coach an additional one week's pay of Coach's Annual Salary for each year during the Term at which the Team upon the regular season's conclusion has either:
 - i. won the Conference Tournament; or
 - ii. obtained an automatic NCAA Tournament berth otherwise (including any so-called "play-in" game in the NCAA tournament).
 - b. NCAA Tournament. If the Team – either by automatic qualification or as an at-large choice – competes in the NCAA's Tournament, then University cumulatively also must pay Coach for advancing the tournament bracket as follows:

Round 1	64 teams	1 st win	\$ 1,000.00
Round 2	32 teams	2 nd win	\$2,000.00
Round 3	16 teams	3 rd win	\$3,000.00
Round 4	8 teams	4 th win	\$4,000.00
Round 5	4 teams	5 th win	\$5,000.00
Round 6	2 teams	6 th win	<u>\$6,000.00</u>

Possible national championship winner computation bonus total: **\$21,000.00**

3. *Record Bonus.* Coach is eligible to receive supplemental compensation equivalent to one week's salary for winning (30) or more regular season softball games
4. *Team APR Bonus.* Coach annually is eligible contingently to receive supplemental compensation for Team members' academic achievements. University must pay to Coach as indicated below for any year during the Term that the Team's four-year APR meets a NCAA's national ranking range within softball listed below:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
60%-69%	\$1,000.00
70%-79%	\$2,000.00
80%-89%	\$3,000.00
90% or above	\$5,000.00

5. *Summer Camp operated by University.* Despite its exclusive right to operate any Youth Camp, the University must allow Coach an opportunity as a University employee to earn compensation related to that camp.
 - a. Duties. For any Youth Camp in which Coach chooses to participate, Coach's duties include:
 - i. directing that camp's marketing, supervision, and general administration; and
 - ii. performing any other related obligation that the Parties mutually choose.
 - b. Payment. In exchange for Coach's participation in any Youth Camp, the University additionally must:
 - i. pay Coach any net revenues resulting from that camp, payable no later than thirty days after the camp ends; or
 - ii. upon the Coach's instruction, direct those net revenues as an enhancement to the softball program budget at the University.
 - c. Interruption. Upon any suspension, reassignment or Agreement termination, University:
 - i. is not under any obligation to permit Coach to hold a Youth Camp after that termination, suspension, or reassignment takes effect; and
 - ii. is released from all obligations relating to that camp.

D. General Conditions of Compensation.

1. *Deductions; Withholdings.* All compensation that University provides to Coach is subject to deductions and withholdings as required by law or the requirements of any fringe benefit in which Coach participates.

2. *Employee Benefits.* Any employee fringe benefit – based in whole or in part upon compensation that the University provides to Coach – is so based only under section III.B, unless a specific fringe benefit program requires otherwise. Coach’s right to that benefit through the University or Department is conditioned upon Coach having fulfilled each current or later-amended requirement set forth by that benefit’s provider.

IV. **Coach’s Professional Obligations.** Coach must cooperate fully with the University and Department at all times.

A. Definitions.

1. “*Benefactor*” means any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor providing any benefit to Coach.
2. “*Company*” means any entity that the University has selected to provide footwear, apparel or equipment applicable to the Agreement.
3. “*Deadline*” means the close of business on June 30th of each year or the last regular University work day preceding June 30th.
4. “*Mark*” means any University name, logo, trademark, trade name, or other University designation (including contraction, abbreviation or simulation).
5. “*Requirement*” means any applicable law or any policy, rule or regulation of the University, the Board, the Conference, or the NCAA, as further described in Exhibit A (attached and incorporated into this Agreement).
6. “*Violation Incident*” means any instance in which Coach has reasonable cause to believe that any person or entity has violated or is likely to violate any Requirement.

B. Coach’s Specific Duties and Responsibilities. In exchange for the compensation specified in this Agreement, and in addition to each obligation set forth elsewhere in this Agreement, Coach must:

1. devote Coach’s full time and best efforts to performing Coach’s Agreement duties;
2. develop and implement programs and procedures with respect to evaluating, recruiting, training, and coaching Team members that enable them to:
 - a. compete successfully; and
 - b. reasonably protect their health, safety, and well-being; and
3. observe and uphold the University’s academic standards, requirements, and policies and encourage Team members to:
 - a. perform to their highest academic potential; and
 - b. graduate in a timely manner.

C. Outside Activities.

1. *Distractions.* Coach must not undertake any business, professional or personal activity or pursuit that would:
 - a. prevent Coach from devoting Coach's full time and best efforts to performing Coach's Agreement duties;
 - b. detract from those duties in any manner otherwise; or
 - c. at University's sole determination, reflect adversely upon the University or its athletic program.
2. *Allowable Involvement.* Upon prior written approval from the Director (who may consult with the President), Coach has a right to enter into any separate arrangement for an outside activity or endorsement that is consistent with this Agreement. Coach must obtain prior written approval from the Director and the President before using any Mark in connection with that arrangement.

D. NCAA Rules.

1. *Outside Income.* Under NCAA rules, Coach must:
 - a. obtain the President's written approval before receiving any athletically-related income or benefit from any source outside the University; and
 - b. report the source and amount of all that income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the Deadline.
2. *Format.* Coach must cause the above outside income report to be in a format reasonably satisfactory to University.
3. *Prohibited Sources.* Coach directly or indirectly must not accept or receive from any Benefactor any money, benefit, or gratuity, if its acceptance or receipt by Coach would violate any Requirement.

E. Hiring Authority. Coach has the responsibility and sole authority to recommend to the Director any hiring or termination of any assistant coach for the Team. The Director makes any final decision to hire or terminate an assistant coach and – when necessary or appropriate – that decision may be subject to the President's and Board's the advance approval.

F. Personnel Changes. A listing of each name or title of any employee whom Coach supervises is attached as Exhibit B (attached and incorporated into this Agreement), Coach promptly throughout the Term must provide an update to this listing upon any employment change under Coach's supervision. That updated listing supersedes each prior Exhibit B version and is automatically incorporated into this Agreement.

G. Scheduling. Coach must consult with, and may make recommendations to the Director or the Director's designee with respect to the scheduling of Team competitions. The Director or the Director's designee makes any final scheduling decision.

- H. Other Coaching Opportunities. Coach during the Term must obtain the Director's approval before actively seeking, negotiating for, or accepting any basketball coaching employment at any other higher education institution. The University must ensure that the Director does not unreasonably withhold any approval described under this paragraph. Coach timely must keep the Director informed regarding any negotiation that Coach has begun as set forth above.
- I. Product Tie-Ins.
1. *Exclusivity.* University has an exclusive right to select footwear, apparel or equipment for Coach, other staff and student-athletes to use during:
 - a. any official practices or game; and
 - b. any time when Coach or the Team is:
 - i. being filmed by motion picture or video camera; or
 - ii. posing for any photograph in Coach's and/or Team's capacity as University's representative.
 2. *Consultation.* Upon the University's reasonable request, Coach must provide services among the following:
 - a. consulting with appropriate parties concerning Company's product's design or performance;
 - b. instructing at a clinic sponsored in whole or in part by that Company;
 - c. presenting a lecture at an event sponsored in whole or in part by that Company, and
 - d. making any other educationally-related appearance that University reasonably requests.
 3. *Conflicts.* Despite the preceding sentence, Coach retains a right to decline any appearance that Coach reasonably considers to conflict with or hinder Coach's Agreement duties and obligations.
 - a. *Competitive Transactions.* Coach diligently must avoid entering into any binding arrangement with a competitor of that Company. Coach must submit each proposed outside consulting agreement to the University for the Director's review and approval before signing it.
 - b. *Outside Income.* Coach must also report that outside income to the University according to NCAA rules. Coach must not:
 - i. endorse any athletic footwear, apparel or equipment product, including its manufacturer or other merchandizing entity; or
 - ii. participate in any message or promotional appearance that contains a comparative or qualitative description of athletic footwear, apparel or equipment product.

- J. Compliance. Coach must:
1. know, recognize, and comply with each Requirement;
 2. supervise and take appropriate steps to ensure Personnel's knowledge, recognition and compliance of each Requirement; and
 2. immediately report to the Director and to the Department's Director of Compliance any Violation Incident arising from any representative of the University's athletic interests.
- V. **Termination.** Any for-cause ground, remedy or prohibition described under this Article also applies – at the University's discretion – to suspending or reassigning Coach as described in section I.E.
- A. By University.
1. *For Cause.* The University at any time has a right to terminate this Agreement for good or adequate cause, as those terms are defined in applicable rules and regulations.
 - a. Additional Grounds. University's for-cause grounds to terminate also include the following:
 - i. any deliberate and major violation of Coach's Agreement duties or the refusal or unwillingness of Coach to perform them in good faith and to the best of Coach's abilities;
 - ii. Coach's failure to remedy any Agreement violation as of thirty days after University's written notice to Coach of that violation;
 - iii. any deliberate or major Requirement violation by Coach under this Agreement or during Coach's employment at another NCAA or NAIA member institution;
 - iv. ten working days' absence of Coach from duty under the Agreement without the University's consent;
 - v. any conduct of Coach that constitutes moral turpitude or that University considers to reflect adversely on the University or its athletic programs;
 - vi. Coach's failure to represent positively the University and its athletic programs in any public or private forum;
 - vii. Coach's failure of Coach fully and promptly to cooperate with the NCAA or the University in any investigation of any Requirement's possible violation;
 - viii. Coach's failure to report a known Requirement violation by any Personnel; or
 - ix. any Violation Incident arising from Personnel, if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

- b. Procedure. University has a right to terminate for good or adequate cause as follows:
 - i. before the termination takes effect, the Director or his designee provides Coach with notice as set forth in this Agreement, include any reason for the contemplated action;
 - ii. Coach then has an opportunity to respond; and
 - iii. after Coach responds or fails to respond, University must notify Coach whether, and if so, when the action has effect.
 - c. Effect of Termination. Upon University's termination for good or adequate cause:
 - i. the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, ceases as of the date of that termination; and
 - ii. University is not liable for the loss of any collateral business opportunity or other benefit, perquisite, or income resulting from any outside activity or other source.
 - d. NCAA Sanction. If Coach is found to violate any NCAA regulation, then along with Section V.A, Coach is subject to disciplinary or corrective action under NCAA enforcement procedures. This paragraph applies to any violation occurring at the University or at any previous institution at which the Coach was employed.
2. For Convenience. At any time during the Term, University has a right to terminate this Agreement for University's convenience by giving ten days' prior written notice to Coach. If University terminates this Agreement for its convenience, then:
- a. University must pay Coach any due amount under section III.B.1, excluding any deduction that law requires, on each regular University payday until the first of the following occurs:
 - i. the Term expires; or
 - ii. Coach obtains reasonably comparable employment;
 - b. Coach is entitled to continue Coach's health insurance plan and group life insurance as if Coach remained a University employee until the first of the following occurs:
 - i. the Term expires; or
 - ii. Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance;
 - c. Coach is entitled to no other compensation or fringe benefit, unless this Agreement provides or law requires otherwise;

- d. if Coach obtains employment at any lesser amount after that termination, then:
 - i. the amount that University must pay is adjusted and reduced by that lesser amount; and
 - ii. that adjusted compensation is to be calculated for each University pay-period by the following steps:
 - STEP 1: reducing the section III.B.1 amount (before any deduction that law requires) by Coach's gross compensation under the lesser employment; and
 - STEP 2: from this adjusted gross compensation, subtracting each legally-required deduction.
- e. Coach specifically must:
 - i. inform University no later than ten business days after obtaining any other employment; and
 - ii. advise University of the employment's nature, location, salary, compensation, health insurance, life insurance, other fringe benefits and each other relevant provision;
- f. any failure by Coach to so inform and advise University constitutes a material Agreement breach that ends University's payment obligation under this for-convenience termination provision; and
- g. Coach further must repay to University any compensation that University has paid to Coach:
 - i. after the date Coach obtains that other employment; and
 - ii. to which Coach is not entitled under this for-convenience termination provision.

C. Termination by Coach for Convenience.

- 1. *University Investment Interest.* The Coach recognizes that Coach's promise to work for University for the entire Term is this Agreement's essence. The Coach also recognizes that:
 - a. the University is making a highly valuable investment in Coach's employment by entering into this Agreement; and
 - b. University's investment would be lost if Coach resigns or terminates Coach's employment with the University before Term's expiration otherwise.
- 2. *Termination Right.* The Coach has a right to terminate for Coach's convenience during the Term by giving prior written notice to the University. That termination takes effect ten days after Coach delivers that notice to the University. If the Coach terminates this Agreement for convenience at any time, then:

- a. each University obligation ceases immediately when the termination takes effect;
 - b. Coach must pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement an applicable amount as described below:
 - i. the whole amount set forth in section III.B.1 for the then-current Term, if Coach terminates the Agreement on or before July 01, 2010;
 - ii. **\$30,000.00**, if the Agreement is terminated between July 02, 2010, and June 30, 2011, inclusive; or
 - iii. **\$20,000.00**, if the Agreement is terminated between July 01, 2011 and June 30, 2012, inclusive; and
 - c. liquidated damages are due and payable no later than twenty days after the termination takes effect and any unpaid amount bears simple interest at a rate of eight percent *per annum* until paid.
- D. Termination due to Disability or Death of Coach. “*Function*” means an essential Head function under the Agreement.
- 1. *Automatic Termination.* Despite any other Agreement provision, this Agreement terminates automatically if Coach:
 - a. becomes totally or permanently disabled as the University's disability insurance carrier so defines;
 - b. becomes unable to perform any Function; or
 - c. dies.
 - 2. *Death.* If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits cease as of the last day worked. But the University must pay the Coach's personal representative or other designated beneficiary any:
 - a. compensation due or unpaid; and
 - b. death benefit – due to the Coach's estate or any beneficiary under that estate – that is:
 - i. contained in any fringe benefit plan currently in force; or
 - ii. later adopted by the University as of that termination date.
 - 3. *Disability.* If this Agreement terminates because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform any Function, then:
 - a. University's duty to pay any salary or other benefit ceases; although:
 - b. the Coach remains entitled to receive:

- i. any compensation due or unpaid; and
 - ii. any disability-related benefit to which Coach is entitled by virtue of employment with the University.
- E. Interference by Coach. Upon any termination by either Party, Coach must not:
 - 1. interfere with the University's student-athletes; or
 - 2. obstruct the University's ability to transact business or operate its intercollegiate athletics program otherwise.
- F. No Liability. Irrespective of any circumstance, the University is not liable to Coach for any loss of any collateral business opportunity or other benefit, perquisite or income from any source that ensues:
 - 1. as a result of any Agreement termination:
 - a. by either party; or
 - b. due to death or disability; or
 - 2. Coach's suspension or reassignment.
- G. Waiver of Rights.
 - 1. *Unique Circumstances.* The Coach under this Agreement is receiving a multi-year commitment and an opportunity to receive supplemental compensation. Commitments and opportunities of this type are not customarily afforded to University employees.
 - 2. *Impact.* Recognizing that commitment and opportunity, under any circumstance that the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach:
 - a. retains each right that this Agreement provides to Coach under that circumstance; but
 - b. releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in:
 - i. the Board's governing policies and procedures manual; and
 - ii. the University's faculty-staff handbook.

VI. Miscellaneous.

- A. Definitions.
 - 1. "Force Majeure" means any prevention, delay or stoppage of a Party's Agreement performance due to any:
 - a. strike;
 - b. lockout;
 - c. labor dispute;

- d. act of God;
 - e. inability to obtain labor or any material (or reasonable substitute for that labor or material);
 - f. governmental restriction;
 - g. governmental regulation;
 - h. governmental control;
 - i. enemy or hostile governmental action;
 - j. civil commotion;
 - k. fire; or
 - l. other casualty or cause beyond the Party's reasonable control.
- 2. "*Property*" means any key, credit card, personnel record, recruiting record, team information, film, statistic, material, data, information article, courtesy car or other personal property.
- B. Board Approval. This Agreement has effect only after being approved by the Board and signed by both Parties as set forth below. In addition, University's duty to pay any Agreement compensation is subject to:
 - 1. approval of the Board, the President, and the Director;
 - 2. sufficiency of legislative appropriations;
 - 3. University's receipt of sufficient funds in any account from which that compensation is to be paid; and
 - 4. the Board's and University's rules regarding financial exigency.
- C. University Property.
 - 1. *Scope*. University owns any Property:
 - a. that University has furnished to Coach; or
 - b. that Coach develops:
 - i. on the University's behalf;
 - ii. at the University's direction;
 - iii. for the University's use; or
 - iv. in connection with Agreement employment otherwise.
 - 2. *Return*. No later than twenty-four hours after the Term's expires or the Agreement earlier terminates, Coach immediately must cause any Property in Coach's possession or control to be delivered to the Director.
- D. Assignment. Each Party must obtain the other Party's written consent before assigning its rights or delegating its obligations under this Agreement.
- E. Waiver. A waiver of any default in performing under this Agreement takes effect only if in writing and signed by the waiving Party. That waiver does not constitute

a waiver of any other or later breach. Resorting to a particular remedy upon a breach does not constitute a waiver of any other available remedy.

- F. Severability. If any Agreement provision is determined to be invalid or unenforceable, then the remainder of the Agreement is not affected and remains in effect.
- G. Governing Law. This Agreement is subject to and is to be construed according to the laws of the state of Idaho as an agreement to be performed in Idaho. A Party must bring any action based in whole or in part on this Agreement in the courts of the state of Idaho.
- H. Oral Promises. The University is not bound to any oral promise of any increase in Annual Salary or of any supplemental or other compensation.
- I. Force Majeure. A Party obligated to perform (including financial inability) under the Agreement is excused from performing during any Force Majeure occurrence period.
- J. Confidentiality. The Coach consents to this document being released and made available to the public after the Coach has signed it. The University has sole discretion to release or make available to the public any document or report that Coach is required to produce under this Agreement.
- K. Notices.
 - 1. *Procedure*. Actual notice, however and from whomever received, is always effective.
 - a. Means. A Party must cause each Agreement notice to be in writing and delivered:
 - i. in person;
 - ii. by public or private courier service (including U.S. Postal Service Express Mail);
 - ii. by certified mail with return receipt requested; or
 - iv. by facsimile.
 - b. Relevant Date. Any notice is considered to have been given on the earliest of:
 - i. actual delivery or refusal to accept delivery;
 - ii. the date of mailing by certified mail; or
 - iii. the day facsimile delivery is verified.
 - 2. *Party Addresses*. 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:
 - a. if to the University: Director of Athletics
Campus Box 8173
Idaho State University

Pocatello, ID 83209-8173

with a copy to: President
921 South 8th Ave. Stop 8310
Idaho State University
Pocatello, ID 83209-8310

b. if to the Coach: Andrea Wilson
Last known address on file with
University's Human Resource Services

- L. Headings. Each heading contained in this Agreement is for reference purposes only and does not in any way affect the Agreement's meaning or interpretation.
- M. Binding Effect. This Agreement is for the benefit only of the Parties and inures to the benefit of and binds the Parties and their respective heirs, legal representatives, successors and assigns.
- N. Non-Use of Names and Trademarks. The Coach in each case must obtain the University's written consent before using any Mark, except in the course and scope of Coach's official University duties.
- O. No Third Party Beneficiaries. The Agreement has no intended or unintended third party beneficiary.
- P. Entire Agreement; Amendments. This Agreement constitutes the Parties' entire understanding and supersedes any prior agreement or understanding with respect to the same subject matter. An amendment or modification of this Agreement is effective only if in writing, signed by both Parties, and approved by University's Board Trustees.
- Q. Opportunity to Consult with Attorney. The Coach acknowledges that Coach has had an opportunity to consult and review this Agreement with an attorney and has not relied upon the advice of any legal counsel acting on behalf of the University. Accordingly, in all cases, the language of this Agreement is to be construed simply, according to its fair meaning, and not strictly for or against any party.

Signed:

UNIVERSITY

COACH

Arthur Vailas, President Date

Andrea Wilson Date

Approved by the Board of Trustees, on the _____.

Exhibit A

Requirements

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) Department policies;
- (e) NCAA rules and regulations; and
- (f) Conference rules and regulations.

Exhibit B

Listing of Employees under Coach's Supervision

Assistant Coach

Shelly Prochaska

THIS PAGE INTENTIONALLY LEFT BLANK

ANDREA WILSON, HEAD SOFTBALL COACH - MULTI-YEAR CONTRACT CHANGES			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	1.3 Duties	I.D.2 .. Non-Team Activity	Language added clarifying University's right "at any time" to reassign is independent of "for cause" right to terminate or to reassign duties under V.A.1.
2	3.2 Supplemental Compensation	III.C Supplemental Compensation – increases bonus amounts and adds bonus categories, while clarifying that all depends on acceptable conduct by Coach, assistance, staff and players	Makes all supplemental compensation (not Annual Salary) <u>contingent</u> on Coach's and Personnel's acceptable conduct, and <u>alters</u> supplemental compensation bonus potential according to the following milestones: <ul style="list-style-type: none"> regular-season win thresholds (<i>increased</i> from 20 games to 30 games); and reaching <i>modified</i> NCAA academic progress metric (from raw score to 4-year percentile ranking) (increased amounts also).
3	3.2.6 Summer Camp Operated by University	III.C.7 Summer Camp Operated by University; language added	University has decided to provide a University-operated summer camp only. Coach has the right to direct net revenues from summer camps to be used to enhance the budget of the Women's Softball Program.
4	5.1.1 Termination for Cause	V.A.1.a.vi Additional Grounds - Added a subsection regarding cause for termination (or for suspension/reassignment)	Added language including "failure of Coach to represent the University and its athletic programs positively in public or private forums" as possible cause for employment action.
5	5.2.2 Termination of Coach for Convenience of University	V.A.2.a University termination of Coach for convenience – modified duration	Modified and added language specifying Coach to be paid until the earlier date of the contract term ending, or Coach finding "reasonably comparable employment."
6	6.16. Opportunity to Consult with Attorney	VI.Q. Opportunity to Consult with Attorney; language added	Additional language added "and has not relied upon the advice of any legal counsel acting on behalf of the University."

THIS PAGE INTENTIONALLY LEFT BLANK

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

UNIVERSITY OF IDAHO

SUBJECT

Modifications to multi-year athletic coach contracts

REFERENCE

February 22, 2007	Board approval of Head Football Coach contract
August 21, 2008	Board approval of Head Women's Soccer Coach contract
August 11, 2005	Board approval of term extension and modifications to Head Women's Volleyball Coach contract.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.B.3.

BACKGROUND/DISCUSSION

The University of Idaho is requesting approval for modifications to the multi-year contracts of three head coaches. All three contracts will be modified to allow for each coach to operate youth camps on campus in their respective sports, provided the University has notified the coach, in writing, that the University does not intend to operate youth camps in their sport for a specified period of time.

The proposed new terms govern the operation of the youth sports camps by each coach during the specified time the University has chosen not to operate its own camp. The proposed new terms adopt the Board's standard contract terms for sports camps operated by coaches.

Additionally, with respect to the Head Women's Volleyball Coach and the Head Football Coach contracts, the university has updated the contract terms relating to termination for convenience and compliance with NCAA Rules. These terms incorporate what is now the University's standard language for multi-year coach contracts.

IMPACT

The proposed amendments to allow these coaches to operate youth sports camps will not have a material financial impact on the University, in as much as the University retains the first right to operate such camps if it chooses to do so.

The proposed amendments do not change the amount of annual compensation the University pays the coach under the contract.

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

ATTACHMENTS

Attachment 1 – Proposed Amended Contract Head Football Coach	Page 3
Attachment 1A – Amended Contract Head Football Coach-REDLINE	Page 17
Attachment 1B – Model Contract Matrix - Head Football Coach	Page 33
Attachment 2 – Proposed Amended Contract Head Women's Soccer Coach	Page 35
Attachment 2A –Amended Contract Head Women's Soccer Coach-REDLINE	Page 47
Attachment 2B – Model Contract Matrix - Head Women's Soccer Coach	Page 63
Attachment 3 – Proposed Amended Contract Head Women's Volleyball Coach	Page 65
Attachment 3A –Amended Contract Head Women's Volleyball Coach-REDLINE	Page 79
Attachment 3B – Model Contract Matrix - Head Women's Volleyball Coach	Page 95

STAFF COMMENTS AND RECOMMENDATIONS

These modifications allow the coaches to operate youth camps in the event the University does not intend to operate youth camps in their sport for a specified period of time. Also, the university has updated the contract terms relating to termination for convenience and compliance with NCAA Rules for the Head Women's Volleyball Coach and the Head Football Coach contracts.

Staff recommends approval.

BOARD ACTION

A motion to approve the request by the University of Idaho to modify the terms of the multi-year contracts for the University's Head Football Coach, Women's Soccer Coach and Women's Volleyball Coach, and to authorize the University to execute amended contracts in substantial conformance to the proposed amended contracts attached to the Board materials.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (Agreement) is entered into by and between the University of Idaho (University) and Robb Akey (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate football team. 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 section 3.2.1 through 3.2.6 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment commencing on December 17, 2006, and terminating, without further notice to Coach, on December 16, 2011, 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 \$155,001.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- b) Such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) 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 or becomes eligible for a bowl game pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head football 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 or bowl eligibility is 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 the final ESPN/USA Today coaches poll of Division IA football teams, and if Coach continues to be employed as University's head football coach as of the ensuing July 1st, 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 is named Conference Coach of the Year, and if Coach continues to be employed as University's head football 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.

3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$5,000 based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation will be made within thirty (30) days of the last day of the fall semester and shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: NCAA

Academic Progress Rate (APR); 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.

3.2.5 The Coach shall receive the sum of \$85,000 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 football game, and one-half shall be paid no later than two weeks after the last regular season football game or bowl game, 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, provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.4; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) 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 that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University 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 football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach the remaining income from the summer football camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth football camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth football camps on the University's campus and using its facilities under the following terms and conditions:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA, Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;
- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws

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

3.2.7 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 is 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 football 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 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 football 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 provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

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; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in the applicable policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA.

5.1.1 In addition to the definitions contained in applicable policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension 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 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. Coach may, within fifteen (15) calendar days of receiving such notice, request review of the decision in writing directed to the University President. However, such request for review shall not stay the effectiveness of the action, and review by the President is at the President's sole discretion.

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.

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 pay to Coach 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, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. 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 or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing 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. Such compensation is 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 the following sums: (a) if the Agreement is terminated between January 2, 2009 and January 1, 2010 inclusive, the sum of \$750,000.00; (b) if the Agreement is terminated between January 2, 2010 and January 1, 2011 inclusive, the sum of \$500,000; (c) if the Agreement is terminated between January 2, 2011, and December 15, 2011 inclusive, the sum of \$500,000. These sums 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 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing 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 sums 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. Such payments 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of Coach.

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

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

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

5.5 Interference by Coach. In the event of termination or suspension, 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 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 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 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 therefor, 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: Robb Akey
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.

UNIVERSITY

COACH

Duane Nellis, President Date

Robb Akey Date

THIS PAGE INTENTIONALLY LEFT BLANK

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (Agreement) is entered into by and between the University of Idaho (University) and Robb Akey (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate football team. 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 section 3.2.1 through 3.2.6 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment commencing on December 17, 2006, and terminating, without further notice to Coach, on December 16, 2011, 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 \$155,001.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- b) Such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) 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 or becomes eligible for a bowl game pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head football 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 or bowl eligibility is 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 the final ESPN/USA Today coaches poll of Division IA football teams, and if Coach continues to be employed as University's head football coach as of the ensuing July 1st, 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 is named Conference Coach of the Year, and if Coach continues to be employed as University's head football 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.

3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$5,000 based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation will be made within thirty (30) days of the last day of the fall semester and shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: NCAA Academic Progress Rate (APR); 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.

3.2.5 The Coach shall receive the sum of \$85,000 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 football game, and one-half shall be paid no later than two weeks after the last regular season football game or bowl game, 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, provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.4; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) 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 that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University 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 football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach the remaining income from the summer football camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth football camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth football camps on the University's campus and using its facilities under the following terms and conditions:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA, Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s),

Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.

- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;
- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws

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

3.2.7 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 is 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 football 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 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 football 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~~ provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

~~4.3~~ 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; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in the applicable policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA.

5.1.1 In addition to the definitions contained in applicable policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension 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 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. Coach may, within fifteen (15) calendar days of receiving such notice, request review of the decision in writing directed to the University President. However, such request for review shall not stay the effectiveness of the action, and review by the President is at the President's sole discretion.

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.

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 to 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, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. 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; or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 ~~The parties have both~~ University has been represented by legal counsel, and coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations, ~~and The parties~~ 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~~ Such compensation is 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 sums: (a) ~~if the Agreement is terminated on or before January 1, 2008, the sum of \$1,000,000.00;~~ (b) ~~if the Agreement is terminated between January 2, 2008 and January 1, 2009 inclusive, the sum of \$1,000,000.00;~~ (c) if the Agreement is terminated between January 2, 2009 and January 1, 2010 inclusive, the sum of \$750,000.00; (d) if the Agreement is terminated between January 2, 2010 and January 1, 2011 inclusive, the sum of \$500,000; (e) if the Agreement is terminated between January 2, 2011, and December 15, 2011 inclusive, the sum of \$500,000. ~~The liquidated damages~~ These sums 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~~ University has been represented by legal counsel, ~~and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel~~ in the contract negotiations, ~~and The parties~~ 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 sums~~ 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~~ Such payments 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of Coach.

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently

disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

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

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

5.5 Interference by Coach. In the event of termination or suspension, 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 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 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 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 therefor, 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: Robb Akey
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.

UNIVERSITY

COACH

Duane Nellis, Tim White, President

Date _____

_____ Robb Akey Date _____

~~Approved by the Board of Regents on the 22nd day of February, 2007.~~

THIS PAGE INTENTIONALLY LEFT BLANK

Rob Akey, University of Idaho, Head Football Coach
MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM

Model Contract Section	Contract Section	Justification for Modification
3.2.6 Summer Camps	3.2.6 Supplemental Compensation; summer camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and authorizes coach to operate a summer camp under these conditions in the event the University notifies the coach in writing that it does not intend to operate a camp for a particular period of time. The language and criteria for coach operated summer camps is a modification from the original contract with coach, but it does not deviate in substance from the Board's model contract.
4.3 NCAA Rules	4.3 NCAA Rules	Revised to conform to NCAA Rule 11.2.2 effective 3/8/06. Rule requires a written detailed account of athletically related income and identifies some of the sources that must be reported as "including but not limited to..." This is now standard in all University coach contracts.
5.2.2 University Termination for Convenience	5.2.2 University Termination for Convenience	Language allows the University to offset salary received by Coach for lesser employment obtained after University termination for convenience. Prior language would allow coach to take lesser employment and continue to receive full termination payment. Language also requires Coach to inform University of the terms of any new employment so University can accurately determine the compensation, if any, to which Coach is entitled. References to liquidated damages are deleted because the compensation due upon termination for convenience flows from a contractual right to terminate and not from a breach of the contract. The non-terminating party is entitled to compensation, not damages for breach. This is now standard in all University coach contracts.
5.2.3 Representation by	5.2.3 Representation by	Language clarifies that the parties have been

Counsel	Counsel; compensation for termination	represented by counsel or that Coach <u>chose to proceed without counsel</u> during the negotiations. The underlined language is new and recognizes the fact that we cannot require candidates to retain counsel. References to liquidated damages are deleted for the same reason as in 5.2.2. This is now standard in all University coach contracts.
5.3.3 Coach Termination for Convenience	5.3.3 Coach Termination for Convenience	References to payments on termination which have expired are deleted. References to liquidated damages are deleted for the same reason as in 5.2.2. This is now standard in all University coach contracts.
5.3.4 Representation by Counsel	5.3.4 Representation by Counsel; for termination	Same as 5.2.3. above. This is now standard in all University coach contracts.

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Peter Showler (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 soccer team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.7 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years five (5) months, commencing on July 1, 2008, and terminating, without further notice to Coach, on December 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.

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 \$37,689.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- 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 if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000 during the fiscal year immediately following the year in which the championship is 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 finishes in the top 20 in the NCAA championships and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000. 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 based on the academic achievement and behavior of Team members if the Team's cumulative APR ranks nationally within intercollegiate women's soccer at the 50th percentile or higher as follows:

National rank within sport
50th - 60th % = \$250
60th - 70th % = \$300
70th – 80th % = \$400
80th % or above = \$450

Any such supplemental compensation paid to Coach shall be accompanied with a 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 The Coach shall receive the sum of \$6,000 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 contest, and one-half shall be paid no later than two weeks after the last contest. 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, provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) 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 that 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 operate soccer 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 soccer 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 soccer camps, the University shall pay coach the remaining income from the camps after all claims, insurance, and expenses of such camps have been paid.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth soccer camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth soccer camps on the University's campus and using its facilities under the following terms and conditions:

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

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

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

3.2.6 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 is negotiating or has entered into an agreement with Nike 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 Nike products' design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Nike, or give a lecture at an event sponsored in whole or in part by Nike, 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 soccer coach. In order to avoid entering into an agreement with a competitor of Nike, 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 Nike, 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 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 soccer conference of which the University is a member.

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 provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

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 be unreasonably 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 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 or her 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, including suspension without pay or termination of employment for significant or repetitive violations. 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 pay to Coach 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, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. 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 or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel, in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University that are extremely difficult to determine with certainty. The parties further agree that the payment of such compensation by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach. Such compensation is 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 the following sums: (a) if the Agreement is terminated on or before June 1, 2009, the sum of \$15,000; (b) if the Agreement is terminated between June 2, 2009 and June 1, 2010 inclusive, the sum of \$10,000; (c) if the Agreement is terminated between June 2, 2010 and December 1, 2010 inclusive, the sum of \$5,000. Sums 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 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing 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 that are extremely difficult to determine with certainty. The parties further agree that the payment of such sums by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University. Such payments 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of Coach.

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the

University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

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

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

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

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

Duane Nellis
President

Date

Peter Showler,

Date

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Peter Showler (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 soccer team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.7 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years five (5) months, commencing on July 1, 2008, and terminating, without further notice to Coach, on December 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.

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 \$37,689.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- 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 if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000 during the fiscal year immediately following the year in which the championship is 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 finishes in the top 20 in the NCAA championships and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000. 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 based on the academic achievement and behavior of Team members if the Team's cumulative APR ranks nationally within intercollegiate women's soccer at the 50th percentile or higher as follows:

National rank within sport

50th - 60th % = \$250

60th - 70th % = \$300

70th - 80th % = \$400

80th % or above = \$450

Any such supplemental compensation paid to Coach shall be accompanied with a 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 The Coach shall receive the sum of \$6,000 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 contest, and one-half shall be paid no later than two weeks after the last contest. 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, provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) 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 that 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 operate soccer 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 soccer 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 soccer camps, the University shall pay coach the remaining income from the camps after all claims, insurance, and expenses of such camps have been paid.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth soccer camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth soccer camps on the University's campus and using its facilities under the following terms and conditions:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA, Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;

- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws

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

3.2.6 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 is negotiating or has entered into an agreement with Nike 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 Nike products' design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Nike, or give a lecture at an event sponsored in whole or in part by Nike, 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 soccer coach. In order to avoid entering into an agreement with a competitor of Nike, 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 Nike, 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 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 soccer conference of which the University is a member.

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 provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

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 be unreasonably 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 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 or her 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, including suspension without pay or termination of employment for significant or repetitive violations. 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 pay to Coach 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, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. 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 or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel, in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University that are extremely difficult to determine with certainty. The parties further agree that the payment of such compensation by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach. Such compensation is 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 the following sums: (a) if the Agreement is terminated on or before June 1, 2009, the sum of \$15,000; (b) if the Agreement is terminated between June 2, 2009 and June 1, 2010 inclusive, the sum of \$10,000; (c) if the Agreement is terminated between June 2, 2010 and December 1, 2010 inclusive, the sum of \$5,000. Sums 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 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing 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 that are extremely difficult to determine with certainty. The parties further agree that the payment of such sums by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University. Such payments 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

Duane Nellis~~Steven Daley Laursen~~

Date

Peter Showler,

Date

President

~~Approved by the Board of Regents on the ____ day of August, 2008.~~

THIS PAGE INTENTIONALLY LEFT BLANK

Peter Showler, University of Idaho, Head Women's Soccer Coach
MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM

Model Contract Section	Contract Section	Justification for Modification
3.2.6 Summer Camps	3.2.6 Supplemental Compensation; summer camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and authorizes coach to operate a summer camp under these conditions in the event the University notifies the coach in writing that it does not intend to operate a camp for a particular period of time. The language and criteria for coach operated summer camps is a modification from the original contract with coach, but it does not deviate in substance from the Board's model contract.

THIS PAGE INTENTIONALLY LEFT BLANK

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Debbie Buchanan (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 volleyball 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 3.2.7 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on August 1, 2005 and terminating, without further notice to Coach, on July 31, 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 \$66,817.60 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 volleyball 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 volleyball teams and if Coach continues to be employed as University's head volleyball 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 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 volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$4,000. 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 volleyball game, and one-half shall be paid no later than two weeks after the last regular season volleyball 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 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 her 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 her 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.

3.2.6 Coach agrees that the University has the exclusive right to operate youth volleyball 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 volleyball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth volleyball camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth volleyball camps on the University's campus and using its facilities under the following terms and conditions:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA, Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;
- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during

the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws

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

3.2.7 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 her duties and obligations as head volleyball 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 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 volleyball 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 provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

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 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 her 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 pay to 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, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue her health insurance plan and group life insurance as if she remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to her by University after the date she obtains other employment, to which she is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to her 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. Such compensation is not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

5.3.2 The Coach, for her 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 her convenience she shall pay to the University the following sum: (a) if the Agreement is terminated between August 2, 2008 and August 1, 2010 inclusive, the sum of \$2,000. This sum 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 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing 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 that are extremely difficult to determine with certainty. The parties further agree that the payment of such sums by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University. Such payments 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, she shall forfeit to the extent permitted by law her right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of Coach.

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

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

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

COACH

M. Duane Nellis, President

Date

Debbie Buchanan

Date

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Debbie Buchanan (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 volleyball 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 3.2.7 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on August 1, 2005³ and terminating, without further notice to Coach, on July 31, 2010,⁷ 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 \$66,817.60 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 volleyball 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 volleyball teams and if Coach continues to be employed as University's head volleyball 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 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 volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$4,000. 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 volleyball game, and one-half shall be paid no later than two weeks after the last regular season volleyball 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 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 her 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 her 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.

3.2.6 Coach agrees that the University has the exclusive right to operate youth volleyball 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 volleyball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth volleyball camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth volleyball camps on the University's campus and using its facilities under the following terms and conditions:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA, Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexho for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage:

spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;

- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws

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

3.2.7 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 her duties and obligations as head volleyball 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 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 volleyball 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~~ 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~~ provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

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 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 her 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 to~~ 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. provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue her health insurance plan and group life insurance as if she remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment; or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to her by University after the date she obtains other employment, to which she is not entitled under this provision.

5.2.3 ~~The parties have both~~ University has been represented by legal counsel, and coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. ~~and The parties~~ 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 her 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~~ Such compensation is not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

Amended Employment Agreement

5.3.1 The Coach recognizes that her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

5.3.2 The Coach, for her 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 her convenience she 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 1, 2006, the sum of \$5,000.00;~~ (b) ~~if the Agreement is terminated between August 2, 2006 and August 1, 2007 inclusive, the sum of \$4,000.00;~~ (c) ~~if the Agreement is terminated between August 2, 2007 and August 1, 2008 inclusive, the sum of \$3,000.00;~~ (d) ~~if the Agreement is terminated between August 2, 2008 and August 1, 2010 inclusive, the sum of \$2,000.~~ The liquidated damages This sum 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 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing 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 that are extremely difficult to determine with certainty. The parties further agree that the payment of such sums by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University. Such payments 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.

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

5.4 Termination due to Disability or Death of Coach.

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently Amended Employment Agreement

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 she 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 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

Amended Employment Agreement

Coach further agrees that all documents and reports she 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 (College): _____ 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: Debbie Buchanan
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 her official University duties.

| Amended Employment Agreement

14

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 she 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 ~~(COLLEGE)~~ OF IDAHO — COACH

~~Timothy White~~ M. Duane Nellis, President _____ Date _____
Buchanan, _____ Date _____ Debbie

THIS PAGE INTENTIONALLY LEFT BLANK

Debbie Buchanan, University of Idaho, Head Women's Volleyball Coach
MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM

Model Contract Section	Contract Section	Justification for Modification
3.2.5 Supplemental Compensation	3.2.5 Supplemental Compensation	Media compensation is made contingent on Coach's compliance with University's financial stewardship policies. This is now standard in all University coach contracts.
3.2.6 Summer Camps	3.2.6 Supplemental Compensation; summer camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and authorizes coach to operate a summer camp under these conditions in the event the University notifies the coach in writing that it does not intend to operate a camp for a particular period of time. The language and criteria for coach operated summer camps is a modification from the original contract with coach, but it does not deviate in substance from the Board's model contract.
4.3 NCAA Rules	4.3 NCAA Rules	Revised to conform to NCAA Rule 11.2.2 effective 3/8/06. Rule requires a written detailed account of athletically related income and identifies some of the sources that must be reported as "including but not limited to..." This is now standard in all University coach contracts.
5.2.2 University Termination for Convenience	5.2.2 University Termination for Convenience	Language allows the University to offset salary received by Coach for lesser employment obtained after University termination for convenience. Prior language would allow coach to take lesser employment and continue to receive full termination payment. Language also requires Coach to inform University of the terms of any new employment so University can accurately determine the compensation, if any, to which Coach is entitled. References to liquidated damages are deleted because the compensation due upon termination for convenience flows from a contractual right to terminate and not from a breach of the contract. The non-

		terminating party is entitled to compensation, not damages for breach. This is now standard in all University coach contracts.
5.2.3 Representation by Counsel	5.2.3 Representation by Counsel; compensation for termination	Language clarifies that the parties have been represented by counsel or that Coach <u>chose to proceed without counsel</u> during the negotiations. The underlined language is new and recognizes the fact that we cannot require candidates to retain counsel. References to liquidated damages are deleted for the same reason as in 5.2.2. This is now standard in all University coach contracts.
5.3.3 Coach Termination for Convenience	5.3.3 Coach Termination for Convenience	References to liquidated damages are deleted for the same reason as in 5.2.2. This is now standard in all University coach contracts.
5.3.4 Representation by Counsel	5.3.4 Representation by Counsel; for termination	Same as 5.2.3. above. This is now standard in all University coach contracts.

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

SUBJECT

Chief Executive Officers Employment Agreements

REFERENCE

June, 2009

Board approved annual compensation for its chief executive officers and directed staff to prepare employment agreements containing terms and conditions for further Board consideration.

BACKGROUND/DISCUSSION

Staff was directed to develop employment agreements for the Chief Executive Officers for Boise State University, Idaho State University, Lewis-Clark State College, Eastern Idaho Technical College and the Office of the State Board of Education. The Executive Committee of the Board has reviewed the proposed contract and they are now being submitted to the Board for approval.

BOARD ACTION

A motion to approve the employment contract for Boise State University President, Dr. Robert Kustra, in the form provided to the Board and to authorize the Board President to sign on behalf of the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

A motion to approve the employment contract for Idaho State University President, Dr. Arthur Vilas, in the form provided to the Board and to authorize the Board President to sign on behalf of the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

A motion to approve the employment contract for Lewis-Clark State College President, Dr. Dene Thomas, in the form provided to the Board and to authorize the Board President to sign on behalf of the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

A motion to approve the employment letter and term sheet for Eastern Idaho Technical College President, Mr. Burton Waite, in the form provided to the Board and to authorize the Board President to sign on behalf of the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

A motion to approve the employment letter and term sheet for the Office of the State Board of Education Executive Director, Dr. Mike Rush, in the form provided to the Board and to authorize the Board President to sign on behalf of the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

SUBJECT

First reading Board Policy II.G. Faculty (Institutional Faculty Only)

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.G.2.b.(2)

BACKGROUND/DISCUSSION

Board policy II.G.2.b.(2) leaves open for interpretation the annual status of 9-month, full time faculty. The proposed change in the policy is designed to make it clear that for all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching, research, and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution. This item comes with a recommendation from CAAP for approval.

IMPACT

The action will clarify the benefit status for faculty.

ATTACHMENTS

Attachment 1 – Revised Policy – Redline

Page 2

Attachment 2 – Revised Policy – Clean

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

This policy revision stipulates that faculty members are considered full-time employees. The state Attorney General office opined in 2007 that the Board has authority to adopt a 12-month payment methodology for non-classified employees whose duty year is less than 12 months.

The combination of the revised Board policy and AG opinion should clarify that faculty are considered full-time employees when determining benefits and similar calculations.

Staff recommends approval.

BOARD ACTION

A motion to approve the first reading of Board Policy II.G. – Faculty as submitted.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only)****August 2009~~7~~****2. Compensation****a. Salary**

All initial salaries for faculty employees are established by the chief executive officer, subject to approval by the Board where applicable. Payment in addition to regular salaries must be authorized by the chief executive officer and reported to the Board. The Board may make subsequent changes for faculty employee positions or may set annual salary guidelines and delegate to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective and paid to the employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board Authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

b. Salaries, Increases and other Compensation related items

- (1) For purposes of categorizing faculty employees for salary and reporting purposes, the following definition applies: Faculty includes all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold the following academic rank or titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any of these academic ranks. Report in this category deans, directors, or the equivalents, as well as associate deans, assistant deans, and executive officers of academic departments (chairpersons, heads, or the equivalent) if their principal activity is instructional. Do not include student teaching or research assistants or medical interns or residents. (For reporting purposes, deans, associate deans, and assistant deans are included in the executive/administrative category.)
- (2) Credited State Service/Full Time Status - A faculty member employed for an academic year and paid over a twelve-month period will be credited with twelve (12) months of state service. For all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching, research and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution.
- (3) Pay Periods - All faculty employees, including those on academic-year appointments, are paid in accordance with a schedule established by the state controller.
- (4) Automobile Exclusion - Unless expressly authorized by Board policy, no faculty employee will receive an automobile or automobile allowance as part of his/her compensation.

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

ATTACHMENT 3

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: G. Policies Regarding Faculty (Institutional Faculty Only)

August 2009

2. Compensation

a. Salary

All initial salaries for faculty employees are established by the chief executive officer, subject to approval by the Board where applicable. Payment in addition to regular salaries must be authorized by the chief executive officer and reported to the Board. The Board may make subsequent changes for faculty employee positions or may set annual salary guidelines and delegate to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective and paid to the employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board Authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

b. Salaries, Increases and other Compensation related items

- (1) For purposes of categorizing faculty employees for salary and reporting purposes, the following definition applies: Faculty includes all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold the following academic rank or titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any of these academic ranks. Report in this category deans, directors, or the equivalents, as well as associate deans, assistant deans, and executive officers of academic departments (chairpersons, heads, or the equivalent) if their principal activity is instructional. Do not include student teaching or research assistants or medical interns or residents. (For reporting purposes, deans, associate deans, and assistant deans are included in the executive/administrative category.)
- (2) Credited State Service/Full Time Status - A faculty member employed for an academic year and paid over a twelve-month period will be credited with twelve (12) months of state service. For all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching, research and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution.
- (3) Pay Periods - All faculty employees, including those on academic-year appointments, are paid in accordance with a schedule established by the state controller.
- (4) Automobile Exclusion - Unless expressly authorized by Board policy, no faculty employee will receive an automobile or automobile allowance as part of his/her compensation.

THIS PAGE INTENTIONALLY LEFT BLANK

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 20, 2009

SUBJECT

Hiring of a Chief Fiscal Officer by the Office of the State Board of Education (OSBE)

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Board Policy II.B.3.b. requires Board approval for any positions hired at a rate of 75% or greater of the Chief Executive Officer's salary.

The Chief Fiscal Officer is a key position in the Office of the State Board of Education and been vacant since July 2007.

IMPACT

Having this position filled will allow the Board staff to provide the State Board and the institutions with critical information, planning and coordination related to the financial function of institutions and agencies.

BOARD ACTION

A motion to approve the request by the Office of the State Board of Education to hire a Chief Fiscal Officer at a rate of 75% or greater of the Chief Executive Officer's salary.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

THIS PAGE INTENTIONALLY LEFT BLANK