

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 15, 2009**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>PROPOSED AMENDMENTS TO BOARD POLICY</b> Section II.G.2.b.(2) Faculty Compensation - 2nd Reading	Motion to approve
<b>2</b>	<b>ITEM PULLED</b>	
<b>3</b>	<b>PROPOSED AMENDMENTS TO BOARD POLICY</b> I.E. Executive Officers – 2nd Reading	Motion to approve
<b>4</b>	<b>BOISE STATE UNIVERSITY</b> Head Track & Cross Country Coach Contract	Motion to approve

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**SUBJECT**

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

**REFERENCE**

August, 2009

Board Approved first reading of Board Policy II.G.2.b.(2).

**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 – 2<sup>nd</sup> Reading

Page 2

**STAFF COMMENTS AND RECOMMENDATIONS**

This policy revision provides that faculty members are considered full-time employees. The state Attorney General's 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.

There have been no changes to the proposed amendments between the first and second reading. Staff recommends approval.

**BOARD ACTION**

A motion to approve the second 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)****October 2009**

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**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.

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**ITEM PULLED FROM AGENDA**

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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**SUBJECT**

Second Reading – Board Policy I.E.4. Executive Officers

**REFERENCE**

December 2008	Board approved first reading with changes of Board Policy I.E. Executive Officers.
February, 2009	Board discussion of Board Policy I.E. Executive Officers
August, 2009	Board Approved first reading with changes of Board Policy I.E.4.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section I.E. Executive Officers

**BACKGROUND/DISCUSSION**

In August, 2009 the Board approved the first reading to amend Board Policy I.E. to add a new subsection providing for reimbursement of official travel expenses for the spouse of an institutional president. Since approval of first reading, Board staff has continued to work with the institutions in developing this policy. Three substantive changes have been made: (1) the addition of reimbursement for “business related” expenses, which would have to meet the same “*bona fide* business purpose” test; (2) removal of the limitation on reimbursement only for domestic travel; (3) removal of the requirement for prior notice of spousal travel to the executive director of the Board; and (4) removal of the limitation for reimbursing non-business travel.

**IMPACT**

The reimbursement of expenses which do not serve a *bona fide* business purpose to the institution will necessitate, under IRS code, inclusion of such reimbursement in the employee's taxable wages as a taxable fringe benefit.

**ATTACHMENTS**

Attachment 1 – Revised Policy Section I.E.4. - Redline	Page 3
Attachment 1 – Revised Governing Policy Section I.E.4. - Clean	Page 4

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval of the second reading of Board Policy I.E. as submitted.

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**BOARD ACTION**

A motion to approve the second reading of the amendment to Board Policy I.E.4., Executive Officers, Institutional Presidents Official Duties Related Spousal Expenses.

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



**GOVERNING POLICIES AND PROCEDURES**

SECTION: I. GENERAL GOVERNING POLICIES AND PROCEDURES

SUBSECTION: E. Executive Officers

June 2009 October 20094. Institutional Presidents: Official Duties Related Spousale Official Travel  
Expenses

The Board acknowledges that the spouse of an institutional president provides valuable service activities on behalf of the institution, the Board, and to the Idaho higher education system. The Board further recognizes that the spouse ~~will~~may be expected to attend certain functions related to the ongoing mission and purposes of the institution. Accordingly, a spouse shall be eligible for reimbursement of authorized ~~domestic~~-official travel and business related expenses ~~(not international)~~, in accordance with the State of Idaho's travel and expense policies, as long as such expenses~~that~~ have a bona fide business purpose. To be a bona fide business purpose the presence and activities of the spouse at the function must be significant and essential (not just beneficial) to the institution ~~president being able to carry out his/her business purpose for the institution.~~ A president's spouse attending official functions as part of protocol or tradition and where the spouse makes an important contribution to the function can be considered serving a business purpose. For example, ceremonial functions, fundraising events, alumni gatherings, community, and recruiting events are examples of activities at which the presence of a spouse may contribute to the mission of the University. If a spouse has no significant role ~~at the function~~, or performs only incidental duties of a purely social or clerical nature, then ~~attendance such~~ does not constitute a bona fide business purpose. ~~The travel expenses of a spouse that do not constitute a bona fide business purpose for the institution may not be reimbursed under this policy. Spousal travel expenses may not be charged to state funds; various non-state funds controlled by the institution may be used to fund spousal travel expenses. Official travel expenses will be reimbursed under this policy only when prior notice of such travel is provided to the executive director of the Board.~~

**GOVERNING POLICIES AND PROCEDURES****SECTION: I. GENERAL GOVERNING POLICIES AND PROCEDURES****SUBSECTION: E. Executive Officers****October 2009**

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**4. Institutional Presidents: Official Duties Related Spousal Expenses**

The Board acknowledges that the spouse of an institutional president provides valuable service activities on behalf of the institution, the Board, and to the Idaho higher education system. The Board further recognizes that the spouse may be expected to attend certain functions related to the ongoing mission and purposes of the institution. Accordingly, a spouse shall be eligible for reimbursement of authorized official travel and business related expenses, in accordance with the State of Idaho's travel and expense policies, as long as such expenses have a bona fide business purpose. To be a bona fide business purpose the presence and activities of the spouse at the function must be significant and essential (not just beneficial) to the institution. A president's spouse attending official functions as part of protocol or tradition and where the spouse makes an important contribution to the function can be considered serving a business purpose. For example, ceremonial functions, fundraising events, alumni gatherings, community, and recruiting events are examples of activities at which the presence of a spouse may contribute to the mission of the University. If a spouse has no significant role, or performs only incidental duties of a purely social or clerical nature, then such does not constitute a bona fide business purpose. Spousal expenses may not be charged to state funds; various non-state funds controlled by the institution may be used to fund spousal expenses.

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Multi-year contract for a Head Track and Cross Country 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 Track and Cross Country Coach. The contract will be for four years. The salary is \$85,000 per year with incentives as follows:

Athletic Incentive Pay may be earned as follows:

Conference Championship	\$3,000
National Championship	\$10,000
(one of the following)	
Top 5 National Ranking at end of season	\$5,000 or
Top 10 National Ranking at end of season	\$3,000 or
Top 15 National Ranking at end of season	\$2,500 or
Top 20 National Ranking at end of season	\$2,000 or
Top 25 National Ranking at end of season	\$1,000
Qualify Team for NCAA Nationals	\$2,000
(5 or more men & women combined)	
NCAA Individual Champion (Coach Specific)	\$1,500
NCAA Individual Scorer [Top 8 Finish] (Coach Specific)	\$250
Conference Coach of the Year	\$1,000
NCAA Regional Coach of the Year	\$1,500
NCAA National Coach of the Year	\$2,500
Top 5 RegionalTeam Finish in Outdoor Track	\$1,000

Academic Incentive Pay may be earned as follows:

National Score within Sport		
50 <sup>th</sup> - 60 <sup>th</sup> %	=	\$1,400
60 <sup>th</sup> - 70 <sup>th</sup> %	=	\$1,600
70 <sup>th</sup> - 80 <sup>th</sup> %	=	\$1,800
80 <sup>th</sup> % or above	=	\$2,000

Liquidated damages for the Coach leaving within the first three years of his employment agreement are \$10,000.

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**IMPACT**

The Contract is similar to the model coach contract with the exceptions noted on page 33.

**ATTACHMENTS**

Attachment 1 – Proposed Contract	Page 3
Attachment 2 – Proposed Addendum #1	Page 15
Attachment 3 – Redline from the SBOE Model	Page 19
Attachment 4 – Matrix	Page 33

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

A motion to approve the request by Boise State University to enter into a multi-year employment contract with James Hardy, Head Track and Cross Country Coach.

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

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (University) and James W. Hardy (Coach).

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate men's and women's track and field and cross country 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 men's and women's track and field and cross country coach.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four ( 4 ) years, commencing on August 17, 2009 and terminating, without further notice to Coach, on June 30, 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 men's and women's track and field and cross country 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 men's and women's track and field

and cross country 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 men's and women's track and field and cross country camps, the University shall pay Coach supplemental compensation during each year of his employment as head men's and women's track and field and cross country 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 men's and women's track and field and cross country 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.



4.7 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 Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1, 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 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 men's and women's track and field and cross country 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. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: if the Agreement is terminated on or before June 30, 2012, the sum of \$10,000.00. The liquidated damages shall

be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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 men's and women's track and field and cross country 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:                              James W. Hardy  
   1910 University Drive  
   Boise, Idaho 83725-1020

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

\_\_\_\_\_  
James W. Hardy                      Date

\_\_\_\_\_  
Robert Kustra, President                      Date

Approved by the Board on the \_\_\_\_ day of \_\_\_\_\_, 2009.

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**Addendum #1 to Head Coaches Contract for  
James W. Hardy  
Effective August 17, 2009**

This is an addendum to the Employment Agreement between Boise State University (University) and James W. Hardy (Coach) effective August 17, 2009, subject to the approval of the State Board of Education.

**1.** If the Coach is found in violation of NCAA regulations then Coach shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

**2.** Coach may be suspended for a period of time, without pay, or Coach's employment may be terminated if Coach is found to be involved in deliberate and serious violations of NCAA regulations.

**3.** Coach is required to receive, annually, prior written approval from the University President and the Athletic Director for all athletically related income and benefits from sources outside the institution. Sources of such income shall 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 membership;
- e. Complimentary tickets;
- f. Television and radio programs;
- g. Endorsement or consultation contracts with athletics shoe, apparel, or equipment manufacturers.

**4.** Coach 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.

**5.** Coach 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.

**6.** Coach shall be subject to the State Board of Education Rules Manual (IDAPA 08.00) and Governing Policies and Procedures Manual, the Boise State University Policies and Administrative Handbook, the Western Athletic Conference Rules, and the National Collegiate Athletic Association Rules as they now exist, and as they may provide by amendment during the term of this Agreement. Material violation of any of the above rules shall constitute cause for

which the University may in its discretion suspend with or without pay, or terminate employment.

**7.** Coach may be assigned additional duties to operate clinics and/or summer camps. The summer camp will be operated as a University sponsored activity, and the University may pay the Coach reasonable supplemental income, based in part upon the revenue and expenses of the summer camp.

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

**9.** Specific duties of Coach: the Coach is expected to devote full time to coaching and recruitment involving the **Track & Field** team as the Head Coach. The Coach will attend staff meetings, public relation functions, dinners, awards banquets and make appearances as directed by the Athletic Director.

**10.** Compensation (from section 3.1.1 of the Employment Agreement): Coach will be compensated for services under the Agreement with an annual salary of \$85,000.

**11.** Coach may qualify for **Athletic** Incentive Pay as follows:

~ Conference Championship	\$3,000	
~ National Championship	\$10,000	
~Top 5 National Ranking at end of season	\$5,000, or \	
~Top 10 National Ranking at end of season	\$3,000, or \	only one
~Top 15 National Ranking at end of season	\$2,500, or /	
~Top 20 National Ranking at end of season	\$2,000, or /	
~Top 25 National Ranking at end of season	\$1,000 /	
~Qualify Team for NCAA Nationals (5 or more men & women combined)	\$2,000	
~ NCAA Individual Champion (Coach Specific)	\$1,500	
~ NCAA Individual Scorer [Top 8 Finish] (Coach Specific)	\$250	
~ Conference Coach of the Year	\$1,000	
~ NCAA Regional Coach of the Year	\$1,500	

~ NCAA National Coach of the Year	\$2,500
~ Top 5 Regional Team Finish in Outdoor Track	\$1,000

Athletic supplemental pay earned shall be paid on July 1 of each year following the academic year it is earned only if Coach still employed by the University on that date.

**12.** Coach may qualify annually for **Academic** Incentive Pay if the 1 year team APR (for example 2009-2010) ranks nationally within your sport above the 50th percentile as follows:

<u>National Rank Within Sport</u>		
50 <sup>th</sup> - 60 <sup>th</sup> %	=	\$1,400
60 <sup>th</sup> - 70 <sup>th</sup> %	=	\$1,600
70 <sup>th</sup> - 80 <sup>th</sup> %	=	\$1,800
80 <sup>th</sup> % or above	=	\$2,000

Academic supplemental pay earned shall be paid on July 1 following each APR year if Coach is still employed by the University on that date.

Signed:

\_\_\_\_\_  
Dr. Robert Kustra – University President

Date: \_\_\_\_\_

\_\_\_\_\_  
Gene Bleymaier – Director of Athletics

Date: \_\_\_\_\_

\_\_\_\_\_  
James W. – Track & Field Head Coach

Date: \_\_\_\_\_

Approved by the State Board of Education on October \_\_\_\_, 2009.

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## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (University) and James W. Hardy (Coach).

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate men's and women's track and field and cross country 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 (Depending on supplemental pay provisions used) shall cease.~~ 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 men's and women's track and field and cross country coach.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four ( 4 ) years, commencing on August 17, 2009 and terminating, without further notice to Coach, on June 30, 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) ~~An annual~~ A salary of \$ \_\_\_\_\_ per year 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. Each year the Team is the conference champion or co-champion and also becomes eligible for a bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs, and if Coach continues to be employed as University's head (Sport) coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) 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 the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams), and if Coach continues to be employed as University's head (Sport) coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

~~3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University as academically at risk students;~~

~~the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere.~~<sup>1</sup> 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 —Trustees as a document available to the public under the Idaho Public Records Act.

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

~~3.2.5 The Coach shall receive the sum of (amount or computation)~~ 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). ~~Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment)~~. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University 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.

3.2.63 SUMMER CAMP—OPERATED BY UNIVERSITY. Coach agrees that the University has the exclusive right to operate youth ~~(Sport)~~ men's and women's track and field and cross country 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 ~~football~~ men's and women's track and field and cross country 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~~ men's and women's track and field and cross country camps, the University shall pay Coach ~~(amount)~~ per year as supplemental compensation during each year of his employment as head (Sport) men's and women's track and field and cross country coach at the University. This amount shall be paid (terms of payment).

3.2.74 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 (Company Name) 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 an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), 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 (Sport) coach. In order to avoid entering into an agreement with a competitor of (Company Name) 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, including (Company Name), 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 men's and women's track and field and cross country 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.

4.7 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 ~~regulations~~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 ~~notice is given to the University~~ written notice is given to the University. Such termination must occur at a time outside the men's and women's track and field and cross country 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. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: ~~(a) if the Agreement is terminated on or before June 30, 2012 the sum of \$10,000.00.; (b) if the Agreement is terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \_\_\_\_\_; (c) if the Agreement is terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \_\_\_\_\_.~~ The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by, 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. ~~This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University.~~

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit 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~~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 ~~termination~~, suspension, or 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.

5.76 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.

5.87 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 ~~Policy~~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 men's and women's track and field and cross country 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~~ <sup>therefore</sup>, 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: \_\_\_\_\_James W. Hardy  
\_\_\_\_\_~~Last known address on file with~~  
\_\_\_\_\_~~University's Human Resource Services~~  
  
\_\_\_\_\_1910 University Drive  
\_\_\_\_\_Boise, Idaho 83725-1020

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~~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

\_\_\_\_\_  
James W. Hardy                      Date

\_\_\_\_\_  
Robert Kustra, President                      Date

Approved by the Board on the \_\_\_\_ day of \_\_\_\_\_, 2009.

**ATTACHMENT 4****James Hardy, Boise State University, Head Track Coach – 2009 – Multi-Year Contract**

	<b>Model Contract Section</b>	<b>Contract Section</b>	<b>Justification for Modification</b>
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 athletic and academic achievement supplemental compensation and is moved from the base contract 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	3.2.5 Supplemental Compensation; language added	Removed the vesting language and the specific details of the compensation is moved to the addendum.
3.2	Supplemental Compensation	3.2.6 Supplemental Compensation; summer camp	Language provides criteria and conditions 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.

James Hardy, Boise State University, Head Track Coach – 2009 – Multi-Year Contract

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; that the buyout terms for pursuing other employment \$10,000 for years one, two, and three.
	General	Addendum	The addendum contains additional specific duties of the coach as well as sets forth all the compensation terms of the contract, including performance based incentives.