

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 17, 2010**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>BOISE STATE UNIVERSITY</b> Employment Agreement – Head Basketball Coach	Motion to approve
<b>2</b>	<b>UNIVERSITY of IDAHO</b> Employment Agreement – Head Football Coach	Motion to approve
<b>3</b>	<b>EASTERN IDAHO TECHNICAL COLLEGE</b> Reorganization of Administrative Structure	Motion to approve
<b>4</b>	<b>EASTERN IDAHO TECHNICAL COLLEGE</b> New Positions & Deletions of Positions	Motion to approve
<b>5</b>	<b>EASTERN IDAHO TECHNICAL COLLEGE</b> Appointment for the Vice President of Instruction and Student Affairs	Motion to approve
<b>6</b>	<b>AMENDMENT TO BOARD POLICY</b> Section II.G.6.i - Tenure for Academic Administrators – 2 <sup>nd</sup> Reading	Motion to approve

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## BUSINESS AFFAIRS AND HUMAN RESOURCES

JUNE 17, 2010

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### BOISE STATE UNIVERSITY

#### SUBJECT

New Employment Contract with Leon Rice as Head Men's Basketball Coach

#### APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section 2.H

#### BACKGROUND/DISCUSSION

Leon Rice has been offered the position of Head Men's Basketball Coach at Boise State University. Mr. Rice comes to Boise State from Gonzaga University.

The pertinent terms of the contract are as follows:

**Term:** Fixed term contract of five years. If the University changes athletic conferences during the term of the agreement, however, the University agrees to add one year to the then remaining term as long as it does not exceed five years. This was requested by the coach's attorney because conference adjustment will require more time for the program to adjust.

**Compensation:** Mr. Rice will be paid a base salary of \$400,000 per year.

#### Additional Pay for Performance

##### Athletic Incentive Pay:

- Regular season conference champions \$5,000;
- The greater of the following two: Conference Tournament Finalist \$3,000 or Conference Tournament Champion \$15,000;
- NCAA Tournament game wins \$5,000 per game;
- NIT Appearances \$3,000 per game;
- Plus the greater of the following two: Winning recording (more wins than losses) \$4,000 or 20 wins \$8,000

**Academic Incentive Pay:** Coach may qualify for supplemental pay if the academic progress rate for that year meets the following percentages in the national rankings within men's basketball

50-59.9%	\$5,000
60-69.9%	\$7,500
70-79.9%	\$10,000
80% or above	\$12,500

**Buy-Out Provision:** If Mr. Rice terminates early, he will be required to pay liquidated damages if he leaves for a position in one of the following areas: head coach in another NCAA Division I school, professional basketball in any capacity or sports media in any capacity. If he leaves

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prior to the end of the first two years the amount is \$250,000 and before the end of the third or fourth years the amount is \$125,000.

**IMPACT**

This contract will provide continuity for the program with its five year duration. Mr. Rice comes to Boise State University from a successful collegiate program at Gonzaga University.

**ATTACHMENTS**

Attachment 1 – Employment Contract - Clean	Page 3
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Attachment 3 – Contract Comparison Matrix	Page 35

**STAFF COMMENTS AND RECOMMENDATIONS**

The base compensation amount provided in this agreement is \$400,000, funded entirely with local funds (i.e. no State General Funds). The general terms and compensation amounts of the agreement are summarized in the “Background/Discussion” above. The agreement also provides for two other opportunities for supplemental compensation not enumerated above: (1) the coach’s assistance with a summer youth basketball camp; and (2) based on the overall development of the men’s basketball program the University president has the discretion to award supplemental compensation to the coach.

The contract is for a five year term, but may be extended by one year if the University changes athletic conferences. In no case may the remaining term of the contract exceed five years at any given time. For example, if the University changed conferences in July 2010 with an effective date of July 2011, then Mr. Rice’s contract would be extended by one year in July 2011. He would have already completed the first year of his contract by that date, and thus the extension would not have the effect of making the existing term of his contract exceed five years.

Staff recommends approval.

**BOARD ACTION**

A motion to approve the request by Boise State University to enter into a new Employment Agreement with Leon Rice, Head Men’s Basketball 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 Leon Rice (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 Basketball 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.

### **ARTICLE 2**

2.1. Initial Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on March 26, 2010 and terminating on March 31, 2015 (with a potential one (1) year extension as provided in section 2.3) unless sooner terminated in accordance with other provisions of this Agreement.

2.2. 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.

2.3. Conference Change Term Extension. If the conference affiliation of the University (currently the Western Athletic Conference) changes during the term of this agreement and Coach's employment is not already terminated or suspended as otherwise provided herein, this Agreement shall automatically be extended by one (1) additional year to its then existing term; provided, however, that at no time may the term of this

Agreement exceed five (5) years. If the extension of the additional year as provided in this section 2.3 would have the effect of making the then existing term of this agreement longer than five (5) years, then this provision shall be null and void and of no effect.

### 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 \$400,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; 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. Coach may earn supplemental compensation as follows:

##### 3.2.1. Athletic Achievement:

- a) Regular Season Conference Champions \$5,000
- b) The greater of the following two:  
 Conference Tournament Finalist \$3,000  
 Conference Tournament Champions \$15,000
- c) NCAA Tournament game wins \$5,000 per game
- d) NIT appearances \$3,000 per game
- e) The greater of the following two:

Winning Record (more wins than losses)	\$4,000
20 Wins	\$8,000

### 3.2.2 Academic Achievement

- a) Coach shall qualify for supplemental pay annually if the one-year Academic Progress Rate (“APR”, meaning the measurement as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs) for that year meets the following levels in the National Ranking within men’s basketball (four-year rate):
  - i. 50% to 59.9% \$5,000
  - ii. 60% to 69.9% \$7,500
  - iii. 70% to 79.9% \$10,000
  - iv. 80% or above \$12,500

### 3.2.3 Conditions for payment of Academic and Athletic Achievement supplemental compensation.

- a) Payment Date for Academic Achievement Supplemental Compensation and for Athletic Achievement Supplemental Compensation shall be made July 1<sup>st</sup> of each year following the completion of the season in which it is earned
- b) In order to receive the 3.2.1 supplemental compensation, the basketball team’s retention rate must be at least 50 percent for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4 Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate men's basketball 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 Compensation for Media. The Coach may receive a portion of the section 3.1.1(a) compensation from the University, the University's designated media outlet(s), or from public appearance fees or a combination thereof (at the discretion of the University and the Media outlets), each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). This sum may be paid either through the University by-weekly payroll or may be paid

monthly directly from the media outlets. The Coach will be advised annually, or at other times as needed, as to the source of payment. Coach acknowledges that the differing sources of payment may change the nature of the benefits attached to such payments and the University and Coach shall mutually agree on such changes if there is a alteration to the source 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.

3.2.6 Summer Camp. The University may operate a summer youth basketball camp using University facilities, and in so doing, the University shall allow Coach the opportunity to earn supplemental compensation by assisting the University in his capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In considering whether to operate a summer youth camp, the University may consider the following conditions:

- a) The summer youth camp operation reflects positively on the University and the Department;
- b) The summer youth camp is operated as a University activity in which the University shall pay Coach a reasonable supplemental income based in part upon the revenue and expenses of the summer camp. The camp operation will have the opportunity to internally lease University facilities for the summer camp which will be charged as an operating expense of the camp;
- c) The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- d) All revenues and expenses of the camp shall be deposited with and paid by the University.



- e) If required by the University, Coach shall secure through University risk management as an expense of the camp, supplemental 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;

In the event of termination of this Agreement, or suspension from employment of the Coach, University shall not be under any obligation to hold a summer youth camp with the Coach after the effective date of such termination or suspension and the University 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 has the authority to enter into an agreement with a company 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 a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not, without University approval, 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 salary provided pursuant to section 3.1.1 that is also paid through the University, 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 Governing Policies and Procedures and Rule Manual; (b) University's Policies; (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 athletic 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 prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

4.8 Specific Duties of Coach. The Coach is expected to devote full time to coaching and recruitment involving the Men's Basketball team as the Head Coach. The Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by Athletic Director unless excused by Athletic Director. Such functions shall include, but are not limited to, the following:

- a) The annual BAA Bar-B-que;
- b) The weekly BAA gatherings during the relevant season;
- c) The annual BAA Endowment dinner;
- d) The BSU Athletic Hall of Fame dinner;
- e) The BAA Bronze Bronco Award banquet;
- f) The BAA/Alumni Auction dinner;
- g) All Athletic Department staff meetings called by Athletic Director;
- h) Athletic Department Graduation Reception;
- i) Bronco Series Golf Tournaments.

## ARTICLE 5

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

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

- a) A repetitive 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 cure any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) (i) A repetitive or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board or the conference, or (ii) the finding by the NCAA of a repetitive or major violation of the rules or policies of the NCAA, including but not limited to any major violation which may have occurred during the employment of Coach at another NCAA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes a grave violation of the moral sentiment or accepted moral standards of society or that would, in the University's reasonable 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 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 when the Coach had actual knowledge of, or in the proper and faithful performance of his duties should have known of, such violation; or

- i) A major violation of any applicable law or the policies, rules or regulations of the University or the University's governing board, or the finding by the conference or the NCAA of a major violation of the rules or policies of 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, in the proper and faithful performance of his duties, should have known of the violation and could have prevented it by ordinary supervision.

5.1.2 Suspension or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension 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 the 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 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. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

### 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 and pursues employment as, or performs the services or duties regularly associated with, a head coach in NCAA Division 1 collegiate basketball, professional basketball in any capacity, sports media in any capacity he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement if the Agreement is terminated on or before March 31, 2012, the sum of \$250,000 and the sum of \$125,000 if the Agreement is so terminated after March 31, 2012 and prior to March 31, 2014. 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 bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of 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.

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.

5.7 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.

5.8 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 Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Policies.

5.9 Use of Annual Leave. In the event of non-renewal or termination Coach will use all accumulated annual leave prior to the end of the contract period.

## 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 policies regarding furloughs and financial exigency.



6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car 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 1910 University Drive Boise, ID 83725-1020
with a copy to:	President 1910 University Drive Boise, ID 83725-100
the Coach:	Leon Rice 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 Trustees.

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

UNIVERSITY

COACH

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Robert W. Kustra, President      Date

---

Leon Rice      Date

Approved by the Board of Trustees on the \_\_\_\_ day of \_\_\_\_\_, 2010.

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## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (University) and [Leon Rice](#) (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 Basketball](#) 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.~~

### ARTICLE 2

2.1. Initial Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on March 26, 2010 and terminating, ~~without further notice to Coach,~~ on March 31, 2015 (with a potential one (1) year extension as provided in section 2.3) 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.

2.3. Conference Change Term Extension. If the conference affiliation of the University (currently the Western Athletic Conference) changes during the term of this agreement and Coach's employment is not already terminated or suspended as otherwise provided herein, this Agreement shall automatically be extended by one (1) additional year to its then existing term; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension of the additional year as provided in this section 2.3 would have the effect of making the then existing term of this agreement longer than five (5) years, then this provision shall be null and void and of no effect.

### 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 \$400,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits ~~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. Coach may earn supplemental compensation as follows:

~~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. 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.~~

3.2.1. ~~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) Athletic Achievement:~~

a)	Regular Season Conference Champions	\$5,000
b)	The greater of the following two:	
	Conference Tournament Finalist	\$3,000
	Conference Tournament Champions	\$15,000
c)	NCAA Tournament game wins	\$5,000 per game
d)	NIT appearances	\$3,000 per game
e)	The greater of the following two:	
	Winning Record (more wins than losses)	\$4,000
	20 Wins	\$8,000

3.2.2 Academic Achievement

- a) Coach shall qualify for supplemental pay annually if the one-year Academic Progress Rate ("APR", meaning the measurement as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs) for that year meets the following levels in the National Ranking within men's basketball (four-year rate):

i.	50% to 59.9%	\$5,000
ii.	60% to 69.9%	\$7,500
iii.	70% to 79.9%	\$10,000
iv.	80% or above	\$12,500

3.2.3 Conditions for payment of Academic and Athletic Achievement supplemental compensation.

- a) Payment Date for Academic Achievement Supplemental Compensation and for Athletic Achievement Supplemental Compensation shall be made July 1<sup>st</sup> of each year following the completion of the season in which it is earned
- b) In order to receive the 3.2.1 supplemental compensation, the basketball team's retention rate must be at least 50 percent for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4 Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate men's basketball 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 Compensation for Media. The Coach ~~shall~~may receive a portion of the ~~sum of (amount or computation) section 3.1.1(a) compensation~~ from the University ~~or~~ the University's designated media outlet(s), or from public appearance fees or a combination thereof (at the discretion of the University and the Media outlets), 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) . This sum may be paid either through the University by-weekly payroll or may be paid monthly directly from the media outlets. The Coach will be advised annually, or at other times as needed, as to the source of payment. Coach acknowledges that the differing sources of payment~~



may change the nature of the benefits attached to such payments and the University and Coach shall mutually agree on such changes if there is a alteration to the source 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.

3.2.6 ~~SUMMER CAMP OPERATED BY UNIVERSITY~~ ~~Coach agrees that the University has the exclusive right to~~ Summer Camp. The University may operate a summer youth (Sport) camps on its campus basketball camp using University facilities. The, and in so doing, the University shall allow Coach the opportunity to earn supplemental compensation by assisting ~~with the University's camps~~ University in ~~Coach's~~ his 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 (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the University. This amount shall be paid (terms of payment).~~ In considering whether to operate a summer youth camp, the University may consider the following conditions:

- a) The summer youth camp operation reflects positively on the University and the Department;
- b) The summer youth camp is operated as a University activity in which the University shall pay Coach a reasonable supplemental income based in part upon the revenue and expenses of the summer camp. The camp operation will have the opportunity to internally lease University facilities for the summer camp which will be charged as an operating expense of the camp;
- c) The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps;

- d) All revenues and expenses of the camp shall be deposited with and paid by the University.
- e) If required by the University, Coach shall secure through University risk management as an expense of the camp, supplemental 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;

In the event of termination of this Agreement, or suspension from employment of the Coach, University shall not be under any obligation to hold a summer youth camp with the Coach after the effective date of such termination or suspension and the University 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~~ the authority to enter into an agreement with a company 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 a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~—(Company Name)—~~ the University's designated company, or give a lecture at an event sponsored in whole or in part by ~~—(Company Name)—~~ said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not, without University approval, 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~~ salary

provided pursuant to section 3.1.1 [that is also paid through the University](#), 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~~ [Policies](#); (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 [athletic](#) 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 prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

4.8 Specific Duties of Coach. The Coach is expected to devote full time to coaching and recruitment involving the Men's Basketball team as the Head Coach. The Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by Athletic Director unless excused by Athletic Director. Such functions shall include, but are not limited to, the following:

- 
- a) The annual BAA Bar-B-que;
  - b) The weekly BAA gatherings during the relevant season;
  - c) The annual BAA Endowment dinner;
  - d) The BSU Athletic Hall of Fame dinner;
  - e) The BAA Bronze Bronco Award banquet;
  - f) The BAA/Alumni Auction dinner;
  - g) All Athletic Department staff meetings called by Athletic Director;

- h) Athletic Department Graduation Reception;
- i) Bronco Series Golf Tournaments.

## ARTICLE 5

5.1 Termination of Coach for Cause. The University may, in its discretion, temporarily or permanently 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 policies, rules and regulations.

5.1.1 In addition to the definitions contained in applicable policies, 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~~repetitive 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~~cure any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) (i) A deliberate~~deliberate~~repetitive or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, ~~or the conference~~ ~~or the~~, or (ii) the finding by the NCAA of a repetitive or major violation of the rules or policies of the NCAA, including but not limited to any ~~such~~major 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 a grave violation of the moral turpitude~~sentiment or accepted moral standards of society~~ or that would, in the University's reasonable 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 when the Coach had actual knowledge of, or in the proper and faithful performance of his duties should have known of, such violation; or
- i) A major violation of any applicable law or the policies, rules or regulations of the University, or the University's governing board, or the finding by the conference, or the NCAA, of a major violation of the rules or policies of 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, in the proper and faithful performance of his duties, should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.



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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach the 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 opportunity to consult with, legal counsel in the contract negotiations and~~ 5.2.3 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 not, and shall not be construed to be, a penalty. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

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 and pursues employment as, or performs the services or duties regularly associated with, a head coach in NCAA Division 1 collegiate basketball, professional basketball in any capacity, sports media in any capacity 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 March 31, 2012, the sum of \$30250,000.00; (b) and the sum of \$125,000 if the Agreement is so terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between \_\_\_\_\_ after March 31, 2012 and \_\_\_\_\_ inclusive, the sum of \$10,000.00.~~ prior to March 31, 2014. 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 opportunity to consult with, legal counsel in the contract negotiations and~~ 5.3.4 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 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. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of 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.

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, 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.

5.7 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.

5.8 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 ~~of Regents of the University of Idaho~~ Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University ~~Policy or Faculty Staff Handbook~~ [Policies](#).

5.9 Use of Annual Leave. In the event of non-renewal or termination Coach will use all accumulated annual leave prior to the end of the contract period.

## 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~~polices regarding furloughs and financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car 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~~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, ID 83725-1020

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

the Coach:                            [Leon Rice](#)  
    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 Trustees.

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

UNIVERSITY

COACH

Robert W. Kustra, President      Date

Leon Rice Date

Approved by the Board of Trustees on the \_\_\_\_ day of \_\_\_\_\_, 2010.

## Leon Rice, Boise State University, Head Men's Basketball Coach – 2010 – Multi-Year Contract

	<b>Model Contract Section</b>	<b>Contract Section</b>	<b>Justification for Modification</b>
1.3	Duties	1.3 Duties, and sections 5.5, 5.7, 5.8	Deleted the reassignment clause.
2.1	Term	2.1 to 2.3 Extension Term	Added language that would add one (1) additional year to the contract if there is a conference change during the term of the agreement.
3.2	Supplemental Compensation	3.2.1, 3.2.2, 3.2.3, 3.2.4 Supplemental Compensation are deleted and replaced	Language provides specific criteria for athletic achievement supplemental compensation.
3.2	Supplemental Compensation	3.2.5 Media Compensation	Language changed to reflect potential payment of media compensation.
3.2	Supplemental Compensation	3.2.6 Supplemental Compensation; summer camp	Language provides criteria and conditions applicable to University operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
4.8	N/A	4.8 Specific Duties	Language provides for specific duties not addressed in the Model.
5.1	Termination	5.1 Termination – Deleted language	Deleted reassignment provisions.
5.1	Termination	5.1.1 Adequate Cause	Clarified language in several provisions defining adequate cause for dismissal.
5.3	Termination by coach for convenience	5.3.2, 5.3.3, 5.3.4, Termination by coach for convenience; language added	If the Coach terminates to pursue employment as, or performs the services or duties regularly associated with, a head coach in NCAA Division 1 collegiate

## Leon Rice, Boise State University, Head Men's Basketball Coach – 2010 – Multi-Year Contract

	<b>Model Contract Section</b>	<b>Contract Section</b>	<b>Justification for Modification</b>
			basketball, professional basketball in any capacity, or sports media, then the payment is \$250,000 for years one and two and \$125,000 for years three and four.
5.9	N/A	5.9 Annual Leave	In the event of termination, annual leave must be used during the remaining term.
6.1	6.1 Board Approval	6.1 Board Approval – added language	Added language regarding the contract being subject to furloughs.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 17, 2010**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Multi-year contract for head intercollegiate football coach

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

The University of Idaho has agreed, subject to Regents' approval, to terms extending employment of the head intercollegiate football coach through December 16, 2014 and replacing the final year and a half of the current contract. The university submits the attached multi-year contract to the Regents for approval. The primary terms of the agreement are set forth below. The entire contract, a redlined version showing changes from the Board model contract, and a matrix comparison to the Board model contract are attached.

The extended term of the employment contract is four years, five and a half months, commencing on July 1, 2010, and terminating on December 16, 2014.

The annual base salary is \$165,796.80 based on a December 17 to December 16 employment year. Coach is eligible to participate in university-wide changes in employee compensation as approved by the president and athletic director.

Annual media payments per football season are as follows:

- i. 2011 season - \$190,000
- ii. 2012 season - \$200,000
- iii. 2013 season - \$210,000
- iii. 2014 season - \$220,000
- iv. 2015 season - \$230,000

Coach is entitled to receive the following incentive/supplemental compensation:

- Conference champions or co-champion = \$12,753.60
- Seven regular season wins = \$12,753.60
- National Coach of the Year = \$10,000
- Conference Coach of the Year = \$5,000
- BCS Bowl game = \$100,000
- Team ranking in top 25 in final ESPN/USA Today poll = \$12,753.60
- Academic achievement and behavior of team: Team's annual APR exceeds the Football Bowl Subdivision average = \$5,000

Maximum potential annual compensation (base salary, media payment and maximum potential incentive) is as follows:

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 17, 2010**

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- FY 2011 \$514,057.60
- FY 2012 \$524,057.60
- FY 2013 \$534,057.60
- FY 2014 \$544,057.60
- 07/01/14 to 12/16/14 \$464,251.00

Coach may participate in youth football camps as follows:

- Remaining income from any university operated camp, less \$500, after all claims, insurance, and expenses of camp have been paid, OR
- in the event university elects not to operate a camp, coach may do so within Board guidelines for such camps.

**IMPACT**

This contract will provide continuity for the University's football program with its approximately 4½ year duration. Mr. Akey is coming off of a successful season, with the team's first bowl appearance since 1998.

Mr. Akey's annual base salary will be paid entirely from appropriated state general funds.

**ATTACHMENTS**

Attachment 1 – Employment Contract – clean	Page 3
Attachment 2 – Employment Contract – redline	Page 19
Attachment 3 - Contract Comparison Matrix	Page 37

**STAFF COMMENTS AND RECOMMENDATIONS**

The general terms and compensation amounts of the contract are summarized in the "Background/Discussion" above). The contract provides for termination for convenience (by either party), but stipulates that the non-terminating party is entitled to compensation. These compensation amounts are set forth in the contract. Staff recommends approval.

**BOARD ACTION**

A motion to approve the University of Idaho's multi-year employment contract for head intercollegiate football coach for a term commencing on July 1, 2010 and terminating on December 16, 2014 in substantial conformance with the employment agreement submitted to the Board in Attachment 1.

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



## EMPLOYMENT AGREEMENT

This 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 ("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 3.2.9 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment commencing on July 1, 2010, and terminating, without further notice to Coach, on December 16, 2014, unless sooner terminated in accordance with other provisions of this Agreement, and unless the Team participates in a bowl game, in which event the date of termination will be adjusted by mutual agreement of the parties.

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 \$165,796.80, 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, and if Coach continues to be employed as University's head football coach as of the ensuing July 1<sup>st</sup>, the University shall pay 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 co-championship occurs. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year the football program achieves at least 7 regular season wins, 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 Team achieves 7 wins.

3.2.3. National Coach of the Year. For receiving the "Bear Bryant Coach of the Year" award, 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 \$10,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4. BCS Bowl game. If the Team participates in any of the five BCS bowl games, Coach shall receive supplemental compensation of \$100,000. The

University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5 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 1<sup>st</sup>, 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.

3.2.6 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.

3.2.7 Each year Coach shall be eligible to receive supplemental compensation based on the academic achievement and behavior of Team members. If the Team's annual APR (for the previous fall and spring semesters) exceeds the Football Bowl Subdivision (FBS) average, 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. 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.

3.2.8 The Coach shall receive 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) the sum of:

- i. From July 1, 2010 through June 30, 2011:  
\$190,000 per year;
- ii. From July 1, 2011 through June 30, 2012:  
\$200,000 per year;
- iii. From July 1, 2012 through June 30, 2013,  
\$210,000 per year;
- iv. From July 1, 2013 through June 30, 2014:  
\$220,000 per year;
- v. From July 1, 2014 through December 16, 2014 (or  
adjusted contract termination date if applicable):  
\$230,000.

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) 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 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, through a media outlet that is not University-designated, 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.

3.2.9 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's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth 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 youth football camps, the University shall pay Coach the remaining income from the youth 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 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.

3.2.10 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, and give a lecture at an event sponsored in whole or in part by Nike, and 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 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 that 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 that 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 that 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 the 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 that 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. 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 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 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 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 agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. 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 sums 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 sum: (a) if the Agreement is terminated on or before June 30, 2011, the sum of \$400,000.00; (b) if the Agreement is terminated between July 1, 2011 and June 30, 2012 inclusive, the sum of \$350,000.00; (c) if the Agreement is terminated between July 1, 2012 and June 30, 2013 inclusive, the sum of \$250,000.00;

(d) if the Agreement is terminated between July 1, 2013 and June 30, 2014 inclusive, the sum of \$165,000; (e) if the Agreement is terminated between July 1, 2014, and December 16, 2014 inclusive, the sum of \$165,000. The applicable 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. The parties agree that such costs 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 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 provided 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
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with a copy to:	President University of Idaho P.O. Box 443151 Moscow, ID 83844-3151
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the Coach:	Robb Akey
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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

\_\_\_\_\_  
M. Duane Nellis, President                      Date

\_\_\_\_\_  
Robb Akey                      Date

Approved by the Board of Regents on the \_\_\_\_ day of \_\_\_\_\_, 2010.

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~~Approved by the SBOE March 18, 2000 (applies to all Board governed institutions).~~

## EMPLOYMENT AGREEMENT

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

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University ~~(College)~~ shall employ Coach as the head coach of its intercollegiate ~~(Sport)~~ football team ~~(“Team.”)~~. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the ~~University (College)’s~~ 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 (College)’s~~ University’s President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)’s~~ University’s athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ 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~~ section 3.2.1 through ~~(Depending on supplemental pay provisions used)~~ 3.2.9 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment ~~of \_\_\_\_\_ (\_\_\_\_) years,~~ commencing on ~~\_\_\_\_\_ July 1, 2010,~~ and terminating, without further notice to Coach, on ~~\_\_\_\_\_ December 16, 2014,~~ unless sooner terminated in accordance with other provisions of this Agreement, and unless the Team participates in a bowl game, in which event the date of termination will be adjusted by mutual agreement of the parties.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University ~~(College)~~ 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 (College)’s~~ University’s Board of ~~(Regents or 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 ~~(College)~~.

### ARTICLE 3

#### 3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~\_\_\_\_\_ per year~~ \$165,796.80, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, ~~and such salary increases as may be determined appropriate by the eligible to receive University-wide changes in employee compensation approved by the~~ Director and President ~~and approved by the University (College)'s Board of (Regents or Trustees) \_\_\_\_\_~~;
- b) ~~The opportunity to receive such~~ Such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) ~~The opportunity to receive such~~ Such employee benefits as the ~~University (College)'s~~ 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 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 (College)'s~~ University's head ~~(Sport)~~ football coach as of the ensuing July 1<sup>st</sup>, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~(amount or computation)~~ of one-thirteenth (1/13) of Coach's Annual Salary during the fiscal year in which the championship ~~and (bowl or other post season) eligibility are achieved. or co-championship occurs.~~ The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

#### 3.2.2 \_\_\_\_\_

3.2.2. Each year the ~~Team is ranked in~~ football program achieves at least 7 regular season wins. 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 (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) University shall pay to Coach supplemental compensation in an amount equal to ~~—(amount or computation)—~~ of Coach's one-thirteenth (1/13) of Coach's Annual Salary in effect on during the fiscal year in which the Team achieves 7 wins.

3.2.3. National Coach of the Year. For receiving the date "Bear Bryant Coach of the final poll Year" award, 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 \$10,000. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4. BCS Bowl game. If the Team participates in any of the five BCS bowl games, Coach shall receive supplemental compensation of \$100,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.3~~ ~~5~~ 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 1<sup>st</sup>, University shall be eligible to receive pay Coach supplemental compensation in an amount equal to ~~—(amount or computation)—~~ 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.

3.2.6 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.

3.2.7 Each year Coach shall be eligible to receive supplemental compensation 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~~ If the Team's annual APR (for all athletes, but particularly those who entered the University (College) as academically at risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, the previous fall and elsewhere, spring semesters) exceeds the Football Bowl Subdivision (FBS) average, 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. 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 or 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 (College) 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) from the University (College) or the University (College)'s~~ 3.2.8 The Coach shall receive 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 the sum of:

- i. From July 1, 2010 through June 30, 2011:  
\$190,000 per year;
- ii. From July 1, 2011 through June 30, 2012:  
\$200,000 per year;
- iii. From July 1, 2012 through June 30, 2013,  
\$210,000 per year;
- iv. From July 1, 2013 through June 30, 2014:  
\$220,000 per year;
- v. From July 1, 2014 through December 16, 2014 (or  
adjusted contract termination date if applicable):  
\$230,000.

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 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, 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) 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 ~~(College)~~ are the property of the University ~~(College)~~. The University ~~(College)~~ shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University ~~(College)~~ in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any ~~competing~~ radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, 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~~that are broadcast on radio or television that conflict with those broadcast on the ~~University (College)'s~~University's designated media outlets.

3.2.6 ~~(SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~9 Coach agrees that the University ~~(College)~~ has the exclusive right to operate youth ~~(Sport)~~football camps on its campus using University ~~(College)~~ facilities. ~~—~~ The University ~~(College)~~ shall allow Coach the opportunity to earn supplemental compensation by assisting with the ~~University (College)'s~~University's camps in Coach's capacity as a University ~~(College)~~ employee. ~~—~~ Coach hereby agrees to assist in the marketing, supervision, and general administration of the ~~University (College)'s~~University's youth 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 (College)'s summer~~University's youth football camps, ~~the University (College) shall pay Coach (amount) per year as supplemental compensation during each year~~the remaining income from the youth football camps, less \$500, after all claims, insurance, and expenses of his employment as head (Sport) coach at the University (College). This amount shall be such camps have been paid ~~(terms of payment)~~ —.

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 ~~—————~~ 10 Coach agrees that the University ~~(College)~~ 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 ~~(College)~~. Coach recognizes that the University ~~(College)~~ is negotiating or has entered into an agreement with ~~—(Company Name)—~~ Nike to supply the University ~~(College)~~ with athletic footwear, apparel and/or equipment. Coach agrees that, upon the ~~University (College)'s~~ University's reasonable request, Coach will consult with appropriate parties concerning ~~an —(Company Name)— product's~~ Nike products' design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~—(Company Name)—, or Nike, and~~ give a lecture at an event sponsored in whole or in part by ~~—(Company Name)—, or Nike, and~~ make other educationally-related appearances as may be reasonably requested by the University ~~(College)~~. 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)—~~ football coach. In order to avoid entering into an agreement with a competitor of ~~—(Company Name)— Nike,~~ Coach shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. Coach shall also report such outside income to the University ~~(College)~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including ~~—(Company Name)— Nike,~~ and will not participate in any messages or promotional appearances ~~which~~ that 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 ~~(College)~~ 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 ~~(College)~~ 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~~that 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 ~~(College)~~ 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 ~~—(College)—~~, the ~~University~~ ~~(College)'s~~University's governing board, the conference, and the NCAA ~~(or NAIA)~~; 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 (College)'s~~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 ~~(College)~~ and Department at all times. ~~The names or titles of employees whom Coach supervises are attached as Exhibit A.~~ The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) ~~University (College)'s~~University's Handbook; (c) ~~University (College)'s~~University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~—(Sport)—~~football conference of which the University ~~(College)~~ 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 ~~—(College)—~~, would reflect adversely upon the University ~~(College)~~ 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~~that are consistent with Coach's obligations under this Agreement. Coach may not use the ~~University~~ ~~(College)'s~~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 ~~(or NAIA)~~ Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s~~ University's President for all athletically related income and benefits from sources outside the University ~~(College)~~ and shall ~~report~~ provide a written detailed account of the source and amount of all such income and benefits to the ~~University (College)'s~~ 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 ~~(College)~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. 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 ~~(College)~~ booster club, University ~~(College)~~ alumni association, University ~~(College)~~ 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 ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, or the NCAA ~~(or NAIA)~~.

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 the President and the ~~University (College)'s~~ University's Board of ~~-(Trustees or 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.

4.76 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 ~~(College)~~ 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 the applicable policies, rules and/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 and/or regulations of the University ~~(College)~~, 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, ~~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 ~~(College);~~;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University ~~(College)~~'s governing board, the conference or the NCAA ~~(NAIA)~~, including but not limited to any such violation ~~which~~that 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 (College)'s~~ University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)'s~~ University's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, or the NCAA ~~(NAIA)~~;

- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the ~~University~~ ~~(College)~~'s ~~University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 ~~(College)~~, the ~~University~~ ~~(College)~~'s ~~University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 ~~(College)~~ 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 ~~(College)~~ 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~~ ~~(College)~~'s ~~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 ~~(College)~~ 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 ~~(NAIA)~~ 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 ~~(NAIA)~~ enforcement procedures. This section applies to violations occurring at the University ~~(College)~~ or at previous institutions at which the Coach was employed.

## 5.2 Termination of Coach for Convenience of University ~~(College)~~.

5.2.1 At any time after commencement of this Agreement, University ~~(College)~~, 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 ~~(College)~~ terminates this Agreement for its own convenience, University ~~(College)~~ shall be obligated to pay Coach, ~~as liquidated damages and not a penalty,~~ the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University ~~(College) until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first,~~ until the term of this Agreement ends or until Coach obtains 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 ~~(College)~~ employee until the term of this Agreement ends or until Coach obtains employment or any other employment providing Coach with a reasonably comparable employment 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 agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. 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 ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such ~~liquidated damages~~ sums by University ~~(College)~~ 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 (College). 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 ~~(College)~~ for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University ~~(College)~~ 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 ~~(College)~~ 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 ~~(College)~~. Termination shall be effective ten (10) days after notice is given to the University ~~(College)~~.

———5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ 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 ~~(College)~~, ~~as liquidated damages and not a penalty, for the breach of this Agreement~~ the following sum: (a) if the Agreement is terminated on or before ~~June 30, 2011~~, the sum of \$~~30400~~,000.00; (b) if the Agreement is terminated between ~~July 1, 2011~~ and ~~June 30, 2012~~ inclusive, the sum of \$~~20350~~,000.00; (c) if the Agreement is terminated between ~~July 1, 2012~~ and June 30, 2013 inclusive, the sum of \$250,000.00; (d) if the Agreement is terminated between July 1, 2013 and ~~June 30, 2014~~ inclusive, the sum of \$~~10,000.00~~165,000; (e) if the Agreement is terminated between July 1, 2014, and December 16, 2014 inclusive, the sum of \$165,000. The ~~liquidated damages~~ applicable 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 ~~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 ~~(College)~~ will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs, if Coach terminates this Agreement for convenience, ~~which damages~~. The parties agree that such costs 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 ~~(College)~~ shall constitute adequate and reasonable compensation to University ~~(College)~~ ~~for the damages and injury suffered by it because of such termination by Coach~~. The liquidated damages. 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 ~~(College)~~.

—————5.3.5 Except as ~~provide~~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 (College)'s~~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 ~~(College)~~ 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 (College)'s~~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 ~~(College)~~.

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

5.6 ~~No Liability.~~ The University ~~(College)~~ 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 ~~(College)~~ employees, if the University ~~(College)~~ 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



~~(College)~~ from compliance with the notice, appeal, and similar employment-related rights ~~provide~~provided 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 ~~(College)~~ Faculty-Staff Handbook.

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the ~~University (College)'s~~University's Board of ~~-(Regents-or-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 (College)'s~~University's Board of ~~-(Regents-or-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 ~~-(Regents or Trustees)-~~ and ~~University (College)'s~~University's rules regarding financial exigency.

6.2 University ~~(College)~~ 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 ~~(College)~~ or developed by Coach on behalf of the University ~~(College)~~ or at the ~~University (College)'s~~University's direction or for the ~~University (College)'s~~University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University ~~(College)~~. 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 ~~(College)~~.

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~~ ~~(College)~~'s 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: \_\_\_\_\_ Robb Akey  
 Last known address on file with  
~~University~~ ~~(College)~~'s 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 (College)'s~~ University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (~~College~~) (including contraction, abbreviation or simulation), except in the course and scope of his official University (~~College~~) 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 (College)'s~~ University's Board of ~~(Regents or Trustees)~~.

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

COACH

\_\_\_\_\_  
 \_\_\_\_\_  
M. Duane Nellis, President \_\_\_\_\_ Date \_\_\_\_\_ Robb Akey  
 Date

Approved by the Board of ~~(Regents or Trustees)~~ on the \_\_\_\_ day of \_\_\_\_\_,  
~~2000~~ \_\_\_\_\_, 2010.

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## ATTACHMENT 3

<b>Model Contract Section</b>	<b>Contract Section</b>	<b>Modification/Justification for Modification</b>
3.1.1 Regular Compensation	3.1.1 Regular Compensation	Added language that Coach will be eligible for University-wide changes in employee compensation as approved by Director and President.
3.2. Supplemental Compensation	3.2.1 Supplemental Compensation	Changed to entitle coach to supplemental compensation if the team is conference champion or co-champion.
3.2 Supplemental Compensation	3.2.2 Supplemental Compensation	Renumbered. New 3.2.2 entitles coach to supplemental compensation if Team wins 7 games.
3.2 Supplemental Compensation	3.2.3 Supplemental Compensation	Renumbered. New 3.2.3 allows for supplemental compensation for National Coach of the Year designation.
3.2 Supplemental Compensation	3.2.4 Supplemental Compensation	Added section allowing for supplemental compensation if Team participates in BCS bowl.
3.2 Supplemental Compensation	3.2.4 Supplemental Compensation	Deleted section allowing for supplemental compensation based on overall development of football program, ticket sales, fundraising and outreach.
3.2 Supplemental Compensation	3.2.5 Supplemental Compensation	Renumbered. New 3.2.5 entitles coach to supplemental compensation if team is ranked in top 25 in final ESPN/USA Today poll.
3.2 Supplemental Compensation	3.2.6 Supplemental Compensation	Renumbered. New 3.2.6 entitles coach to supplemental compensation if Coach is named Conference Coach of the Year. Added language allowing Coach to operate football summer camp if University opts not to.
3.2 Supplemental Compensation	3.2.7 Supplemental Compensation	Former 3.2.3. Entitles coach to supplemental compensation if Team APR exceeds Football Bowl Subdivision average.
3.2 Supplemental Compensation	3.2.8 Supplemental Compensation	Former 3.2.5. Established annual increase of \$10,000 in media payment in each year of the contract. Changed language to divide media payment into two separate payments, with Coach's right to second payment vesting on date of Team's last game. Added language stating that media payment is contingent on (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches; and (3) Coach's compliance with University's financial stewardship policies.
3.2 Supplemental Compensation	3.2.9 Supplemental Compensation (summer camps)	Former 3.2.6. Allows Coach to operate summer camp if University opts not to.
3.2 Supplemental Compensation	3.2.10 Supplemental Compensation (footwear)	Former 3.2.7.
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..."
5.1 Termination of Coach for Cause	5.1.1 Termination of Coach for Cause	Added language making definitions in Board, conference, NCAA, and University policies, rules, and regulations applicable to termination for cause.
5.1. Termination of Coach for Cause	5.1.2 Termination of Coach for Cause	Added language providing that within fifteen days of receiving notice of suspension, reassignment, or termination, Coach may request review of the decision by President. The request for review will not stay the effectiveness of the action, and review is at the President's sole discretion.
5.2.2 Termination of Coach for Convenience of University	5.2.2 Termination of Coach for Convenience of University	Added language that 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

# ATTACHMENT 3

Model Contract Section	Contract Section	Modification/Justification for Modification
		damages for breach.
5.2.3 Termination of Coach for Convenience of University	5.2.3 Termination of Coach for Convenience of University	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.
5.3 Termination by Coach for Convenience	5.3.3 Termination by Coach for Convenience	References to liquidated damages are deleted for the same reason as in 5.2.2. Changed payment amounts to \$400,000 for the first year of the contract, \$350,000 for the second year, 250,000 for the third year, and \$165,000 for the final two years. Given the University's current need for stability in the football program and other factors, these amounts are a reasonable estimate of the damages the University would incur if the coach terminated the agreement prematurely for convenience.
5.3 Termination by Coach for Convenience	5.3.4 Termination by Coach for Convenience	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.
6.16 Opportunity to Consult with an Attorney	6.16 Opportunity to Consult with an Attorney	Adds Coach's acknowledgment that he has either consulted with legal counsel or chosen not to.

## **BUSINESS AFFAIRS AND HUMAN RESOURCES**

**JUNE 17, 2010**

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### **EASTERN IDAHO TECHNICAL COLLEGE**

#### **SUBJECT**

Implementation of reorganization of the Administration of Eastern Idaho Technical College

#### **BACKGROUND/DISCUSSION**

The Administrative structure of Eastern Idaho Technical College (EITC) has been in place for several years. There are currently three (3) deans, Dean of Instruction, Dean of Students, and Dean of Administration that report directly to the college president. The Dean of Students also currently fills the position of a full-time admissions counselor in the admissions office. Therefore, most of this dean's time is spent meeting with students and helping them plan class schedules etc. The administrative and planning responsibilities of this position get limited attention, since there is not time to do that. The Dean of Administration also currently fills the position of controller. The College has a small business office staff and so the majority of the day-to-day accounting and finance duties fall to the controller. This leaves little if any time to work with building and facility issues, human resources, and any oversight or planning functions. In recent audit reports, the College has been cited as being deficient in the separation of accounting duties along with concerns that one person has access to all accounting functions. The State Board of Education Audit Committee has asked the College to make progress in removing these deficiencies. Under the current structure, while an Assistant Controller was added in January of 2009, adequately addressing this concern is difficult. The Dean of Instruction is responsible for instructional staff and is the only dean position that does not have another full-time job as a part of his current duties.

The College president's advisory council (PAC) consists of the college president and the three deans. This council meets regularly to set policy and discuss plans for the College, but with two of the three deans currently filling other full time responsibilities it is difficult for them to spend any time and effort on any long term planning processes or ideas.

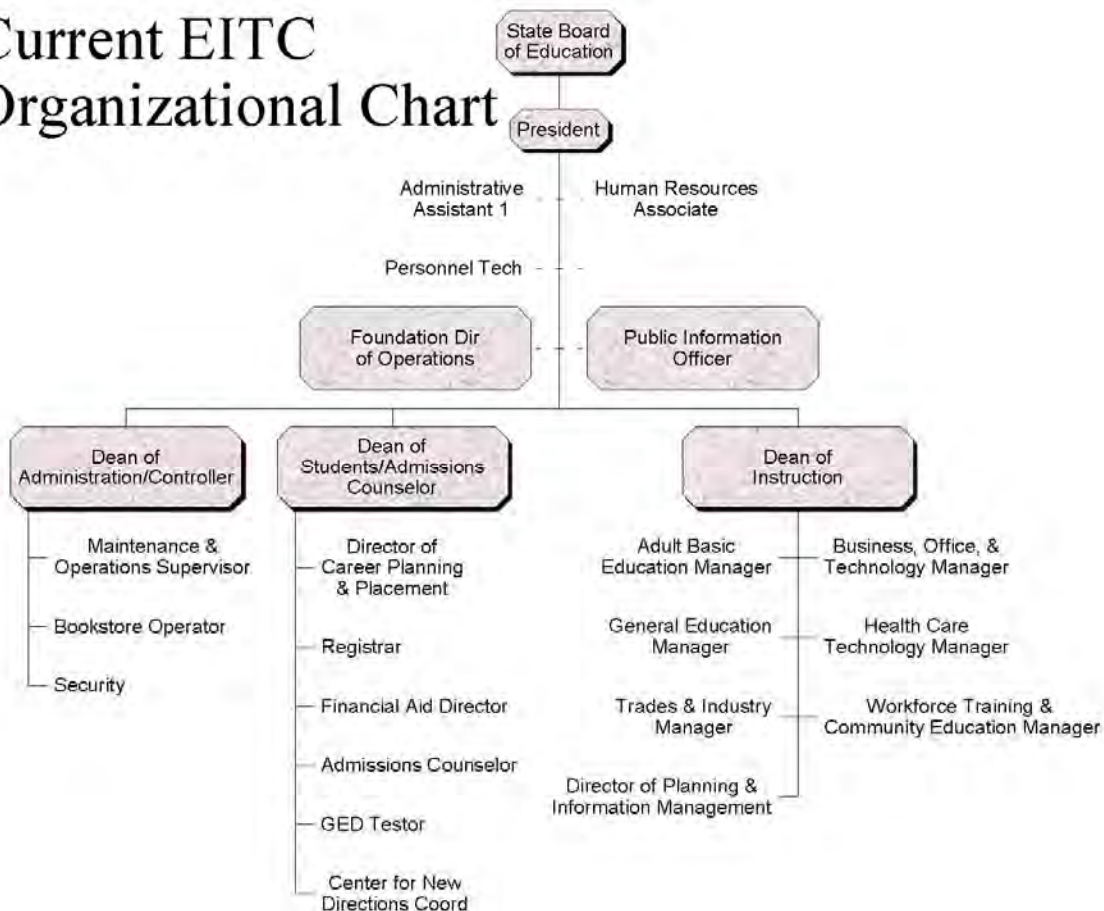
This has been a concern of President Waite since his arrival on campus in 2008. He has spent considerable time looking at other two year college administration structures to see what was being used at other institutions. This collection of information was done with the idea in mind that the opportunity for a change in the administration structure would come as a result of a vacancy in one of the dean positions. President Waite decided there would be no need to have discussions about administrative structure changes on the campus until the opportunity for such a change occurred. On March 12, 2010, Dr. Scott Hamilton, Dean of Instruction, announced that he had accepted a position as President of Mountain Empire Community College in Big Stone Gap, Virginia, and that he would be leaving (EITC) in June of 2010. With this announcement, President

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 17, 2010**

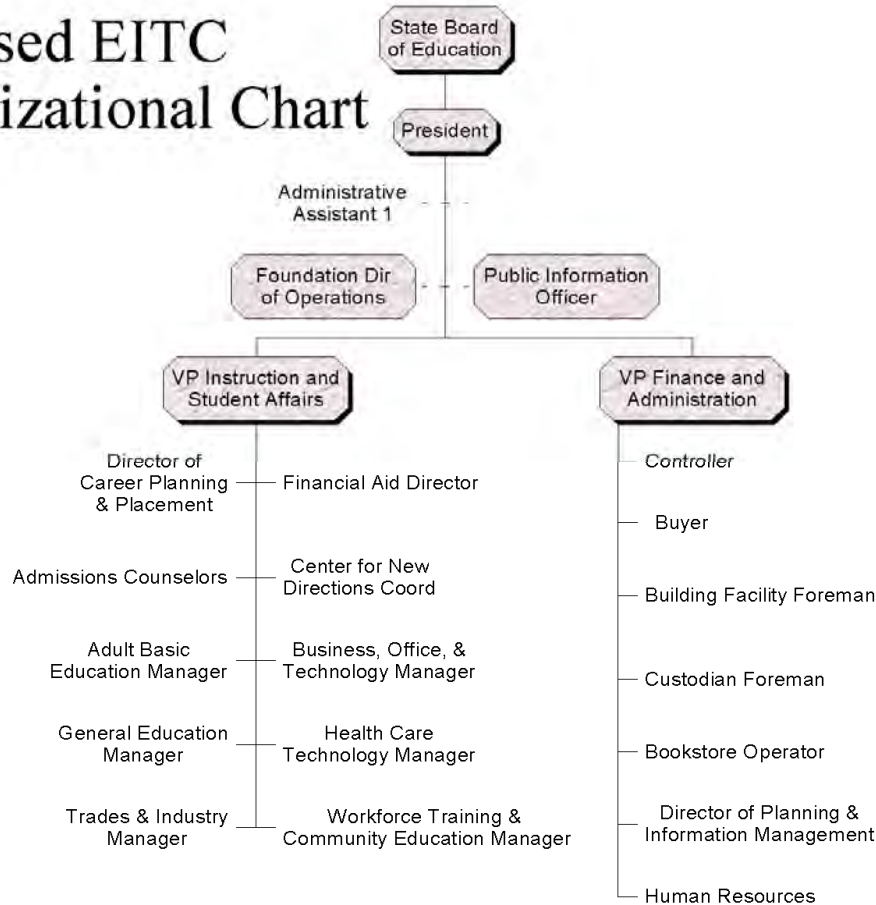
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Waite began discussions on campus about a new administrative structure. It consists of eliminating all current dean positions and creating two vice president positions: a Vice President of Instruction & Student Affairs and a Vice President of Finance & Administration. These positions would no longer have additional full-time job responsibilities. This new structure would require the addition of an admissions/counseling position, a controller position and an administrative assistant position. The organizational charts indicate the current structure and the new proposed structure.

## Current EITC Organizational Chart



## Proposed EITC Organizational Chart



This new structure would allow the College to then divide the operations of the College into two functional categories: the Vice President of Instruction & Student Affairs would have responsibility for student centered functions and the Vice President of Finance & Administration would have responsibility for business functions. Currently there are units reporting to either the Dean of Instruction or the Dean of Students that are really college business functions. In this restructure process, reporting lines of these units would be changed to report to the appropriate vice president. The auditors concern over separation of duties (the combined duties performed by the Dean of Administration/Controller) would be addressed because those responsibilities would be divided thus eliminating the issue.

President Waite presented this new administrative structure to (PAC) on March 22, 2010. The new structure was presented to the Instructional Advisory Council (IAC) on April 7, 2010. It was reviewed again at (PAC) on April 12, 2010, with approval given to move forward with discussions among the members of the campus community. Employee forums with the college president were held on April 15 and again on April 20. This gave all college employees the opportunity to meet with President Waite to hear about this new administrative structure and to ask questions and provide input. All managers were encouraged to include on

## **BUSINESS AFFAIRS AND HUMAN RESOURCES**

**JUNE 17, 2010**

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their staff meeting agendas this suggested change and to have employees either e-mail the president with comments or questions, attend the forums or visit with him in person.

As these various processes took place there was no opposition expressed to the suggested change. On Wednesday, May 5 as a part of the State Employee Recognition activities, President Waite announced to the college staff and faculty his plans to move forward with this restructure proposal by taking it to the State Board of Education to request approval.

### **IMPACT**

This new organizational structure will do several things. First, by combining Instruction and Student Affairs under one person, the interaction among those groups that work most closely with students will experience improved coordination and the needs of the students will be better served. Second, conflicts between student service processes and faculty will be resolved more quickly. Third, the combination of finance and administration under one person without the additional responsibility of being controller will allow a recommended separation of duties in the accounting area. Fourth, it will improve planning and oversight for purchasing, human resources and facilities.

### **STAFF COMMENTS AND RECOMMENDATIONS**

In the presentation of audit results for FY 2009 prepared by Moss Adams, EITC had a finding for lack of segregation of duties over financial reporting and year-end closing entries. The finding reads in part:

“The current year significant deficiency is the prior year's partially resolved material weakness. This item was reported as a material weakness due to a lack of adequate segregation of duties over financial reporting and year end closing entries and the sufficiency of supporting documentation. In the current year, this finding has been downgraded to a significant deficiency due to the College's changes to their processes and additions to their Business office staff. In particular, the addition of a new Assistant Controller during the current year has allowed segregation of critical accounting responsibilities related to controls over financial reporting. This addition has also allowed the business office some ability to obtain review over critical functions and time to document some functions. While there has been improvement, the controller still has the ability to control many of the accounting transactions from the beginning of the process through the preparation of the financial statements and there is a risk that errors may not be detected.”

While the College has addressed some of the deficiencies identified by the auditors, segregation of duties remains an issue. The proposed reorganization would resolve this issue in particular.

Overall, the proposed structure eliminates an executive level position and



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reworks the administrative functions and duties which will enable the College's executive team to better meet the needs of the constituencies they serve.

The two subsequent agenda items are contingent upon the approval of this proposed reorganization plan.

Staff recommends approval.

### **BOARD ACTION**

A motion to approve the request by Eastern Idaho Technical College to proceed with implementation of the proposed reorganization of the College's central administrative functions, duties and non-instructional personnel.

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

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**EASTERN IDAHO TECHNICAL COLLEGE**

**SUBJECT**

New positions & deletion of positions

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Eastern Idaho Technical College requests approval to:

- create two (2) professional positions (2.0 FTE), one (1) non-classified position (1.0 FTE) and one (1) classified position (1 FTE) supported by appropriated funds
- delete three (3) professional positions (3.0 FTE) supported by appropriated funds

**IMPACT**

Once approved, the positions can be reallocated in the State Employee Information System.

**STAFF COMMENTS AND RECOMMENDATIONS**

This agenda item is contingent upon Board approval of EITC's reorganization plan. The requested addition and deletion of positions would give effect to the reorganization plan. Staff recommends approval.

**BOARD ACTION**

A motion to approve the request by Eastern Idaho Technical College for four (4) new positions (4.0 FTE) and to delete three (3) positions (3.0 FTE) supported by appropriated funds.

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

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**NEW POSITIONS**

Position Title	Vice President of Finance and Administration
Type of Position	Professional Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$92,000
Funding Source	Appropriated Funds
New or Reallocation	Reallocation
Area/Department of Assignment	Administration
Duties and Responsibilities	Supervise the business affairs of the college.
Justification of Position	This position is needed to provide planning and leadership over the business-centered functions of the college.

Position Title	Controller
Type of Position	Professional Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$75,000
Funding Source	Appropriated Funds
New or Reallocation	New
Area/Department of Assignment	Business Office
Duties and Responsibilities	Manage the accounting function and processes of the college.
Justification of Position	This position is needed as a part of the college restructure, to provide for suggested separation of duties from auditors.

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Position Title	Admissions Counselor
Type of Position	Non-Classified Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$40,000
Funding Source	Appropriated Funds
New or Reallocation	Reallocation
Area/Department of Assignment	Student Services
Duties and Responsibilities	Assist students enrolling in the college.
Justification of Position	This position is needed to meet the admissions needs of students as a result of separation of duties in college restructure.

Position Title	Administrative Assistant I
Type of Position	Classified Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$29,000
Funding Source	Appropriated Funds
New or Reallocation	Reallocation
Area/Department of Assignment	Student Services
Duties and Responsibilities	Assist the Vice President of Instruction and Academic Affairs.
Justification of Position	This position is needed to assist the Vice President of Instruction & Academic Affairs with needed administrative duties.

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**DELETIONS OF POSITIONS**

Position Title	Dean of Administration/Controller
Type of Position	Professional Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$87,358
Funding Source	Appropriated Funds
Area/Department of Assignment	Administration
Duties and Responsibilities	Supervise administrative functions and perform accounting functions.
Justification of Position	Position eliminated due to reorganization.

Position Title	Dean of Students/Counselor
Type of Position	Professional Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$87,358
Funding Source	Appropriated Funds
Area/Department of Assignment	Administration
Duties and Responsibilities	Supervise student services and provide admission counseling to students.
Justification of Position	Position eliminated due to reorganization.

Position Title	Dean of Instruction
Type of Position	Professional Position
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$87,358
Funding Source	Appropriated Funds
Area/Department of Assignment	Administration
Duties and Responsibilities	Supervise instructional functions of the college.
Justification of Position	Position eliminated due to reorganization.

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### **EASTERN IDAHO TECHNICAL COLLEGE**

#### **SUBJECT**

Appointment for the Vice President of Instruction and Student Affairs above the 75% of the Chief Executive Officer's annual salary

#### **APPLICABLE STATUTE, RULE, OR POLICY**

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

#### **BACKGROUND/DISCUSSION**

Eastern Idaho Technical College requests approval of the appointment of Dr. Steven K. Albiston as the new Vice President of Instruction and Student Affairs at a salary of \$92,000, which exceeds 75% of the Chief Executive Officer's annual salary by \$5,750.

#### **IMPACT**

This appointment is subject to State Board approval. The initial appointment of this employee is requested at a salary that exceeds 75% of the Chief Executive Officer's salary.

#### **STAFF COMMENTS AND RECOMMENDATIONS**

This agenda item is contingent upon Board approval of EITC's reorganization plan. The plan contemplates a new vice president of instruction and student affairs position at an annual salary in excess of 75% of the president's salary, which requires Board approval. Staff recommends approval.

#### **BOARD ACTION**

A motion to approve the request by Eastern Idaho Technical College for the appointment of Dr. Steven K. Albiston to the position of Vice President of Instruction and Student Affairs at an annual salary of \$92,000.

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

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**EMPLOYMENT OF VICE PRESIDENT OF INSTRUCTION AND STUDENT AFFAIRS  
— SALARY LEVEL HIGHER THAN 75% OF THE CHIEF EXECUTIVE OFFICER'S  
SALARY**

Position Title	Vice President of Instruction & Academic Affairs
FTE	1.0 FTE
Term of Employment	1 Year
Effective Date	July 1, 2010
Annual Salary	\$92,000
Funding Source	Appropriated Funds
Area/Department of Assignment	Administration
Duties and Responsibilities	The duties of this position will be to supervise instructional departments and academic affairs.
Justification of Salary Level	Salary is comparable to other salary levels for similar positions in higher education institutions.



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### **SUBJECT**

Second Reading, Proposed Amendments to Board Policy II.G.6.i, Tenure for Academic Administrators

### **APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.G. Policies Regarding Faculty (Institutional Faculty Only).

### **BACKGROUND/DISCUSSION**

Board Policy Section II.G.6.i.(2), stipulates that “an employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit.” Current policy defines academic administrators as “chief academic officers of the Office of the State Board of Education and the institutions and the deans and department chairs and their associates/assistants of the academic units of the institutions” and further indicates that persons occupying other administrative positions shall not be included.

In 2007 and 2008, the Board waived Board Policy II.G.6.i on several occasions to allow the institutions to offer a tenured faculty position for a Vice President for Research. Due to the number of requests to waive this policy provision, Board staff felt that the definition of academic administrators should be expanded to include research administrators.

Board staff worked with the Council on Academic Affairs and Programs (CAAP) on proposed amendments that would provide the provision for Vice Presidents for Research to be among those administrative positions to be eligible for tenure. Other amendments include removing the reference to the “chief academic officers of the Office of the State Board of Education” from the definition, adding “executive officer/presidents” to the definition and “vice provosts or equivalent” due to the position title differences at each institution and to provide some flexibility. CAAP also proposed amending II.G.6.i.(6), which references the manner in which an administrative employee would be evaluated. The proposed change would require an administrative employee who is granted tenure, to be reviewed in accordance to policies established at each institution and not according to the tenured faculty policy.

### **IMPACT**

Approval of the amendments would allow institutions to attract qualified candidates in the future without requiring a waiver to the policy, clarifies definitions of eligible academic administrators, and enables institutions to evaluate their administrative employees based on their policies for administrator review.

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**STAFF COMMENTS AND RECOMMENDATIONS**

Board staff and CAAP recommend approval of the revised Board policy Section II.G.6.i, as presented.

There have been no changes between the first and second reading.

**BOARD ACTION**

A motion to approve the second reading of proposed amendments to Board Policy Section II.G.6.i, Tenure for Academic Administrators as presented.

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

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**Idaho State Board of Education**

**GOVERNING POLICIES AND PROCEDURES**

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

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

**June 2010**

**6. Tenure**

a. **Tenure Defined** - Tenure is a condition of presumed continuous employment following the expiration of a probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause; except in the case of retirement or financial exigency as declared by the Board; in situations where extreme shifts of enrollment have eliminated the justification for a position; or where the Board has authorized elimination or substantial reduction in a program. Tenure status is available only to eligible, full-time institutional faculty members, as defined by the institution. All faculty appointments are subject to the approvals as required in Board policy. Nontenured members of the faculty are appointed to term appointments pursuant to subsection G1. Any commitment to employ a nontenured member of the faculty beyond the period of his or her current term of appointment is wholly ineffective.

b. **Acquisition of Tenure**

(1) Professional-Technical Faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:

- (a) be afforded the right to pursue promotion; and
- (b) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and
- (c) be afforded on opportunity to serve on institutional committees.

(2) Academic faculty members, after meeting certain requirements, established by the employing institution, may acquire tenure. Each institution shall develop policies for the acquisition of tenure that are consistent with this general philosophy and policy statement of the Board. Acquisition of tenure is not automatic, by default or defacto, but requires an explicit judgment, decision, and approval. A faculty member is eligible to be evaluated for the acquisition of tenure after having completed four (4) full years of academic employment at the institution, although tenure may be awarded prior to completion of this initial eligibility period in certain exceptional cases as provided in Board Policy II.G.6.d.4.a). In addition, an academic faculty member must be evaluated for the acquisition of tenure

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not later than the faculty member's sixth (6th) full academic year of employment at the institution. In certain exceptional cases a faculty member may petition for extension of the timeline for tenure due to extenuating circumstances as provided in Board Policy II.g.6.d.4.b).

- c. Notification - An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 after the academic year during which the decision is made. In case of denial of tenure, the faculty member must be given a written notice that tenure was denied.

- d. Standards of Eligibility for Tenure

- (1) Annual Appointments - Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Prior to the award of tenure, employment beyond the annual term of appointment may not be legally presumed.

- (2) Service in Professional Rank - All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.

- (3) Service in Instructor Rank - A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the institution even though they teach in fields that have established professorial ranks.

- (4) Exceptional Cases

- (a) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.

- (b) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.

- e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured

- faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
- f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given
- g. Periodic Performance Review of Tenured Faculty Members - It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department.
- (1) Procedures for periodic review - Each institution must establish procedures for the performance review of tenured faculty members at the institution. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.
- (2) Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

If during the periodic review, the performance of a tenured faculty member is questioned in writing by a majority of members of the department or unit, the department chairperson or unit head, the appropriate dean, the appropriate vice president, or the chief executive officer, then the appropriate vice president or equivalent administrator must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure at the institution. If during the periodic review, the performance of a tenured

faculty member is not questioned in writing, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required.

- (3) Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.
  - (4) Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.
- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.
  - i. Tenure for Academic Administrators
    - (1) "Academic administrators," for purposes of this topic, means the chief executive officer/presidents, chief academic officers/provosts, vice provosts or equivalent of the institutions, the deans, associate/assistant deans, and department chairs of the academic units of the institutions, and the vice presidents for research of the institutions, and shall not include persons occupying other administrative positions.
    - (2) An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit
    - (3) An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the institution's president.
    - (4) Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in

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the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.

- (5) An individual hired for a non-academic administrator position from outside the institution will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and president, if the individual will teach and otherwise contribute to that department.
- (6) Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in accordance to policies established at each institution for the evaluation of an academic administrator.
- j. Terminal Contract of Employment - If a faculty member is not awarded tenure, the chief executive officer must notify the faculty member of the decision not to recommend tenure and may, at his or her discretion, either issue to the faculty member a contract for a terminal year of employment, or, at the sole discretion of the chief executive officer, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.
- k. When authorized by the chief executive officer, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.
- l. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.
  - (1) A non-tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
  - (2) Before a non-tenured faculty member holding academic rank is moved from one position in the institution to another, the member must be

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informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.

- (3) No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.
- (4) When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.