

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 9, 2010**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>REVISIONS TO MODEL COACH CONTRACTS &amp; AMENDMENT TO BOARD POLICY</b> Section II.H. - Policies Regarding Coaching Personnel and Athletic Directors – 2 <sup>nd</sup> Reading	Motion to approve
<b>2</b>	<b>OPTIONAL RETIREMENT PLAN – VALIC CONVERSION TO MUTUAL FUND PLATFORM</b>	Motion to approve

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**DECEMBER 9, 2010**

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**SUBJECT**

Revised model Coach Contract and Board Policy II.H. – 2<sup>nd</sup> Reading

**REFERENCE**

June 2010	Board directed staff to amend the model coach contract
October 2010	Board approved First Reading

**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND/DISCUSSION**

In October 2010 the Board approved the first reading to amend Board Policy II.H. to incorporate model coach contracts by reference and to update the model contracts.

**IMPACT**

The Board's current model coach contract is referenced in Board policy, but is otherwise a free standing document maintained by Board staff. The proposed policy change would formally incorporate the model coach contract into policy by reference to help ensure that all institutions use the most current Board-approved version.

**ATTACHMENTS**

Attachment 1 – Board Policy II.H. – 2 <sup>nd</sup> Reading	Page 3
Attachment 2 – Multiyear Model Athletics Contract	Page 5
Attachment 3 – Single Year Model Athletics Contract	Page 19

**STAFF AND COMMENTS AND RECOMMENDATIONS**

There was one change between first and second reading. In Section 5.2.2 of the multiyear model contract the language is clarified to read that if an institution exercises its option to terminate a coach for convenience, the institution shall be obligated to pay the coach their salary pursuant to the terms of the agreement less any compensation the coach earns from any other employment.

Board staff recommends approval of the second reading of Board Policy II.H. as submitted.

**BOARD ACTION**

I move to approve the second reading of Board Policy Section II.H. Policies Regarding Coaching Personnel and Athletic Directors, and documents incorporated by reference therein, as presented.

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

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**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors December 2010

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**H. Policies Regarding Coaching Personnel and Athletic Directors (Institution Employees Only)****1. Agreements Longer Than One Year**

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board as to the terms, conditions, and compensation there under, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The December 9, 2010 Board revised and approved multiyear model contract is adopted by reference into this policy. The model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.

**2. Agreements For One Year Or Less**

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of one (1) year or less without Board approval. Each contract shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The December 9, 2010 Board revised and approved model contract is adopted by reference into this policy. The single-year model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.

**3. Academic Incentives**

Each contract for a head coach shall include incentives, separate from any other incentives, based upon the academic performance of the student athletes whom the coach supervises. The chief executive officer of the institution shall determine such incentives. Each institution shall report to the Board annually concerning each coach's performance relative to the academic incentives of the coach's contract.

**4. Part-time Coaches Excepted**

**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors December 2010

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The chief executive officer of an institution is authorized to hire part-time head coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

5. Assistant Coaches

The chief executive officer of the institution is authorized to hire assistant coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

## (MODEL ATHLETICS CONTRACT)

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between \_\_\_\_\_  
(University (College)), and \_\_\_\_\_ (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) 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 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 President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University (College)'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 3.2.1 through (Depending on supplemental pay provisions used) shall cease.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ ( \_\_\_\_ ) years, commencing on \_\_\_\_\_ and terminating, without further notice to Coach, on \_\_\_\_\_ 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 (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 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, payable in biweekly installments in accordance with normal University (College) procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University (College)'s Board of (Regents or Trustees) ;
- b) The opportunity to receive such employee benefits as the University (College) provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University (College)'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 head (Sport) coach as of the ensuing July 1st, the University (College) 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 (College) 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 (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) 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 (College) 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 discretion of the President in

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consultation with the Director and approved by the University (College)'s Board of (Regents or Trustees). 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 (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents 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 discretion of the President in consultation with the Director and approved by the University (College)'s Board of (Regents or Trustees).

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

3.2.6 **(SUMMER CAMP—OPERATED BY UNIVERSITY (COLLEGE))**  
Coach agrees that the University (College) has the exclusive right to operate youth (Sport) 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 camps in Coach's capacity as a University (College) employee. Coach hereby agrees

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to assist in the marketing, supervision, and general administration of the University (College)'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 (College)'s summer football camps, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the University (College). This amount shall be paid (terms of payment) .

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

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

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

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

3.2.7 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) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally-related appearances as may be reasonably requested by the University (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) coach. In order to avoid entering into an agreement with a competitor of (Company Name), 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), 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 (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

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(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 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 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 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 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 (College)'s Handbook; (c) University (College)'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) 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 are consistent with Coach's obligations under this Agreement.

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Coach may not use the University (College)'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 President for all athletically related income and benefits from sources outside the University (College) and shall report the source and amount of all such income and benefits to the University (College)'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). 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 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 President and the University (College)'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.

4.7 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.

## 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 applicable rules and regulations.

5.1.1 In addition to the definitions contained in applicable rules and regulations, University (College) 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 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 consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University (College)'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 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 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 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

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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.

5.1.3 In the event of any termination for good or adequate cause, the University (College)'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~~ employment, whichever occurs first; provided, however, in the event Coach obtains lesser other employment of any kind or nature 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 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 Coach under the lesser other employment, then subtracting from this adjusted gross compensation deduction 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 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 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

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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 been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University (College), which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages 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 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 \_\_\_\_\_, the sum of \$30,000.00; (b) if the Agreement is terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between \_\_\_\_\_ and \_\_\_\_\_ inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University (College) will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased

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compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University (College) shall constitute adequate and reasonable compensation to University (College) for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University (College).

5.3.5 Except as 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 (College)'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 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, suspension, or reassignment, Coach agrees that Coach will not interfere with the University (College)'s student-athletes or otherwise obstruct the University (College)'s ability to transact business or operate its intercollegiate athletics program.

5.7 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.

5.8 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 (College) employees, if the University (College)

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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 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 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 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 rules regarding financial exigency.

6.2 University (College) Property. All personal property (excluding vehicle(s) provided through the \_\_\_\_\_ 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 direction or for the University (College)'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 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

\_\_\_\_\_  
\_\_\_\_\_

with a copy to: President

\_\_\_\_\_  
\_\_\_\_\_

the Coach:

\_\_\_\_\_  
Last known address on file with  
University (College)'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 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 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. 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

\_\_\_\_\_  
, President                      Date

\_\_\_\_\_  
Date

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

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between \_\_\_\_\_ (University (College)), and \_\_\_\_\_ (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) 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 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 President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University (College)'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 3.2.1 through (Depending on supplemental pay provisions used) shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ ( \_\_ ) months, commencing on \_\_\_\_\_ and terminating, without further notice to Coach, on \_\_\_\_\_ 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 (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 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.

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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, payable in biweekly installments in accordance with normal University (College) procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University (College)'s Board of (Regents or Trustees) ;
- b) The opportunity to receive such employee benefits as the University (College) provides generally to non-faculty exempt employees, provided that the Coach qualifies for such benefits by meeting all applicable eligibility requirements; and

3.2 Supplemental Compensation. 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 discretion of the President in consultation with the Director and approved by the University (College)'s Board of (Regents or Trustees). 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 (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.

3.3 Footwear; Apparel; Equipment. 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) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally-related appearances as may be reasonably requested by the University (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) coach. In order to avoid entering into an agreement with a competitor of (Company Name), Coach shall submit all outside consulting agreements to the University (College) for review and approval

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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), and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.4 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 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 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 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 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 (College)'s Handbook; (c) University (College)'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)     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 are consistent with Coach's obligations under this Agreement. Coach may not use the University (College)'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 President for all athletically related income and benefits from sources outside the University (College) and shall report the source and amount of all such income and benefits to the University (College)'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). 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 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 President and the University (College)'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.

4.6 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

*Model Contract version: 12/9/2010*



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 applicable rules and regulations.

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.

5.1.3 In the event of any termination for good or adequate cause, the University (College)'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 due to Disability or Death of Coach.

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

5.2.2 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.

5.2.3 If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University (College)'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).

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

5.4 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.

5.5 Waiver of Rights. Because the Coach is receiving 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 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 Approval. This Agreement shall not be effective until and unless 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 Board of (Regents or Trustees), if required, 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 rules regarding financial exigency.

6.2 University (College) Property. All personal property (excluding vehicle(s) provided through the \_\_\_\_\_ 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 direction or for the University (College)'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 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

\_\_\_\_\_  
\_\_\_\_\_

with a copy to: President

\_\_\_\_\_  
\_\_\_\_\_

the Coach:

\_\_\_\_\_

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Last known address on file with  
University (College)'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 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 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. 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

\_\_\_\_\_  
 , President Date

\_\_\_\_\_  
 Date

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**DECEMBER 9, 2010**

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**SUBJECT**

VALIC – conversion to mutual fund platform

**REFERENCE**

January 2004	Board authorized TIAA-CREF to offer mutual funds as an alternative investment vehicle
December 2005	Board adopted a Deferred Compensation Plan for employees under Internal Revenue Code section 457
February 2008	Board directed staff to proceed with preparing an Idaho Tax Deferred 403(b) Plan to replace the separate 403(b) plans offered by the institutions
August 2008	Board approved Idaho Tax Deferred 403(b) Plan

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.K.2.  
Sections 33-107A, 33-107B, Idaho Code

**BACKGROUND/DISCUSSION**

Since 1991 the State of Idaho has offered an Optional Retirement Program (ORP) for higher education faculty and managerial/professional staff. This program is separate from the state Public Employee Retirement System of Idaho (PERSI), and is used by states nationwide for education professionals who often move between states during their career. There are two vendors in Idaho for ORP investment products: TIAA-CREF and VALIC. In 2004, the Board authorized TIAA-CREF to offer mutual funds as an investment product to its clients. The Board also established a 457 deferred compensation plan in January 2006 and a tax deferred 403(b) plan in August 2008.

VALIC has now expressed a desire to convert from its current annuity platform to a mutual fund platform. Existing employees would be grandfathered into the annuity platform, but could make an irrevocable election at any time to migrate to the mutual fund platform. (Current employees would also have the option of freezing their annuity plan and sending all new contributions to mutual funds.) All new participants in the plan would be enrolled in the mutual fund platform.

VALIC's proposal (see Attachment 1) includes a sample investment portfolio. (Note: one of the investment funds (Perkins Small Cap Value Fund) in this proposal is being closed by the fund company. VALIC has added an equivalent replacement which meets the same criteria and performance: American Beacon Small Cap Value Advisor (AASSX)).

**IMPACT**

Mutual fund reimbursements (revenue sharing) will be used to offset plan administration fees. Based on the investment options suggested in the proposal, the net administrative fee is zero basis points.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 9, 2010**

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Plan participants will have additional investment options, and will not be required to convert their current investments.

**ATTACHMENTS**

Attachment 1 – VALIC Proposal	Page 3
Attachment 2 – VALIC Letter	Page 15
Attachment 3 – Sample Custodial Agreement	Page 17

**STAFF COMMENTS AND RECOMMENDATIONS**

Board staff has consulted with tax counsel regarding this proposal. To demonstrate the Board's prudence in monitoring the fees of its retirement plan vendors, we have been advised to request that each vendor for any of our retirement plans agree to disclose to the Board all information required to be disclosed to ERISA plan sponsors pursuant to the final U.S. Department of Labor regulations published under ERISA section 408(b)(2) and effective July 16, 2011, as if the plans were subject to ERISA. VALIC has agreed to provide this disclosure (see Attachment 2). In addition, we were advised to request that VALIC demonstrate to the Board that they maintain a separate custodial account agreement(s) that satisfy section 401(f) of the Internal Revenue Code. VALIC has provided a sample custodian account agreement which satisfies those requirements (see Attachments 2 & 3).

VALIC has provided the following contracts and documents required to implement the mutual fund product for each of the three plans: custodial agreement, service provider agreement, resolutions authorizing individuals to act on behalf of the plan, loan policy, group fixed master application, plan document, and resolution adopting plan. The anticipated live date for adding the mutual fund product is March 1, 2011, so VALIC will need executed agreements by February 1, 2011. However, since the Board's tax counsel did not have an opportunity to review these documents prior to posting the agenda, staff recommends the Board authorize VALIC to offer a mutual fund platform subject to plan document review and approval by Board staff. This will enable VALIC to begin working with the State Controller's Office and institutional IT/payroll staff on any necessary programming changes it order to meet is roll-out deadline.

**BOARD ACTION**

I move to approve the request by VALIC to offer mutual funds as an alternative investment vehicle as part of the Board's Optional Retirement Plan, 403(b) and 457 plans, subject to final review and approval of the plan and related documents by the Board's Chief Fiscal Officer and legal counsel.

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



# PROPOSAL

saving : investing : planning

**VALIC**

## EXECUTIVE OVERVIEW

Page 1

SAVING : INVESTING : PLANNING

Idaho State Board  
of Education

Prepared by: VALIC

This Proposal describes the product and services available to you as a VALIC client. All information contained herein is considered proprietary and should not be disclosed without prior written consent from Officers of VALIC.

The information contained in this proposal expires on **December 29, 2010**. Please direct any requests for extensions to this time frame to the Vice President of Business Case Development at (713) 831-4070.

VALIC represents VALIC Retirement Services Company, VALIC Financial Advisors, Inc., broker/dealer, member FINRA and an SEC registered investment advisor, and the Variable Annuity Life Insurance Company (VALIC).

Prepared for Idaho State Board of Education

**VALIC**



## EXECUTIVE OVERVIEW

Page 2

SAVING : INVESTING : PLANNING

## VALIC

Few companies can offer the menu of defined contribution, retirement plan products and services afforded by The Variable Annuity Life Insurance Company (VALIC). As your retirement plan partner, we offer robust education, investment, recordkeeping and administration services.

### Strength and Experience

Since 1955, VALIC has specialized in providing retirement programs for a variety of employer types, including elementary and secondary education institutions, higher education institutions, governmental entities, hospital and healthcare organizations, and other non-profit organizations.

With more than \$58.8 billion in total assets, VALIC is an industry leader and currently manages long-term investment programs for more than 25,000 organizations representing more than two million participants.

VALIC provides a comprehensive package of investment options and retirement services through a family of companies, which includes: VALIC Retirement Services Company, The Variable Annuity Life Insurance Company and VALIC Retirement Advisors, Inc., broker /dealer, member FINRA and a SEC registered investment advisor.

Our financial strength ratings\* reflect the high quality of our fixed investment portfolio, consistent asset and earnings growth, and leading position in its chosen markets. VALIC's financial strength ratings are as follows:

A.M. Best	A	(Excellent)
Standard & Poor's	A+	(Strong)
Moody's	A1	(Good)
Fitch	A-	(Strong)

\* Independent ratings apply to the financial stability of The Variable Annuity Life Insurance Company, not to the safety or the performance of the mutual funds.

# EXECUTIVE OVERVIEW

Page 3

SAVING : INVESTING : PLANNING

## Flexibility in Plan Design and Administration

At VALIC, we adapt our comprehensive services to meet your needs. We have the capability to deliver a broad range of valuable plan features to plan sponsors and their employees.

Available services include:

- Advanced recordkeeping system updated with current laws and regulations
- Seamless implementation services
- Online contribution remittance processing via a secure Web site
- Plan Sponsor Online Web site with plan report generation capability
- Plan documents
- Summary plan descriptions
- Guidance for plan design, compliance and administration
- Employer notification of regulatory updates

## Superior Communication and Financial Planning Services

VALIC provides a comprehensive package of services to keep your employees informed about the plan and its benefits. These include face-to-face service, voice response system, client service professionals at our state-of-the-art Client Care Center, Web site and easy-to-understand literature—all of which are offered in English and Spanish. We also offer your employees comprehensive retirement planning services.

An effective communication and education program is the biggest factor in increasing participation levels, deferral rates and investment diversification among your employees. By using our financial advisors and a wide selection of media, we are able to maximize the number of people we educate and inform. This is a very productive approach, especially when delivered with targeted communications. VALIC's program focuses on helping employees understand the many strategies and challenges of retirement planning. We believe that equipping them with the knowledge needed to make informed decisions, motivating them and helping them develop and maintain a personalized retirement program, allow us to help them achieve their retirement goals. As a result, we have found participation levels and employee satisfaction tend to increase substantially.

VALIC works closely with plan sponsors to develop extensive marketing and communication approaches specific to their needs. During enrollment and ongoing, our onsite financial advisors take a proactive approach in educating employees about their retirement plan(s).

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## Financial Advisor Service – Both Onsite and Remote

VALIC understands the importance of local service and has developed a nationwide network of regional and district offices to serve its clients and their employees effectively. From these offices, experienced financial advisors provide in-person services to participants across the country. However, we can offer the right service model for your retirement plan. Because each retirement plan is unique, our service model is flexible. This enables us to deliver exactly what you and your employees need. Our financial advisors can provide onsite investment education, retirement planning and financial planning during group meetings, seminars and individual consultations. Our Retirement Education Center, reached by dialing a toll-free number, has 40 retirement planning experts who provide your participants the same level of service they would receive if our advisors were sitting at their kitchen tables. VALIC has capabilities and resources to exceed the level of service requested by the plan sponsor.

## Legal Support Team

VALIC has a dedicated legal team for its defined contribution activities, including attorneys highly experienced in tax, securities and insurance law. Our tax section is made up of attorneys and tax professionals with significant ERISA expertise as well as proficiency in regulations associated with retirement programs and plans established under Internal Revenue Code sections 401(a)/403(a) including 401(k), 403(b), and 457. This includes non-qualified deferred compensation plans, IRAs and tax-deferred annuities under section 72.

Additionally, VALIC retains a major Washington, D.C. law firm as outside legal counsel to assist in tax matters. VALIC has a Government Affairs department committed to supporting legislative efforts to retain and enhance tax features associated with retirement programs for governmental, healthcare, educational and tax-exempt organizations.

Please note that VALIC's Law Division does not render legal advice to VALIC client groups. However, we are happy to offer, at no additional cost, collaborative (non-advisory) contacts between your legal counsel and ours to discuss plan matters, as the plan sponsor and VALIC might jointly consider appropriate, within the context of our ongoing relationship.

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## Mutual Fund Platform

VALIC's Open Architecture Mutual Fund Plan

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## A World of Investment Options

VALIC's goal is to offer the best possible retirement program at a competitive price. With access to more than 5,600 mutual funds through marketing arrangements with more than 100 various mutual fund families and a competitive Fixed-Interest Option through The Variable Annuity Life Insurance Company can create plan portfolios that meet a wide variety of plan sponsor needs.

## Sample Investment Portfolio

The flexibility of our investment offering enables us to provide a customized portfolio of funds to meet the needs of your plan. The portfolio provided in this proposal contains sample investment options for your organization. Keep in mind that this is only a proposed portfolio; our open architecture approach makes available more than 5,600 mutual funds. Changes to the plan's line-up of investment options, other than those initiated by VALIC, may affect pricing.

The sample investment fund line-up presented on the following page was developed based upon VALIC's understanding of your retirement plan goals and objectives. In addition to the funds below, a plan sponsor may choose from more than 5,600 mutual funds through our marketing arrangements with various fund families.

VALIC provides full disclosure of its fees on participant statements and on the Web site. We disclose our revenue sharing policy on our Web site, [www.valic.com](http://www.valic.com) and in our employee enrollment kits, as well as through quarterly statement messages. We would be happy to create more detailed or specific disclosure if desired. VALIC receives revenue sharing payments from mutual funds, broker-dealers, and investment advisers. We estimates the revenue sharing payments that will be received and uses the revenue sharing to offset the costs of administering and/or recordkeeping each retirement plan. Thus, each plan participant receives a benefit from the revenue sharing in the form of reduced plan administrative fees. The fund families may periodically change the fees and any variation from assumed levels may result in a pricing adjustment. We review the pricing structure as part of plan sponsor fund changes at least annually to accommodate fund family fee changes. Please refer to the sample investment portfolio on the following page.

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Mutual Fund Performance Information  
Average Annual Returns (%) as of June 30, 2010

Asset Category Fund Name	Ticker	3-Month Return	YTD Return	1-Year Return	3-Year Return	5-Year Return	10-Year return	Expense Ratio	Mstar Rating	% Mstar Rank Cat 12 Mo	% Mstar Rank Cat 3 Yr	% Mstar Rank Cat 5 Yr	Fund Revenue
<b>Foreign Large Blend</b>													
American Funds EuroPacific Gr R3	RERCX	-12.13	-11.54	9.15	-8.18	4.68	2.38	1.15	5	27	8	10	0.60
<b>World Stock</b>													
American Funds Capital World G/I R3	RWICX	-12.50	-12.43	8.03	-9.31	2.86	5.06	1.13	4	79	40	27	0.60
<b>Real Estate</b>													
First American Real Estate Secs A	FREAX	-4.08	6.24	52.58	-6.67	2.87	11.50	1.27	5	41	11	2	0.50
<b>Small Growth</b>													
Prudential Jennison Small Company A	PGOAX	-8.66	-1.49	21.92	-6.45	2.87	5.51	1.23	4	24	24	15	0.50
<b>Small Blend</b>													
Dreyfus Small Cap Stock Index	DISSX	-8.81	-1.02	23.22	-7.68	0.63	5.22	0.50	**	**	**	**	0.40
<b>Small Value</b>													
Perkins Small Cap Value S	JISCX	-6.45	-0.19	24.35	0.77	5.45	9.95	1.2	5	61	2	2	0.50
<b>Mid-Cap Growth</b>													
Prudential Jennison Mid Cap Growth A	PEEAX	-7.91	-2.06	20.95	-2.70	5.55	0.11	1.21	4	42	8	4	0.50
<b>Mid-Cap Blend</b>													
Dreyfus MidCap Index	PESPX	-9.71	-1.64	24.29	-6.21	1.83	4.84	0.50	**	**	**	**	0.40
<b>Mid-Cap Value</b>													
RidgeWorth Mid-Cap Value Equity A	SAMVX	-11.20	-0.30	30.59	-3.91	5.70		1.32	5	8	5	1	0.55
<b>Large Growth</b>													
American Funds Growth Fund of Amer R3	RGACX	-11.77	-8.13	10.08	-8.76	0.54	-0.31	0.98	3	71	60	32	0.60
<b>Large Blend</b>													
Dreyfus S&P 500 Index	PEOPX	-11.53	-6.84	13.98	-10.17	-1.22	-2.04	0.50	**	**	**	**	0.40
American Funds Fundamental Invs R3	RFNCX	-11.51	-7.78	12.45	-9.09	1.83	1.84	0.99	4	59	33	8	0.60
<b>Socially Responsible</b>													
Calvert Social Investment Equity A	CSIEX	-11.28	-6.26	13.39	-5.42	0.29	1.54	1.28	4	37	16	38	0.50
<b>Large Value</b>													
American Funds American Mutual R3	RMFCX	-8.42	-5.60	13.83	-7.80	0.43	3.88	1.03	5	44	10	15	0.60
<b>Balanced</b>													
Janus Balanced R	JDBRX	-6.87	-3.77	10.45	1.3	5.13	3.03	1.34	5	81	2	2	0.75
<b>High Yield Bond</b>													
AIM High Yield Inst	AHIYX	-0.70	4.16	26.49	5.98	6.86	3.70	0.62	4	23	9	9	0.35
<b>Intermediate-Term Bond</b>													
Dreyfus Bond Market Index Inv	DBMIX	3.40	5.13	8.52	7.04	5.09	5.99	0.40	**	**	**	**	0.35
PIMCO Total Return A	PTTAX	2.64	5.58	12.81	10.62	6.95	7.33	0.90	5	48	3	4	0.35
<b>Inflation-Protected Bond</b>													
American Century Infl-Adj Bond Inv	ACITX	3.81	3.99	9.49	7.58	4.77	6.96	0.48	4	47	26	30	0.25
<b>Money Market</b>													
American Century Premium Money Market	TCRXX	0.00	0.01	0.10	1.95	2.97	2.64	0.46	NA	NA	NA	NA	0.25
<b>Stable Value</b>													
Fixed Interest Option	NA	0.89	1.80	3.69	3.73	3.74	4.29	NA	NA	NA	NA	NA	NA

Averages:

0.92	4.4	46	17	13
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**Target Maturity**

Wells Fargo Advantage DJ Target 2010 A	STNRX	-0.86	0.84	9.42	1.56	3.39	2.61	1.01	5	95	8	11	0.55
Wells Fargo Advantage DJ Target 2020 A	STTRX	-3.88	-1.03	11.73	-2.39	2.55	1.16	1.03	5	81	3	5	0.55
Wells Fargo Advantage DJ Target 2030 A	STHRX	-7.34	-3.46	14.28	-5.77	1.43	0.10	1.04	5	51	5	7	0.55
Wells Fargo Advantage DJ Target 2040 A	STFRX	-9.57	-5.01	15.50	-7.55	1.01	-0.86	1.05	4	25	18	10	0.55
Wells Fargo Advantage DJ Target Today A	STWRX	0.39	1.65	8.12	3.47	3.91	3.70	0.98	4	95	11	5	0.55

\*\* Peer group rankings (Lipper or Morningstar) are not an appropriate relative performance measurement for a passively managed index fund, as they do not separate indices from actively managed funds within each category. Since the investment objective of this fund is to replicate the returns of the index, tracking error (showing variance from the index) is a more appropriate return measurement.

**Disclaimers:**

The performance data quoted represents past performance. Current performance may be higher or lower than the performance stated due to recent market volatility. Past performance does not guarantee future result. Investment return and principal value will fluctuate so an investor's shares, when redeemed, may be worth more or less than their original cost. Please visit [www.valic.com](http://www.valic.com) for month-end performance.

To view or print a prospectus, visit [www.valic.com](http://www.valic.com) and click on ePrint under Login. Enter your Plan ID in the Login field and click go. Click on "Funds" in Quick Links, and funds available for your plan are displayed. The prospectus contains the investment objectives, risks, charges, expenses and other information about the respective investment company that you should consider carefully before investing. Please read the prospectus carefully before investing or sending money. You may also request a copy by calling 1-888-568-2542.

Securities and investment advisory services offered through Valic Financial Advisors Inc., member FINRA, SIPC and an SEC-registered investment advisor.

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## Fixed-Interest Option

The Fixed-Interest Option\* is a group unallocated fixed annuity featuring a highly competitive current interest rate. The rate is declared monthly with interest credited on a daily basis at an annual effective rate. The product credits interest under a portfolio interest crediting method in which all deposits receive the same return regardless of date of initial deposit. The current rate of 3.35 percent is guaranteed through December 2010 with a current minimum guaranteed rate of 3.00 percent, which is subject to change, for the calendar year 2010. The Fixed-Interest Option also features a 2.00 percent minimum guaranteed crediting rate for the life of the contract\*\*

\*Fixed unallocated annuity (Policy Form GFA-504). The Variable Annuity Life Insurance Company, Houston, TX

\*\* Subject to state approval.

## Fixed-Interest Option Provisions

- No sales charges will be applied to contributions, and no surrender charges will apply to distributions.
- A participant can make transfers out of the Fixed-Interest Option to our non-competing investment options at any time, or indirectly to a "competing option" subject to a 90-day equity wash provision. A competing option includes any other fixed, stable value, money market, or short-term bond fund; a mutual fund/brokerage window; or other provider's fund line-up available to plan participants.
- Plan sponsor-directed or induced transfers from the Fixed-Interest Option to another investment option under the plan would be restricted to 20 percent per year or subject to a market value adjustment.

## Fee Structure

VALIC's goal is to offer the best possible retirement program at the most competitive price. Using an open architecture approach, we evaluate each plan on an individual basis. We consider a variety of factors such as the level of service to be provided and the number of locations, the number of active plan participants, employee turnover, amount of existing plan assets, type and number of investment options, and annual contributions.

We work with you to determine what level of plan services your organization needs, and tailor a cost-effective program accordingly. For your plan, we propose the following pricing structure that includes VALIC's full range of services as outlined in this proposal.

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## Plan Administration Fee

VALIC is pleased to offer our mutual fund platform at a gross asset-based charge of **50 basis points**. This fee is prior to accounting for reimbursements received from the mutual fund companies. All mutual fund reimbursements will be used to offset fees and based on the investment options suggested in this proposal, the net administrative fee is **zero basis points**. Any net, residual fee is assessed only on the mutual fund options, not on the assets invested in our Fixed-Interest Option.

## Loan Fees

\$50 setup fee and a \$30 annual maintenance fee per loan\*

\*Fees applicable to loans repaid through payroll deduction.

## Guided Portfolio Services Fees

**Plan Level Fee:** None.

**Participant Level Fee:** We have two levels of Investment Advisory Services. The fees are as follows:

- Participants using GPS Portfolio Advisor will pay an annual fee of \$25 to use the service an unlimited number of times for one year. At the end of the year the participant may elect to re-enroll for another year. Portfolio Advisor includes advice through the Internet and telephone support through the Asset Management Center.
- If a participant elects the Portfolio Manager option of GPS, annualized participant fees are:
  - 60 basis points of his/her assets up to \$100,000, plus
  - 50 basis points of assets between \$100,000 and \$250,000, plus
  - 45 basis points of assets that are in excess of \$250,000.

The above fees are charged quarterly in arrears to the participant's account.

## Assumptions

Our pricing structure is based on the following assumptions:

- 403(b) Tax Sheltered Annuity, 401(a) Idaho ORP, and 457(b) Qualified Deferred Compensation
- A five-year agreement



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- Use of the investment options described in this proposal\*
- Electronic remittance of data
- Higher Ed Side-by-Side Conversion
- VALIC Fixed Option Contract - GFA-504

\* Please note that our GPS offering is based on the sample investment portfolio included in this proposal. Our sample portfolio assumes that if VALIC modifies the sample investment portfolio (i.e., a fund is deleted from or added to the sample portfolio of investment mutual fund options), then the plan sponsor would offer the updated portfolio of funds. Any changes other than those initiated by VALIC may affect pricing.

If Guided Portfolio Services (GPS) is selected as a voluntary option for your retirement plan participants, Ibbotson Associates, acting as independent financial expert under the DOL SunAmerica Advisory Opinion, will perform an analysis of your investment option lineup, using its proprietary methodology, to determine if it can construct well-diversified portfolios with adequate asset class coverage for use in GPS. If Ibbotson determines that it cannot construct well-diversified portfolios with adequate asset class coverage from the plan's existing investment option lineup, we will notify you of any proposed additional investment option(s).

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The Variable Annuity Life Insurance Company  
2929 Allen Parkway  
Houston, TX 77019

November 1, 2010

Matt Freeman  
Chief Fiscal Officer  
Idaho State Board of Education  
650 W. State St., Suite 307  
Boise, ID 83702

Re: Idaho State Board of Education Optional Retirement Plan

Dear Mr. Freeman:

This letter is to confirm that VALIC agrees to disclose to the Idaho State Board of Education ("Board") all information required to be disclosed to ERISA plan sponsors pursuant to the final U.S. Department of Labor regulations published under ERISA section 408(b)(2) and effective July 16, 2011, as if the plans were subject to ERISA.

Also, enclosed is a sample custodial account agreement that satisfies the requirements of section 401(f) of the Internal Revenue Code.

If you have any questions, please do not hesitate to contact Tony Cotton at 206-254-1002 or me at 713-831-5077.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Gutierrez".

Carolyn Gutierrez  
Administrative Officer

Enclosure

cc: Tony Cotton  
John Wing  
Rich Jackson

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## CUSTODIAL AGREEMENT

**I. Establishment of Custodial Account.** A custodial account ("Custodial Account") is hereby established by «Employer\_Name» ("Employer") to hold, administer, and distribute amounts pursuant to the terms of the «Plan\_Name», established pursuant to Section 401(a) of the Internal Revenue Code of 1986, as presently or subsequently amended ("Code"), which provides for the following type(s) of contributions: «Contrib\_1», «Contrib\_2» and «Contrib\_3\_», hereinafter referred to as the "Plan." The interests of each participant under the Plan shall be accounted for in a separate Participant Account, as described in Section VI of this Custodial Agreement.

**II. Designation of Custodian.** By signature below of its duly authorized officer, Employer designates that AIG Federal Savings Bank, a federally-chartered savings bank, shall be the non-discretionary directed custodian ("Custodian") of the Custodial Account, beginning on «Service\_Efft\_Dt» ("Effective Date"); and hereby authorizes Custodian to open and maintain the Custodial Account; and the Custodian accepts such designation.

Except as otherwise provided in this Custodial Agreement, the Custodian shall be directed by the Employer, a plan administrator other than the Employer as designated in the Plan ("Plan Administrator"), or another authorized Plan representative. The Custodian shall hold Custodial Account property in the name of the Plan. The duties of the Custodian shall apply solely with respect to the property allocated to the Custodial Account hereunder, and Custodian shall bear neither responsibility nor liability for other amounts held under the Plan with another trustee, custodian, or other investment or service provider. The Employer hereby agrees that the Custodian shall not serve as, and shall not be deemed to be, a co-custodian or co-trustee and, except as otherwise imposed by applicable law, shall have no co-fiduciary liability for any other person, custodian or trustee. The Custodian shall have no responsibility for any property until it is received and accepted by the Custodian.

### III. Protection of Participants.

A. Custodial Account property shall be held for the sole and exclusive benefit of participants and their beneficiaries.

B. No amounts allocable under the Plan shall be returned to the Employer, except as otherwise provided in this Custodial Agreement, until all obligations to participants have been satisfied, and unless consistent with the requirements of the Plan, and the Code.

C. A Participant Account may not be assigned or pledged by a participant unless permitted under the Plan, the Code, and this Custodial Agreement.

**IV. Protection of Custodian.** The Custodian shall not be obligated to give any bond or other security for the performance of the Custodian's duties hereunder. The Custodian shall not be liable for any mistake of judgment or other action taken in good faith upon the opinion of counsel or of the Custodian's accountant or auditors, or upon the actions of, or the reports made to the Custodian by, any of Employer's officers, employees, or agents, or the actions of or reports by any regulated investment company or other service provider under the Plan, including any other current or prior custodian or trustee, provided that Custodian acted in good faith in such action or omission and in such reliance.

The provisions of this Custodial Agreement shall be subject to the terms of the Plan, any related service provider agreement ("Service Provider Agreement") entered into with VALIC Retirement Services Company ("Service Provider"), and any annuity contract entered into with The Variable Annuity Life Insurance Company ("VALIC"), except that the terms of such Plan, Service Provider Agreement or annuity contract shall not adversely affect the rights or duties of the Custodian under this Custodial Agreement without the Custodian's prior written consent. Custodian shall be permitted to review the terms of the Plan, and any current or future amendments thereto. Such review shall not constitute an opinion as to the qualification of the Plan or as to any terms thereof and the Custodian shall have no responsibility for determining whether the Plan or any amendment thereof satisfies the qualification requirements of the Code. No amendment or other revision of the Plan or the Plan's administrative rules shall be binding upon the Custodian unless advance written notice of such amendment or other revision is provided to the Custodian. Employer shall retain sole responsibility for taking all necessary steps to ensure that administrative services provided for under this Custodial Agreement are not inconsistent with the terms of the Plan.

**V. Forms and Procedures.** All requests for transactions within Participant Accounts, including any account maintenance requests, and transfers or distributions into or out of such Participant Accounts, must be performed in or on a form or method approved by the Custodian.

**VI. Maintenance of Individual Subaccounts for Participants ("Participant Accounts").** The interests of each participant under the Plan shall be accounted for in a separate Participant Account. Records of individual Participant Accounts shall be maintained by Service Provider pursuant to the Service Provider Agreement between the Employer and Service Provider. To the extent permitted by law, the Custodian shall be relieved of any performance obligations under this Custodial Agreement that are also the obligations of the Service Provider under the Service Provider Agreement or any other service provider under the Plan.

**VII. Correction of Errors.** The Custodian is hereby authorized and directed to make such corrections of contributions to the Plan made under a mistake of fact or such other contributions made in error or other errors as may be corrected under the terms of the Plan, and the Code, including corrections under any available Internal Revenue Service ("IRS") self-correction program, as identified by Employer, Service Provider or another authorized Plan representative. Contributions made to a Participant Account that are identified by the Service Provider, Custodian, the Employer or another authorized Plan representative to have resulted from a mistake of fact shall be returned to the participant or the Employer or reallocated to the proper Participant Account, along with earnings thereon, in accordance with the terms of the Plan, and the Code. A mistake of fact may include, but is not limited to (1) a reasonable error in determining the participant's includible compensation, and (2) a reasonable error in determining the amount to be withheld from a participant's wages or the participant to whom a contribution was to be allocated. A mistake of law shall not be considered a mistake of fact.

If an amount credited to a Participant Account by the Custodian under a mistake of fact or other reasonable mistake is transferred to a successor contract issuer, custodian, or trustee, the Custodian is hereby authorized to request the return of such excess amount from the successor contract issuer, custodian, or trustee.

**VIII. Administration of Loans to Participants.** Subject to applicable provisions of the Plan, and the Code, loans from the Custodial Account may be requested by a participant, provided that such loans are established in or on a form or method acceptable to the Custodian and the Service Provider, and provided that such loans are administered pursuant to a loan program established under the Plan and authorized by the Employer and which conforms to the administrative requirements of the Custodian and the Service Provider. Loan repayments shall be deposited into the Custodial Account in accordance with the participant's current investment allocation.

**IX. Identification of Available Investments.** The investments available under Participant Accounts ("Plan Investment Options") are listed in Appendix A to this Custodial Agreement. This list of available investments, which may also describe requirements or limitations applicable to one or more of the investments, was selected by the Employer or the Plan Administrator, and is hereby accepted by the Custodian. Appendix A may be revised annually following any anniversary of this Custodial Agreement provided that sixty (60) days' advance written notice is provided by the Employer, the Plan Administrator, or another authorized Plan representative to the Custodian of the intent to revise the Appendix, and subject to the Custodian's agreement to administer any additional investment(s) in advance of the addition of such additional investment(s) to Appendix A. The Custodian shall have no duty or responsibility for monitoring, selecting or providing advice with respect to the Plan Investment Options. Investment directions may be communicated to the Custodian by the Employer or another authorized Plan representative, such as the Service Provider, or by participants where permitted by the Plan. In the absence of contrary instructions from the Employer, the Plan Administrator, or another authorized Plan representative, the Custodian shall direct one or more third parties in the execution of investment instructions received from participants. The Custodian shall be entitled to rely upon instructions received from the Employer, the Plan Administrator, another authorized Plan representative, or a participant, subject to the limitation described in the preceding sentence, and shall have no obligation to investigate either the prudence of such instructions or the absence of any instructions.

The Employer hereby directs the Custodian to hold in cash or cash equivalents such amounts as may be necessary for the proper administration of assets and to retain for Custodian's sole benefit any income that it may receive while such amounts are so held as a portion of the reasonable compensation to be paid to the Custodian for its services to the Plan. Custodian may, in addition to or in lieu of charging Employer for the costs incurred by Custodian in providing these Custodial services, invest funds received from Employer through a custodial account in investment vehicles that emphasize safety and liquidity. These investment vehicles will comprise obligations of the United States or its agencies and instrumentalities or other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by, the full faith and credit of the United States. All investment vehicles utilized must be liquid on a daily basis. Custodian may retain any income earned from such investments and, if applicable, any fees charged by Custodian as reasonable compensation for services rendered.

**X. Limitations on Contributions.** Contributions to a Participant Account shall not exceed the applicable limits provided in the Code and in the Plan. Any contributions in excess of applicable limits under the Code or the Plan may be distributed to the Employer or to the participant to the extent permitted under the Code; Treasury Regulations or other regulatory guidance, including any IRS self-correction programs; the Plan; the Custodial Account; the annuity contract or as otherwise provided in this Agreement or agreed by the Employer, Custodian and Service Provider.

**XI. Distributions to Participants and Beneficiaries.** Distributions to participants and beneficiaries may be made only as permitted under the Plan and the Code, subject to any limitations in Employer's agreement with Service Provider. Distributions to participants from Participant Accounts must also comply with applicable distribution requirements under Code Section 401(a)(9), which generally requires that distributions commence not later than the April 1 of the year following the year the Participant either attains age 70½ or retires, whichever is later. It shall be the responsibility of the Employer, the Plan Administrator, or an authorized designee to make determinations of eligibility for such distributions, comply with applicable distribution requirements, and direct the Custodian accordingly. The Custodian shall have no duty to inquire or investigate as to the validity of any such directions.

**XII. Term of Agreement.** This Custodial Agreement shall be coterminous with the Service Provider Agreement and shall be subject to the same renewal and termination rights, requirements and limitations described in the Service Provider Agreement. Termination of the Custodial Agreement by Custodian shall also constitute termination by Service Provider of the Service Provider Agreement. Employer shall notify Custodian in writing of its intent to terminate the services of Service Provider not less than ninety (90) days in advance of such termination. In such written notice the Employer shall identify the successor to the Service Provider and to the Custodian, and Custodian shall resign effective as of the date of termination of the Service Provider, without regard to any other provision of this Custodial Agreement. If no successor Custodian is designated, Employer shall be the successor to the Custodian and shall amend its Plan to so provide, and shall take all necessary steps to so qualify.

**XIII. Taxes and Tax Reporting.** Distributions shall be reported to participants and/or beneficiaries and the IRS by the Custodian. The Custodian may pay out of the Custodial Account any taxes properly levied upon the Custodial Account by any governmental taxing authority.

**XIV. Reports to Employer.** Custodian shall provide periodic reports of aggregate Custodial Account activity to Employer not less frequently than quarterly.

**XV. Employer's Duties.** As a condition of Custodian's performance hereunder, Employer shall remit to Custodian, or to a party designated by Custodian, in a timely manner and in a medium and format that have been agreed to between the Employer and the Custodian, all information and contributions that are reasonably necessary for the Custodian to perform its duties hereunder, and further agrees to hold harmless and indemnify the Custodian for any failure by the Employer or the Plan Administrator to provide such information and/or contributions. Custodian shall have no duty to allocate amounts to a Participant Account prior to the collection of such amounts by the Custodian from the bank or other depository institution maintaining the account of the Employer upon which any negotiable instrument for such contribution is or was drawn. If Custodian makes investments for and/or allocates one or more contributions to Participant Accounts in reliance upon one or more negotiable instruments issued by the Employer, and if any such negotiable instrument is dishonored or otherwise fails to be paid, the Custodian shall be authorized to liquidate such investments and reverse such allocations to reflect the proper value of the Participant Accounts. Employer agrees to indemnify the Custodian for any losses incurred by Custodian from such dishonor or other failure of payment.



**XVI. Broker-Dealer Services.** Enrollment services, investment education, purchases and sales of variable Plan investments, and other registered broker-dealer services will be provided as described in Employer's agreement with Service Provider and not by Custodian.

**XVII. Participant Direction of Investment.** To the extent permitted under the Plan, as determined by the Employer, Custodian is directed to accept and follow investment directions received from individual participants or beneficiaries, subject to any other limitations described in this Custodial Agreement.

**XVIII. Assignment and Delegation.** Custodian may assign or delegate certain of the administrative or recordkeeping services described in this Custodial Agreement to be provided by third parties on behalf of the Custodian.

**XIX. Governing Law; Counterparts.** Except where Federal laws would otherwise control, this Custodial Agreement shall be governed by the laws of the State of Delaware. This Custodial Agreement may be executed in any number of counterparts, each of which shall be considered an original of this Custodial Agreement.

**XX. Acts or Omissions of Other Parties.** Neither Service Provider nor its affiliates, successors and assigns shall have any liability, duty or other obligation with respect to actions or omissions (including incomplete or incorrect data provided to Service Provider) of the Employer, the Plan Administrator, or other authorized Plan representative, or of any concurrent or predecessor Custodian, custodian, or other investment or service provider. Custodian is entitled to rely on instructions provided by the Employer, the Plan Administrator, or another authorized Plan Representative and investment instructions provided by participants and beneficiaries and shall have no duty to inquire with respect to such instructions.

**XXI. Notice.** Notice to either party shall be provided in writing as follows:

**To Employer:**

Attn: «Decision\_Maker»  
 «Title»  
 «Employer\_Name»  
 «Employer\_Address»  
 «Address2»  
 «City\_», «State» «Zip»

**To Custodian:**

Attn: Robert Rossiter  
 Senior Vice President  
 AIG Federal Savings Bank  
 ALICO Plaza  
 600 King Street  
 Wilmington, DE 19801

**XXII. Release of Information.** Where necessary to the proper administration of Employer's Plan, the Custodian may release information to the Employer or a governmental agency examining the Employer's Plan.

**XXIII. Representations and Warranties.** Employer and Custodian each represent and warrant to the other as follows:

- a. Each is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, in the case of AIG Federal Savings Bank, the laws of the United States;

b. Each is not a party to or subject to any charter, by-law, agreement, law, rule, regulation, judgment or decree of any kind that would prevent performance of the terms and conditions of this Custodial Agreement;

c. Each has full power and authority to execute and deliver this Custodial Agreement and to consummate and perform the transactions contemplated hereby;

d. This Custodial Agreement has been duly authorized, executed and delivered by Employer and Custodian and constitutes the legal, valid and binding obligation of each, enforceable against each in accordance with its terms; and

e. (Check applicable provision below; if neither checked, paragraph 1. shall apply):

1. \_\_\_\_\_ (*Only individual executing this agreement authorized to act with respect to the Custodial Account*). Employer has invested the fullest authority at all times in the individual executing this Custodial Agreement, which individual is empowered by resolution and applicable law to execute any documents that Custodian requires relevant to the opening or maintaining of a Custodial Account for the Plan and to take any and all action deemed to be proper in connection with the Custodial Account, including, but not limited to, authority to give written or oral instructions to Custodian with respect to Custodial Account transactions; or

2. \_\_\_\_\_ (*Individuals other than individual executing this agreement authorized to act with respect to the Custodial Account*). Employer has invested the fullest authority at all times in the individuals named and whose signatures appear in Appendix B, which individuals are empowered by resolution and applicable law to execute any documents that Custodian requires relevant to the opening or maintaining of a Custodial Account for the Plan and to take any and all action deemed by any of them to be proper in connection with the Custodial Account, including, but not limited to, authority to give written or oral instructions to Custodian with respect to Custodial Account transactions.

Said powers and authority granted shall continue fully effective until receipt by Custodian of written notice of change or revision thereof. Employer will certify to Custodian promptly, when and as made, any change in the individual(s) or powers of said individual(s) hereby authorized and such modifications when received by Custodian shall be adequate both to terminate the powers of the individual(s) theretofore authorized and to empower the individual(s) thereby substituted. The Custodian shall be entitled to rely on and shall be fully protected in acting upon directions, instructions, and any information provided by the individual(s) until a notice described in this paragraph is received.

**XXIV. Entire Agreement.** Executed by the authorized representatives of the parties, this Custodial Agreement together with the referenced exhibits and attachments constitutes the entire intent of the parties to this Custodial Agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Custodial Agreement.

**XXV. Amendment.** This Custodial Agreement may be amended with the written consent of Employer and Custodian. Custodian may unilaterally amend this Custodial Agreement if it is deemed advisable to do so in order to conform the Custodial Agreement to applicable law and regulations.

Signature of authorized representative of Employer:

\_\_\_\_\_

\_\_\_\_\_  
Print name of authorized representative of Employer

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

Appointment of AIG Federal Savings Bank as non-discretionary directed custodian accepted by  
authorized representative:

\_\_\_\_\_

\_\_\_\_\_  
Print name of authorized representative of AIG Federal Savings Bank

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

SAMPLE

**Appendix A**  
to  
**Custodial Agreement**  
Effective «Service\_Efft\_Dt»

**Available Investment Options<sup>1</sup>**

VALIC receives 12b-1 fees and recordkeeping fees from mutual funds or their affiliates as shown below for administrative and shareholder services. VALIC offsets the plan sponsor's administrative fee by the 12b-1 fees and recordkeeping fees received from the fund families as described in the Service Provider Agreement.

				<b>Amounts Paid to VALIC from Fund Family</b>	
	<b>Fund Name</b>	<b>Asset Category</b>	<b>Ticker Symbol or CUSIP Number</b>	<b>12b-1 Fees (%)</b>	<b>Record keeping / Admin Fees (%)</b>
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15	SunAmerica Money Market <sup>2</sup>	Money Market	866919400	0.00	0.25
16	VALIC Fixed-Interest Option <sup>3</sup>				

<sup>1</sup> In the event a fund selected by the Employer has been merged with another fund due to fund-company action and the Employer or its authorized Plan representative has not selected a new fund, for any contributions received on behalf of a participant who is participating in such fund, and, where required for the current account balances in the merged fund, Employer hereby directs Service Provider and Custodian to transfer such amounts to the surviving fund of the fund merger.

<sup>2</sup> Investment of Plan forfeitures only

<sup>3</sup> A VALIC group fixed unallocated annuity (policy form GFUA-398). Transfers from this annuity contract shall be subject to a contractually imposed 90-day "equity wash" limitation, meaning that transfers out of this Fixed-Interest Option may not occur to a "competing option," as defined in the annuity contract, for 90 days after such transfer from the Fixed-Interest Option. This fund will be the default investment option for the Plan.

The default investment option(s) will be used:

- a. for any contributions received on behalf of a participant who does not have investment elections on file with Service Provider; or
- b. in the event a fund selected by the Employer has closed due to fund-company action and the Employer or its authorized Plan representative has not selected a new fund, for any contributions received on behalf of a participant who is participating in such fund; and, where required for the current account balances in the unavailable fund, Employer hereby directs Service Provider and Custodian to transfer such amounts to this investment option.

VALIC represents The Variable Annuity Life Insurance Company and its subsidiaries VALIC Financial Advisors, Inc. and VALIC Retirement Services Company.

SAMPLE

**Appendix B**  
**to**  
**Custodial Agreement**  
**Effective «Service\_Efft\_Dt»**

**Authorized Individuals**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_