

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

TAB	DESCRIPTION	ACTION
1	BOISE STATE UNIVERSITY Employment Agreement – Head Women’s Basketball Coach	Motion to approve
2	IDAHO STATE UNIVERSITY Employment Agreement – Head Football Coach	Motion to approve
3	OFFICE OF THE IDAHO STATE BOARD OF EDUCATION Supplemental Plan for Highly Compensated Employees	Motion to approve

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BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 17, 2011

BOISE STATE UNIVERSITY

SUBJECT

Five year contract for a Head Women's Basketball Coach

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a multi-year contract for its Head Women's Basketball Coach. The contract will be for five years. The salary is \$174,900 per year, plus media based supplemental pay of \$5,100 annually, with incentives as follows:

Athletic Incentive Pay may be earned as follows:

WAC Regular Season Champions	\$5,000
The greater of the following two:	
WAC Tournament Finalist	\$3,000
WAC Tournament Champions	\$15,000
NCAA Tournament Appearances	\$5,000 per game
WNIT Appearance	\$3,000 per game
20 Wins	\$4,000
Winning Record (more wins than losses)	\$4,000

Academic Incentive Pay may be earned if the 4-year team APR ranks nationally within women's basketball above the 50th percentile as follows:

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

Liquidated damages for the Coach terminating the contract early for his own convenience are \$60,000 for the first year, \$45,000 for the second year and \$30,000 for the third year.

IMPACT

This contract represents a five year contract, with a start date of April 2010. The reason is that the Coach is currently in the middle of an existing contract already earning the stated salary. However, the incentive pay terms were re-negotiated in mid year. To memorialize those changes and make them effective and applicable in the current season, the new contract was drafted to back date to the beginning of this contract year.

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ATTACHMENTS

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STAFF COMMENTS AND RECOMMENDATIONS

This is an employment contract for BSU's women's basketball coach. The contract is consistent with the Board-approved multi-year model contract except as noted in the redline version and matrix in Attachments 2 and 3, respectively.

The salient compensation terms and conditions are summarized in the Background/Discussion, above. The contract does stipulate an annual team retention rate of at least 50% is a condition precedent to the coach's receipt of supplemental compensation.

Maximum potential annual compensation (base salary, media payment and maximum potential incentive) is \$223,500 plus any per game compensation for NCAA tournament or WNIT appearances. The base salary amount provided in this agreement is funded entirely from athletics program revenue.

The coach may be eligible to receive other supplemental compensation: (1) based on other factors at the discretion of the president and upon approval by the Board; and (2) through University operated summer camps.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to execute a multi-year employment contract with Gordon Presnell for Head Women's Basketball Coach for a term commencing April 1, 2010 and terminating March 31, 2015.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University, and Gordon H. Presnell.

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate Women's Basketball team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on April 1, 2010 and terminating without further notice to Coach on March 31, 2015 unless sooner terminated in accordance with other provisions of this Agreement

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's Board of Trustee. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$174,900 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

3.2.1 Athletic Achievement

- a) WAC Regular Season Champions \$5,000
- b) The greater of the following two:
 - WAC Tournament Finalist \$3,000
 - WAC Tournament Champions \$15,000
- c) NCAA Tournament Appearances \$5,000 per game
- d) WNIT Appearance \$3,000 per game
- e) 20 Wins \$4,000
- f) Winning Record (more wins than losses) \$4,000

3.2.2 Academic Achievement

Academic Incentive Pay may be earned if your 4 year team APR ranks nationally within your sport above the 50th percentile as follows:

<u>National Rank Within Sport</u>		
50th - 59.9%	=	\$5,000
60th - 69.9%	=	\$7,500
70th - 79.9 %	=	\$10,000
80th % or above	=	\$12,500

3.2.3 Conditions for payment of Academic and Athletic supplemental compensation:

a. Payment date for academic achievement supplemental compensation and for athletic achievement supplemental compensation shall be made July 1st of each year following the completion of the season in which it is earned.

b. In order to receive the 3.2.1 supplemental compensation, the basketball team's retention rate must be at least 50% for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

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

3.2.5 The Coach shall receive the sum of \$5,100 annually from the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). This sum shall be paid monthly. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including, but not limited to, a coach's show, call-in show, or interview show) or a regularly scheduled

news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements, which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Summer Camp Operated by the University. Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer basketball camps, the University shall pay Coach a reasonable supplemental compensation during each year of his employment as head coach at the University. The summer youth camp must be operated by Coach in a manner that reflects positively on the University and the Department. The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps. All revenues and expenses of the Camp shall be deposited with and paid by the University.

In the event of termination of this Agreement, suspension, or reassignment, University 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 shall be released from all obligations relating thereto.

3.2.7 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) University's Policies; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Western Athletic Conference (WAC).

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are

consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

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

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

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

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

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

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including, but not limited to, any such violation which may have occurred during the employment of Coach at another NCAA member institution;
- d) Ten (20) working days absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if

Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a) and the amount set forth in section 3.2.5, excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains 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 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) and the amount set forth in section 3.2.5 (before deductions required by law) by the gross compensation paid to Coach under the 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 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 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 had opportunity to be represented by legal counsel in the contract negotiations have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June 1, 2011, the sum of \$60,000; (b) if the Agreement is terminated between June 1, 2011 and May 31, 2012 inclusive, the sum of \$45,000; (c) if the Agreement is terminated between June 1, 2012 and May 31, 2013 inclusive, the sum of \$30,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both had opportunity to be represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated

damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminated this Agreement because of a material breach by the University.

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

5.6 No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Policies.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of (Regents or Trustees) and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the State of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the State of Idaho.

6.7 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9 Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

the University: Director of Athletics
 1910 University Drive
 Boise, Idaho 83725-1020

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

the Coach: Gordon H. Presnell
 Last known address on file with
 University's Human Resource Services

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12 Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other

designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

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

UNIVERSITY

COACH

Robert Kustra, President

Date

Gordon H. Presnell

Date

Approved by the SBOE on the ____ day of _____, 20__.

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University, and Gordon H. Presnell.

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate Women's Basketball team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on April 1, 2010 and terminating, without further notice to Coach, on March 31, 2015 unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's Board of Trustee. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$174,900 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

~~3.2~~

~~3.3 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 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.~~

3.2.1 Athletic Achievement

a)	<u>WAC Regular Season Champions</u>	<u>\$5,000</u>
b)	<u>The greater of the following two:</u>	
	<u>WAC Tournament Finalist</u>	<u>\$3,000</u>
	<u>WAC Tournament Champions</u>	<u>\$15,000</u>
c)	<u>NCAA Tournament Appearances</u>	<u>\$5,000 per game</u>
d)	<u>WNIT Appearance</u>	<u>\$3,000 per game</u>
e)	<u>20 Wins</u>	<u>\$4,000</u>
f)	<u>Winning Record (more wins than losses)</u>	<u>\$4,000</u>

3.2.2 Academic Achievement

Academic Incentive Pay may be earned if your 4 year team APR ranks nationally within your sport above the 50th percentile as follows:

<u>National Rank Within Sport</u>		
<u>50th - 59.9%</u>	<u>=</u>	<u>\$5,000</u>
<u>60th - 69.9%</u>	<u>=</u>	<u>\$7,500</u>
<u>70th - 79.9 %</u>	<u>=</u>	<u>\$10,000</u>
<u>80th % or above</u>	<u>=</u>	<u>\$12,500</u>

3.2.3 Conditions for payment of Academic and Athletic supplemental compensation:

a. Payment date for academic achievement supplemental compensation and for athletic achievement supplemental compensation shall be made July 1st of each year following the completion of the season in which it is earned.

b. In order to receive the 3.2.1 supplemental compensation, the basketball team's retention rate must be at least 50% for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

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

3.2.5— The Coach shall receive the sum of \$5,100 annually from the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). ~~Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment) ———.~~ This sum shall be paid monthly. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including, but not limited to, a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements, which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Summer Camp Operated by the University. Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general

administration of the University's basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer basketball camps, the University shall pay Coach a reasonable supplemental compensation during each year of his employment as head coach at the University. The summer youth camp must be operated by Coach in a manner that reflects positively on the University and the Department. The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps. All revenues and expenses of the Camp shall be deposited with and paid by the University.

In the event of termination of this Agreement, suspension, or reassignment, University 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 shall be released from all obligations relating thereto.

3.2.7 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) University's Policies; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the University's athletic conference (currently the Western Athletic Conference (WAC)).

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

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits,

or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

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

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

ARTICLE 5

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

5.1.1 In addition to the definitions contained in applicable policies, rules and regulations, University and Coach hereby specifically agree that the following shall constitute

good or adequate cause for suspension, reassignment, or termination of this Agreement.

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including, but not limited to, any such violation which may have occurred during the employment of Coach at another NCAA member institution;
- d) Ten (20) working days absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a) and the amount set forth in section 3.2.5, excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains 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 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) and the amount set forth in section 3.2.5 (before deductions required by law) by the gross compensation paid to Coach under the 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 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 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~~The parties have both had opportunity to be represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June 1, 2011, the sum of \$60,000; (b) if the Agreement is terminated between June 1, 2011 and May 31, 2012 inclusive, the sum of \$45,000; (c) if the Agreement is terminated between June 1, 2012 and May 31, 2013 inclusive, the sum of \$30,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 ~~5.3.4 The parties have both been represented by legal counsel in the contract negotiations and~~The parties have both had opportunity to be represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall

not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminated this Agreement because of a material breach by the University.

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

5.6 No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Policies.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of (Regents or Trustees) and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the State of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the State of Idaho.

6.7 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the

reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9 Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

the University: Director of Athletics
 1910 University Drive
 Boise, Idaho 83725-1020

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

the Coach: Gordon H. Presnell
 Last known address on file with
 University's Human Resource Services

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12 Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

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

UNIVERSITY

COACH

Robert Kustra, President Date

Gordon H. Presnell Date

Approved by the SBOE on the ____ day of _____, 20__.

Gordon Presnell, Boise State University, Head Track Coach – 2010 to 1015 – Multi-Year Contract

	Model Contract Section	Contract Section	Justification for Modification
3.2	Supplemental Compensation	3.2.1 Supplemental Compensation; language added	Language provides specific criteria for athletic achievement supplemental compensation.
3.2	Supplemental Compensation	3.2.2 & 3.2.3 Supplemental Compensation; language added	Language provides specific criteria for athletic and academic achievement supplemental compensation.
3.2	Supplemental Compensation	3.2.5 Supplemental Compensation; language added	Provides for monthly payment rather than year end payment.
3.2	Supplemental Compensation	3.2.6 Supplemental Compensation; summer camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
4.7	None	4.7 Specific Duties of Coach	Language provides for specific duties.
5.2	5.2.2 Termination of coach for convenience	5.2.2 Termination of coach for convenience	Added the 3.2.5 payments.
5.2	5.2.3. Termination of coach for convenience and 5.3.4 Termination by coach for convenience	5.2.3 Termination of coach for convenience and 5.3.4 Termination by coach for convenience	Coach was not represented, but had opportunity to do so.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 17, 2011

IDAHO STATE UNIVERSITY

SUBJECT

Multi-year employment agreement for Head Football Coach

APPLICABLE STATUTE, RULE OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University is requesting approval for a four-year, two-month employment agreement for Michael D. Kramer, Head Football Coach (see Attachment 1). The employment agreement contains the duties, responsibilities and conditions of employment. A model contract matrix of the employment agreement that identifies departures from the model contract form and provides justification for these changes is included as Attachment 3. The position is funded by state appropriated funds.

IMPACT

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

ATTACHMENTS

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement – Red-Line	Page 17
Attachment 3	Model Contract Matrix Changes	Page 33

STAFF AND COMMENTS AND RECOMMENDATIONS

This is an employment contract for ISU's head football coach. The salary is \$135,012.80 per year, with incentives as follows:

Athletic Incentive Pay

Conference Champion or Co-Champion:	\$5,192.80
NCAA FCS Playoffs:	\$5,192.80
Average Attendance at Home Games:	
6,000-6,999	\$2,000.00
7,000-7,999	\$4,000.00
8,000-8,999	\$6,000.00
9,000-9,999	\$8,000.00
10,000+	\$10,000.00
Big Sky Conference Coach of the Year:	\$5,192.80
Winning Season:	
8 wins:	\$2,000.00
9 wins:	\$4,000.00
10 wins:	\$6,000.00
11 wins:	\$8,000.00

BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 17, 2011

		12 wins:	\$10,000.00
NCAA FCS Playoffs:			
Play-in	8 Teams	1st win	\$5,000.00
Round 2	16 Teams	2nd win	\$5,000.00
Round 3	8 Teams	3rd win	\$5,000.00
Round 4	4 Teams	4th win	\$8,000.00
Round 5	2 Teams	5th win	\$10,000.00

Team Participation in "Money Games": 1% of contract payment with loss or 3% of contract payment with win

Supplemental Compensation may also be earned based on academic achievement and team member behavior, at the discretion of the president and upon approval by the Board. Factors will include the team's 4-year APR ranking based on attainment of the following levels:

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

Maximum potential annual compensation (base salary and maximum potential incentive) would be \$216,091.20.

The coach is also eligible to receive other supplemental compensation through University operated summer camps.

Liquidated damages for the Coach terminating the contract early for his own convenience are \$30,000 for the first year, \$20,000 for the second year and \$10,000 for the third year.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Idaho State University to execute a multi-year employment contract with Michael Kramer for Head Football Coach for a term commencing November 22, 2010 and terminating January 21, 2015.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and Michael D. Kramer (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.9 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, two (2) months, commencing on November 22, 2010 and terminating, without further notice to Coach, on January 21, 2015 unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's Board of Trustees. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$135,012.80 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees);
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ($2/52 \times$ Annual Salary) of Coach's Annual Salary during the fiscal year in which the championship is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year the Team competes for the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ($2/52 \times$ Annual Salary) of Coach's Annual Salary during the fiscal year in which the post-season participation are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$15,000 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's Board of Trustees. The determination shall be based on the following factors: the conduct of Team members on the University campus, at authorized

University activities, in the community, and elsewhere and the Team’s four-year ranking based on attainment of the following levels:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
50%-59%	\$ 5,000.00
60%-69%	\$ 7,500.00
70%-79%	\$ 10,000.00
80% or above	\$ 15,000.00

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

3.2.4 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving an average attendance at home Football games at the following levels, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in a amounts equal to the following. Average attendance numbers shall be determined and announced by the University Ticket office. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation:

6,000-6,999	\$ 2,000.00
7,000-7,999	\$ 4,000.00
8,000-8,999	\$ 6,000.00
9,000-9,999	\$ 8,000.00
10,000+	\$10,000.00

3.2.5 Each year the Coach earns recognition as the Big Sky Conference Football Coach of the Year, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week’s pay ($2/52 \times$ Annual Salary) of Coach’s Annual Salary during the fiscal year in which the Big Sky Conference Football Coach of the Year recognition is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving a predetermined number of wins, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to the following:

8 wins:	\$ 2,000.00
9 wins:	\$ 4,000.00
10 wins:	\$ 6,000.00
11 wins:	\$ 8,000.00
12 wins:	\$10,000.00

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

3.2.7 Each year the Team advances in the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Play-in	8 Teams	1 st win	\$5,000.00
Round 2	16 Teams	2 nd win	\$5,000.00
Round 3	8 Teams	3 rd win	\$5,000.00
Round 4	4 Teams	4 th win	\$8,000.00
Round 5	2 Teams	5 th win	\$10,000.00

Possible national championship winner computation bonus total: \$28,000.00/\$33,000.00

3.2.8 Each year the Coach shall have the opportunity to receive supplemental compensation for the Team's participation in "money games" (where another team pays the Team to play them at the other team's location). If Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation for each such money game in an amount equal to either: (a) one percent (1%) of contractual payment received by the University for participation in the money game if the Team loses the money game; or (b) three percent (3%) of contractual payment received by the University if the Team wins the game.

3.2.9 **(SUMMER CAMP—OPERATED BY UNIVERSITY)** Coach agrees that the University has the exclusive right to operate youth Football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head Football coach at the University, or direct those net revenues as an enhancement to the Football program budget at the University. This amount shall be paid within 30 days after all camp billed have been paid.

3.2.10 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University is negotiating or has entered into an agreement with Nike to supply the University with athletic footwear, apparel and/or equipment. Coach

agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a Nike product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Nike, or give a lecture at an event sponsored in whole or in part by Nike, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head Football coach. In order to avoid entering into an agreement with a competitor of Nike, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including Nike, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations.

Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky conference of which the University is a member.

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

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

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the

expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's

assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains 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 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 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 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 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, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 20, 2012, the sum of \$30,000.00; (b) if the Agreement is terminated between January 21, 2012 and January 20, 2013 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 21, 2013 and January 20, 2014 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 will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University.

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

5.6 No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Trustees and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car Program), material, and articles of information, including, without limitation, keys, credit cards, cellular telephones, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9 Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

the University: Director of Athletics

Jeffrey K. Tingey
921 S. 8th Ave. Stop 8173
Pocatello, ID 83209-8173

with a copy to: President

Arthur Vailas
921 S. 8th Ave. Stop
Pocatello, ID 83209-

the Coach:

Michael D. Kramer
Last known address on file with
University's Human Resource Services

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12 Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

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

IDAHO STATE UNIVERSITY

COACH

Arthur C. Vailas, President

Date

Michael D. Kramer

Date

Approved by the Board of Trustees on the ____ day of _____, 2011.

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____
~~(Idaho State University (College));~~University) and _____Michael D. Kramer
 (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)'s~~University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~-(Depending on supplemental pay provisions used)-~~3.2.9 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of _____~~-(four (4))~~ years, two (2) months, commencing on _____November 22, 2010 and terminating, without further notice to Coach, on _____January 21, 2015 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~~University's Board of ~~-(Regents or Trustees)-~~. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University ~~(College)~~.

2.2.

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 \$ ~~_____~~ \$135,012.80 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~~ University'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~~ University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion ~~and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs)~~, and if Coach continues to be employed as University (College)'s University's head ~~(Sport)~~ Football coach as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~_(amount or computation)_~~ of two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in which the championship ~~and (bowl or other post season) eligibility are~~ is achieved. The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.2~~

3.2.2. Each year the Team ~~is ranked in~~ competes for the ~~top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams)~~ NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University (College)'s University's head ~~(Sport)~~ Football coach as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to

~~-(amount or computation) — of Coach's two week's pay (2/52 x Annual Salary in effect on) of Coach's Annual Salary during the fiscal year in which the date of the final post-season participation are achieved.~~ The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. ~~3.2.3~~—Each year Coach shall be eligible to receive supplemental compensation in an amount up to ~~-(amount or computation) —~~ \$15,000 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 University'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 ~~- and the Team's four-year ranking based on attainment of the following levels:~~

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
<u>50%-59%</u>	<u>\$ 5,000.00</u>
<u>60%-69%</u>	<u>\$ 7,500.00</u>
<u>70%-79%</u>	<u>\$ 10,000.00</u>
<u>80% or above</u>	<u>\$ 15,000.00</u>

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 the Coach shall ~~be eligible~~ have the opportunity 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~~ for achieving an average attendance at home Football games at the following levels, and if Coach ~~to various constituency groups, including continues to be employed as University's head Football coach as of the ensuing July 1st, the University (College) students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether shall pay to Coach will receive such~~ supplemental compensation ~~and in a amounts equal to the timing of the payment(s) following. Average attendance numbers shall be at the discretion of the President in consultation with the Director determined and approved announced~~ by the University ~~(College)'s Board of (Regents or Trustees) —~~.

~~3.2.5 Ticket office. 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 determine the appropriate manner in which it 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.~~ pay Coach any such supplemental compensation:

<u>6,000-6,999</u>	<u>\$ 2,000.00</u>
<u>7,000-7,999</u>	<u>\$ 4,000.00</u>
<u>8,000-8,999</u>	<u>\$ 6,000.00</u>
<u>9,000-9,999</u>	<u>\$ 8,000.00</u>
<u>10,000+</u>	<u>\$10,000.00</u>

3.2.5 Each year the Coach earns recognition as the Big Sky Conference Football Coach of the Year, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in which the Big Sky Conference Football Coach of the Year recognition is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving a predetermined number of wins, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to the following:

<u>8 wins:</u>	<u>\$ 2,000.00</u>
<u>9 wins:</u>	<u>\$ 4,000.00</u>
<u>10 wins:</u>	<u>\$ 6,000.00</u>
<u>11 wins:</u>	<u>\$ 8,000.00</u>
<u>12 wins:</u>	<u>\$10,000.00</u>

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

3.2.7 Each year the Team advances in the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

<u>Play-in</u>	<u>8 Teams</u>	<u>1st win</u>	<u>\$5,000.00</u>
<u>Round 2</u>	<u>16 Teams</u>	<u>2nd win</u>	<u>\$5,000.00</u>
<u>Round 3</u>	<u>8 Teams</u>	<u>3rd win</u>	<u>\$5,000.00</u>
<u>Round 4</u>	<u>4 Teams</u>	<u>4th win</u>	<u>\$8,000.00</u>
<u>Round 5</u>	<u>2 Teams</u>	<u>5th win</u>	<u>\$10,000.00</u>

Possible national championship winner computation bonus total: \$28,000.00/\$33,000.00

3.2.8 Each year the Coach shall have the opportunity to receive supplemental compensation for the Team's participation in "money games" (where another team pays the Team to play them at the other team's location). If Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation for each such money game in an amount equal to either: (a) one percent (1%) of contractual payment received by the University for participation in the money game if the Team loses the money game; or (b) three percent (3%) of contractual payment received by the University if the Team wins the game.

3.2.9 (SUMMER CAMP—OPERATED BY UNIVERSITY—(COLLEGE))
 Coach agrees that the University—(College) has the exclusive right to operate youth (Sport)—Football camps on its campus using University (College)—facilities. The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'s University's camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s University's 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 University's summer football camps, -the University (College) shall pay Coach ~~(amount)~~ any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head ~~(Sport) Football~~ coach at the University—(College), or direct those net revenues as an enhancement to the Football program budget at the University. This amount shall be paid ~~—(terms of payment)—~~ within 30 days after all camp billed have been paid.

~~(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;~~
- ~~e) 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.~~

3.2.710 Coach agrees that the University ~~(College)~~ has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University ~~(College)~~. Coach recognizes that the University ~~(College)~~ is negotiating or has entered into an agreement with ~~—(Company Name)—Nike~~ to supply the University ~~(College)~~ with athletic footwear, apparel and/or equipment. Coach agrees that, upon the ~~University (College)'s~~ University's reasonable request, Coach will consult with appropriate parties concerning an ~~an —(Company Name)—a Nike~~ product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~—(Company Name)—Nike~~, or give a lecture at an event sponsored in whole or in part by ~~—(Company Name)—Nike~~, 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)—Football~~ coach. In order to avoid entering into an agreement with a competitor of ~~(Company Name)—Nike~~, Coach shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. Coach shall also report such outside income to the University ~~(College)~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including ~~—(Company Name), Nike~~, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University ~~(College)~~ to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University ~~(College)~~ to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University ~~(College)~~ and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, and the NCAA ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University (College)'s~~ University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit 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~~ University's Handbook; (c) ~~University (College)'s~~ University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~(Sport) Big Sky~~ 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~~ University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3 NCAA ~~(or NAIA)~~ Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s~~ University's President for all athletically related income and benefits from sources outside the University ~~(College)~~ and shall report the source and amount of all such income and benefits to the ~~University (College)'s~~ University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University ~~(College)~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. In no event shall Coach accept or receive directly or indirectly any

monies, benefits, or gratuities whatsoever from any person, association, corporation, University ~~(College)~~ booster club, University ~~(College)~~ alumni association, University ~~(College)~~ foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, or the NCAA ~~(or NAIA)~~.

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

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

4.76 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

ARTICLE 5

5.1 Termination of Coach for Cause. The University ~~(College)~~ may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in 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 University'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 ~~NAAIA~~ member institution;

- d) Ten (10) working days' absence of Coach from duty without the ~~University (College)'s~~ University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)'s~~ University's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, or the NCAA ~~(NAIA)~~;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the ~~University (College)'s~~ University's governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

5.1.3 In the event of any termination for good or adequate cause, the ~~University (College)'s~~ University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the

University ~~(College)~~ shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

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

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

5.2.2 In the event that University ~~(College)~~ terminates this Agreement for its own convenience, University ~~(College)~~ shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University ~~(College)~~ until the term of this Agreement ends; provided, however, in the event Coach obtains 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 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 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 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 ~~_____~~ January 20, 2012, the sum of \$30,000.00; (b) if the Agreement is terminated between ~~_____~~ January 21, 2012 and ~~_____~~ January 20, 2013 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between ~~_____~~ January 21, 2013 and ~~_____~~ January 20, 2014 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 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~~University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

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

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

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

5.76 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.

5.87 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University ~~(College)~~ employees, if the University ~~(College)~~ suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University ~~(College)~~ from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University ~~(College)~~ Faculty-Staff Handbook.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the ~~University (College)'s~~University's Board of ~~(Regents or Trustees)~~ and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the ~~University (College)'s~~University's Board of ~~(Regents or Trustees)~~, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of ~~(Regents or Trustees)~~ and ~~University (College)'s~~University's rules regarding financial exigency.

6.2 University (College) Property. All personal property (excluding vehicle(s) provided through the ~~_____ program~~Courtesy Car Program), material, and articles of information, including, without limitation, keys, credit cards, cellular telephones, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University ~~(College)~~ or developed by Coach on behalf of the University ~~(College)~~ or at the ~~University (College)'s~~University's direction or for the ~~University (College)'s~~University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University ~~(College)~~. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University ~~(College)~~.

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the

reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9 Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the ~~University (College)'s~~ University's sole discretion.

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

the University ~~(College):~~ _____: _____ Director of Athletics

Jeffrey K. Tingey
921 S. 8th Ave. Stop 8173
Pocatello, ID 83209-8173

with a copy to: _____ President

Arthur Vailas
921 S. 8th Ave. Stop
Pocatello, ID 83209-

the Coach: _____ Michael D. Kramer
Last known address on file with
~~University (College)'s~~ University's Human Resource Services

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12 Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13 Non-Use of Names and Trademarks. The Coach shall not, without the ~~University (College)'s~~ University's prior written consent in each case, use any name, trade name, trademark,

or other designation of the University (~~College~~) (including contraction, abbreviation or simulation), except in the course and scope of his official University (~~College~~) duties.

6.14 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University (College)'s University's Board of ~~(Regents or Trustees)~~.

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

IDAHO STATE UNIVERSITY (COLLEGE)
COACH

Arthur C. Vailas, President Date _____ Michael D.
Kramer Date

Approved by the Board of ~~(Regents or Trustees)~~ on the ____ day of _____ ,
20102011.

MICHAEL D. KRAMER, HEAD FOOTBALL COACH - MULTI-YEAR CONTRACT CHANGES			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	3.2.1 Supplemental Compensation	3.2.1 Supplemental Compensation	2 weeks pay bonus for Team being conference champion or co-champion not made contingent on bowl game or post-season tournament/playoff eligibility as post season play is not necessarily available for this Team even if they win the conference.
2	3.2.2 Supplemental Compensation	3.2.2 Supplemental Compensation	2 weeks pay bonus for attaining top 25 ranking replaced with same bonus for Team competing in NCAA Football Championship subdivision post-season playoffs. This would require the Team to finish in the top 16 for its subdivision in order for the bonus to be payable.
3	3.2.3 Supplemental Compensation	3.2.3 Supplemental Compensation	Used the Team's 4-year APR ranking as the criteria for academic achievement as this has been a key focus and issue for the University.
4	3.2.4 Supplemental Compensation	3.2.4 Supplemental Compensation	Changed bonus opportunity based on program development, ticket sales and fundraising to a bonus opportunity of from \$2,000 to \$10,000 based on attendance levels at home games as this has been an issue with the University's Football program.
5	3.2.5 Supplemental Compensation	3.2.5 Supplemental Compensation	Deleted bonus opportunity for participation in media programs as these are not available at the Team's current level. Added bonus opportunity of 2 weeks pay if Coach earns Big Sky Conference Football Coach of the Year as this achievement would be important and prestigious for both the coach and the program.
6	None	3.2.6 Supplemental Compensation	Added bonus opportunity in an amount of \$2,000 to \$10,000 based on number of Team wins. Given the Team's recent record, this is considered an important achievement.
7	None	3.2.7 Supplemental Compensation	Added possible bonus compensation of up to \$33,000 for Teams' post-season playoff wins as this would bring prestige and funds into the Program.
8	None	3.2.8 Supplemental Compensation	Added bonus for "money game" participation. The playing of money games is an important part of the football program's budget.
9	3.2.6 Summer Camp Operated by University	3.2.9 Summer Camp Operated by University	University has decided to provide a University-operated summer camp only. Coach has the option not to take supplemental compensation for assisting with this camp and to instead have the funds used to enhance the budget of the Football Program.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 17, 2011

SUBJECT

Board Supplemental 403(b) Plan for Highly Compensated Employees

APPLICABLE STATUTES, RULE OR POLICY

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

BACKGROUND / DISCUSSION

In 2004 the Board adopted a 403(b) supplemental retirement plan for highly compensated employees (the Plan). The Plan was designed to receive employer and employee contributions that would have been made to the optional retirement plan, except that such contributions exceeded annual compensation limitations mandated by the Internal Revenue Code. Board staff has evaluated the Plan and believes that there are more appropriate plan vehicles that can be designed to achieve the Board's objectives in recruiting and retaining key university officials.

IMPACT

No further employer or employee contributions would be made to the Plan.

STAFF COMMENTS AND RECOMMENDATIONS

Internal Revenue Code provisions with respect to the deferral of income in retirement plans are highly complex. Accordingly, all the Board's retirement plans are reviewed on a regular basis by tax counsel. With respect to this Plan, tax counsel believes that Internal Revenue Code provisions for governmental employers (such as the Board) permit the design of a better and more appropriate deferred income plan for highly compensated employees than the current Plan. Board staff will continue to work with tax counsel to study the Board's options with respect to plan design, and recommends freezing the current Plan and suspending further employer and employee contributions at this time.

BOARD ACTION

In accordance with section 8.1 of the Idaho State Board of Education Supplemental Retirement Benefit Plan (the "Plan"), I move to amend the Plan as follows:

1. Add the following sentence to the end of sections 4.1 and 4.2:

"No further Plan Contributions shall be made to the Plan or accepted by the Plan effective January 1, 2011, pending review of tax requirements applicable to the Plan."

2. Add the following sentence to the end of sections 4.5 and 4.6:

BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 17, 2011

"No transfers or rollovers shall be made to the Plan or accepted by the Plan effective January 1, 2011, pending review of tax requirements applicable to the Plan."

Moved by _____ Seconded by _____ Carried Yes _____ No _____