

**BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 11, 2011**

TAB	DESCRIPTION	ACTION
1	AMENDMENT TO BOARD POLICY Section II. D. – Categories of Employees – General Definitions – Second Reading	Motion to approve
2	AMENDMENT TO BOARD POLICY Section II.F. -- Policies Regarding Non-classified Employees and Section II. G. -- Policies Regarding Faculty (Institutional Faculty Only) - Second Reading	Motion to approve
3	UNIVERSITY OF IDAHO Employment Agreement – Head Swim Coach	Motion to approve
4	UNIVERSITY OF IDAHO Employment Agreement Extension – Athletic Director	Motion to approve

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BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 11, 2011

SUBJECT

Categories of Employees, Board Policy II.D. – Second Reading

APPLICABLE STATUTES, RULE OR POLICY

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

BACKGROUND / DISCUSSION

In June 2011 the Board approved the first reading to amend Board policy II.D.2. on Categories of Employees.

IMPACT

Adoption of this revision to Board policy will ensure that an institution's classification of a position as "non-classified" will also constitute Board "designation," when applicable and required by Idaho Code.

ATTACHMENTS

Attachment 1 – Board Policy, Section II.D.2., 2nd Reading

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STAFF COMMENTS AND RECOMMENDATIONS

There were no changes from the first reading. Staff recommends approval.

BOARD ACTION

I move to approve the second reading of the proposed amendments to Board policy II.D.2., as presented.

Moved by_____ Seconded by_____ Carried Yes____ No____

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Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: D. Categories of Employees – General Definitions

August 2011

1. Classified Employee

"Classified employee" means any person appointed to or holding a position at an institution, or agency whose position is subject to the provisions of the merit examination, selection, retention, promotion, and dismissal requirements of the Idaho Division of Human Resources as provided under Chapter 53, Title 67, Idaho Code, or the policies and procedures of the University of Idaho for classified employees.

a. Classified Employees -- Idaho Division of Human Resources

Appointments, employment status, personnel actions, and primary employment benefits concerning classified employees of the Board must be administered in accordance with the rules and regulations established by the Idaho Division of Human Resources.

b. Classified Employees -- University of Idaho

Classified employees at the University of Idaho are subject to the policies and procedures of the University of Idaho for its classified employees. Such policies and procedures require approval by the Board, and should be, in so much as practical, parallel to the provisions provided for state of Idaho classified employees in Chapter 53, Title 67, Idaho Code.

2. Non-classified Employees

"Non-classified employee" means any person appointed to or holding a non-classified position at an institution or agency pursuant to section 67-5303(j), Idaho Code, and thus is not subject to the provisions of Chapter 53, Title 67, Idaho Code or the policies and procedures of the University of Idaho for its classified employees. The classification of a position or employee as "non-classified" by the Board, or by an institution or agency under the governance of the Board pursuant to the Board's Governing Policies and Procedures, which is not otherwise "teaching staff," constitutes Board designation of such position or employee as an "officer" under section 67-5303(j), Idaho Code.

a. The Board's executive director and the chief executive officers of the institutions and agencies are appointed by the Board and serve at the pleasure of the Board, and may therefore be dismissed at any time, with or without cause, and without notice.

b. As used in these personnel policies, the term "chief executive officer" shall mean the following, with reference to the appropriate entity:

(1) Institutions – the president

(2) Office of the State Board of Education – the executive director

- (3) The Division of Vocational Rehabilitation – the administrator
- (4) The Division of Professional-Technical Education – the administrator
- (5) Idaho Educational Public Broadcasting System – general manager

c. Faculty Employees

Faculty employees comprise a large and unique subset of the Board's non-classified employees. Thus, faculty employees are addressed specifically throughout these policies and procedures.

Institutional Faculty:

- (1) "Academic faculty" means all employees who hold the rank of instructor/lecturer or a higher academic rank in an academic department at the University of Idaho, Idaho State University, Boise State University, or Lewis-Clark State College,
- (2) "Professional-Technical faculty" means all employees who hold the rank of instructor or higher in any of the five area professional-technical colleges or Eastern Idaho Technical College and who are hired under the Division of Professional-Technical Education.

References to "institutional faculty" or "faculty" in these policies include both academic and professional-technical faculty. Institutional faculty are generally subject to all of the same policies and procedures unless one group is specifically addressed or exempted.

d. Temporary or Special Project Non-classified Employees

- (1) This category includes (1) employees who are appointed to positions that are either temporary or for special projects and who generally meet specific position requirements for (a) grants or contracts of specified duration or (b) part-time teaching or other responsibilities, and (2) employees who are appointed to fulfill the responsibilities of continuing positions on an emergency or temporary basis.

(2) Student Employees

A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status.

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GOVERNING POLICIES AND PROCEDURES

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Subsection: D. Categories of Employees – General Definitions

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- e. Head Coaches and Athletic Directors (Institutions Only) – Serve pursuant to contracts of employment as set forth in these policies and procedures.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 23, 2011

SUBJECT

Board Policy II.F. and II.G. – Second Reading

APPLICABLE STATUTES, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.F. and II.G.

Idaho Code §59-1606(3)

Idaho Code §67-5334

BACKGROUND / DISCUSSION

In June 2011 the Board approved the first reading to amend Board policies Section II.F. and II.G. Regarding Non-classified Employees and Faculty.

IMPACT

Amending Board policy will allow institutions to payoff vacation balances when a classified employee's position is changed to non-classified, a classified employee is moved to a non-classified position, or a faculty member moves from a 12 month appointment to a position of less than 12 months.

Idaho Code §59-1606(c) provides that "any policy and procedures determined by the State Board of Education must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures." As such, the actual effective date of any Board policy could be up to 180 days from approval of second reading.

ATTACHMENTS

Attachment 1 – Board Policy, Section II.F.

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Attachment 2 – Board Policy, Section II.G.

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STAFF COMMENTS AND RECOMMENDATIONS

There were no changes from the first reading. Staff recommends approval.

BOARD ACTION

I move to approve the second reading of the proposed amendments to Board Policy II.F and II.G., as submitted.

Moved by _____ Seconded by _____ Carried Yes ___ No ___

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees**August 2011

1. Employment Terms

a. All non-classified employees, except those set forth in Section II.F.1.b. below, serve at the pleasure of the chief executive officer, and may be dismissed at any time, with or without cause, and without notice, at the discretion of the chief executive officer.

b. Employment Contracts

(1) An institution may provide employment contracts to its non-classified employees. If an institution chooses to offer employment contracts to its non-classified employees, the employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-classified employees have no continued expectation of employment beyond their current contract of employment.

(2) Non-classified employees, who serve pursuant to contracts of employment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).

(3) Each employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution.

(4) Each contract of employment shall include a statement to the following effect and intent: "The terms of employment set forth in this contract of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of University of Idaho), and the policies and procedures of the institution." The contract shall also state that it may be terminated at any time for adequate cause, as defined in Section II.L. of Board Policy, or when the Board declares a state of financial exigency, as defined in Section II.N. of Board Policy. The

contract shall also state that it may be non-renewed pursuant to Section II.F.5. of Board Policy.

- (5) No contract of employment with such an employee may exceed one (1) year without the prior express approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.

2. Compensation

- a. Salary – All non-classified employees shall receive a fixed salary. Payment in addition to the fixed salary may be authorized by the chief executive officer and reported to the Board. All initial salaries for non-classified employees are established by the chief executive officer, subject to approval by the Board where applicable. The Board may make subsequent changes for any non-classified employee salary or may set annual salary guidelines and delegates to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective or paid to the non-classified employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.
- b. Salaries, Salary Increases and other Compensation related items
 - (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA-HR), or its equivalent, without prior Board approval.
 - (2) Appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees' salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent's rate, whichever is greater.
 - (3) Overtime Compensation – Non-classified employees earning annual leave at the equivalent rate of two (2) days for each month or major fraction thereof of credited state service are not eligible for either cash compensation or compensatory time off for overtime work. Non-classified employees in positions that are defined as "non-exempt" under the Fair Labor Standards Act earn overtime at a rate of one and one-half (1½) hours for each overtime hour worked. Other non-classified employees may earn compensatory time

off at the discretion of the chief executive officer at a rate not to exceed one (1) hour of compensatory time for each hour of overtime worked.

- (4) Credited State Service - The basis for earning credited state service will be the actual hours paid not to exceed forty (40) per week.
- (5) Pay Periods - All non-classified employees are paid in accordance with a schedule established by the state controller.
- (6) Automobile Exclusion - Unless expressly authorized by the Board, no non-classified employee will receive an automobile or automobile allowance as part of his or her compensation.

3. Annual Leave

- a. Non-classified employees at the institutions, agencies earn annual leave at the equivalent rate of two (2) days per month or major fraction thereof of credited state service. Twelve-month employees employed at the entities named above may accrue leave up to a maximum of 240 hours. An employee who has accrued the maximum will not earn further leave until the employee's use of annual leave reduces the accrual below the maximum.

Non-classified employees in positions which are covered under the Fair Labor Standards Act earn annual leave according to § 67-5334 and are subject to the maximum leave accruals in § 67-5335(2).

- b. Non-classified employees appointed to less than full-time positions earn annual leave on a proportional basis dependent upon the terms and conditions of employment.
- c. Professional Leave - At the discretion of the chief executive officer, non-classified employees may be granted professional leave with or without compensation under conditions and terms as established by the chief executive officer.
- d. Pursuant to section 59-1606(3), Idaho Code, when a classified employee's position is changed to non-classified, or when a classified employee is moved into a non-classified position, and that employee, due to the employee's years of service, has an annual leave balance in excess of 240 hours, then the institution may pay the employee as supplemental pay the balance that is in excess of 240 hours.

4. Performance Evaluation

Each institution or agency must establish policies and procedures for the performance evaluation of non-classified employees, and are responsible for

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implementing those policies in evaluating the work performance of employees. The purposes of employee evaluations are to identify areas of strength and weakness, to improve employee work performance, and to provide a basis on which the chief executive officers and the Board may make decisions concerning retention, promotion, and merit salary increases. All non-classified employees must be evaluated annually. Any written recommendations that result from a performance evaluation must be signed by the appropriate supervisor, a copy provided to the employee and a copy placed in the official personnel file of the employee. Evaluation ratings that result in findings of inadequate performance of duties or failure to perform duties constitute adequate cause as set forth in Section II.L. of Board Policy.

5. Non-Renewal of Non-classified Contract Employees

- a. Notice of the decision of the chief executive officer to not renew a contract of employment must be given in writing to the non-classified employee at least sixty (60) calendar days before the end of the existing period of appointment for annual appointments. For appointments of less than one year, the written notice must be at least thirty (30) days prior to the end of the existing period of appointment. Reasons for non-renewal need not be stated. Non-renewal without cause is the legal right of the Board. If any reasons for non-renewal are provided to the employee for information, it does not convert the non-renewal to dismissal for cause and does not establish or shift any burden of proof. Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) (or thirty days where applicable) calendar days notice to the employee.
- b. Except as set forth in this paragraph, non-renewal is not grievable within the institution nor is it appealable to the Board. However, if an employee presents bona fide allegations and evidence to the chief executive officer of the institution that the non-renewal of the contract of employment was the result of discrimination prohibited by applicable law, the employee is entitled to use the internal discrimination grievance procedure to test the allegation. If the chief executive officer is the subject of the allegations, the employee may present the bona fide allegations and evidence to the Executive Director. The normal internal grievance procedure for discrimination must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The institution is required to offer evidence of its reasons for non-renewal only if the employee has made a prima facie showing that the recommendation of non-renewal was made for reasons prohibited by applicable law. Unless mutually agreed to by the parties in writing, the use of the discrimination grievance procedure will not delay the effective date of non-renewal. Following the discrimination grievance procedures, if any, the decision of the institution, is final, subject to Section II.F.5.c., below.

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Subsection: F. Policies Regarding Non-classified Employees

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- c. The non-classified contract employee may petition the Board to review the final action of the institution. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. Nothing in this section should be construed as any prohibition against filing a complaint with any appropriate state or federal entity, including but not limited to the Equal Employment Opportunity Commission (EEOC) or the Idaho Human Rights Commission (IHRC).

6. Tenure

Non-classified employees are generally not entitled to tenure. Certain, very limited, exceptions to this general rule are found in Subsection G.6 of these personnel policies and procedures.

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only)****August 2011**

1. Letters of Employment

- a. All faculty employees serve pursuant to employment contracts. The employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-tenured faculty employees have no continued expectation of employment beyond their current contract of employment. Each faculty employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the faculty employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution. Each contract of employment must include a statement to the following effect and intent: "The terms of employment set forth in this letter (contract) of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of the University of Idaho), and the policies and procedures of (the institution)."
- b. Term of Appointment - All non-tenured faculty employees have fixed terms of employment. No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.
- c. Non-tenured faculty and tenured faculty, who serve pursuant to contracts of employment or notices (letters) of appointment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).
- d. Faculty Rank and Promotion
 - (1) There are four (4) primary faculty ranks at each institution: (a) professor, (b) associate professor, (c) assistant professor, and (d) instructor. Each institution may establish additional faculty ranks, specify the title of each rank, and delineate the requirements for each faculty rank so established.

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Recommendations for additional faculty ranks must be submitted by the chief executive officer to the Board for approval.

- (2) Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank at an institution, is located in a department or equivalent unit.
- (3) Each institution must establish criteria for initial appointment to faculty rank and for promotion in rank at the institution. Such criteria must be submitted to the Board for approval, and upon approval must be published and made available to the faculty.
- (4) Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established institutional criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with institutional procedures and the appointment is recommended by the chief executive officer and approved by the Board.
- (5) A non-classified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established by the institution. A non-classified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if such employee meets the criteria for rank as established by the institution and approved by the Board.

2. Compensation

a. Salary

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

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b. Salaries, Increases and other Compensation related items

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

3. Annual Leave

- a. Only faculty members serving twelve (12) month appointments earn annual leave. Such annual leave shall be earned in the same manner as for non-classified employees.
- b. Pursuant to section 59-1606(3), Idaho Code, when a faculty member has accrued annual leave for service on a 12 month appointment, and subsequently such faculty member returns to a faculty position of less than 12 months where annual leave does not accrue, then the institution may pay the faculty member, as supplemental pay, the accrued annual leave balance.
- c. Sabbatical Leave

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A sabbatical leave may be granted at the discretion of the chief executive officer to a tenured faculty member (or a professional-technical faculty member) who has completed at least six (6) years of full-time service at an institution. A sabbatical leave may not be awarded to the same faculty member more than once in any six (6) academic years and sabbatical leave time is not cumulative. Sabbatical leave proposals must be submitted, reviewed, and processed according to policies and procedures established at each institution. A sabbatical leave may be used for the purpose of acquiring new professional skills and updating professional skills or conducting research. Sabbatical leave awards are fully dependent on the availability of appropriate funding.

(2) Term

The term of a sabbatical leave is either one (1) academic semester at full pay or two (2) semesters at half pay.

(3) Condition

Each faculty member who is granted a sabbatical leave must serve at the institution for at least one (1) academic year after completion of the sabbatical unless the chief executive officer approves a waiver of the requirement.

(4) Report on Sabbatical Leave

By the end of the first semester following return to the institution from a sabbatical leave, the faculty member must submit a written account of sabbatical activities and accomplishments to the academic vice president.

(5) Report to the Board

The chief executive officer must report the names of faculty members awarded sabbatical leaves and a brief statement of the purposes of each sabbatical in their semi-annual report to the Board

4. Performance Evaluation

- a. Annual Evaluation - Each year the chair of a department must submit to the dean of the chair's college an evaluation of each faculty member in the department. This evaluation, together with the input of higher administrators, will be used as (1) basis for the final recommendation relative to reappointment, non-reappointment, acquisition of tenure, or other personnel action, whichever is

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appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated.

- b. Evaluation Criteria - Evaluation of faculty should be made in terms of the individual's effectiveness. Each institution shall publish its criteria for annual evaluation and ensure that all members of the faculty have access to the criteria.
- c. Any written recommendations that result from evaluation of a faculty employee will be given to the employee and a copy will be placed in the employee's file.
- d. Each institution must develop policies, procedures, and measurement instruments to be used in the evaluation by students of faculty teaching effectiveness.

5. Non-renewal of Non-tenured Faculty Members

- a. Notice of non-renewal must be given in writing and in accordance with the following standards:
 - (1) First Year Of Service - Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination.
 - (2) Second Year of Service - Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of the academic year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination.
 - (3) Three (3) Or More Years Of Service – Not later than July 15 preceding the academic year at the end of which the appointment is to be terminated; or, if the appointment terminates during an academic year and is not to be renewed, at least twelve (12) months in advance of its termination.
 - (4) Failure to provide timely notice of non-renewal because of mechanical, clerical, or mailing error does not extend or renew the letter or contract of employment for another term, but the existing term of employment will be extended to provide the employee with a timely notice of non-renewal.
 - (5) Financial Exigency - Notice of non-renewal is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and a non-tenured faculty member is to be laid off. In that event, notice of layoff must be given as provided under the policies for reduction in force.

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- (1) Non-renewal is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of non-renewal. The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of non-renewal.
- (2) Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the chief executive officer of the institution that the non-reappointment was the result of discrimination prohibited by applicable law, the non-tenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits etc. as set forth for the grievance of non-renewal by non-classified employees shall be used (see subsection F).

- c. Non-tenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are not entitled to a statement of reasons upon which the decision for such action is based. No hearing to review such a decision will be held.

6. Tenure

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

b. Acquisition of Tenure

- (1) Professional-Technical Faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may

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retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:

- (a) be afforded the right to pursue promotion; and
 - (b) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and
 - (c) be afforded on opportunity to serve on institutional committees.
- (2) Academic faculty members, after meeting certain requirements, established by the employing institution, may acquire tenure. Each institution shall develop policies for the acquisition of tenure that are consistent with this general philosophy and policy statement of the Board. Acquisition of tenure is not automatic, by default or defacto, but requires an explicit judgment, decision, and approval. A faculty member is eligible to be evaluated for the acquisition of tenure after having completed four (4) full years of academic employment at the institution, although tenure may be awarded prior to completion of this initial eligibility period in certain exceptional cases as provided in Board Policy II.G.6.d.4.a). In addition, an academic faculty member must be evaluated for the acquisition of tenure not later than the faculty member's sixth (6th) full academic year of employment at the institution. In certain exceptional cases a faculty member may petition for extension of the timeline for tenure due to extenuating circumstances as provided in Board Policy II.g.6.d.4.b).
- c. Notification - An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 after the academic year during which the decision is made. In case of denial of tenure, the faculty member must be given a written notice that tenure was denied.
- d. Standards of Eligibility for Tenure
- (1) Annual Appointments - Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Prior to the award of tenure, employment beyond the annual term of appointment may not be legally presumed.
 - (2) Service in Professional Rank - All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.

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- (3) Service in Instructor Rank - A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the institution even though they teach in fields that have established professorial ranks.
- (4) Exceptional Cases
- (a) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.
 - (b) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.
- e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
- f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given
- g. Periodic Performance Review of Tenured Faculty Members - It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department

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chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department.

- (1) Procedures for periodic review - Each institution must establish procedures for the performance review of tenured faculty members at the institution. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.
- (2) Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

If during the periodic review, the performance of a tenured faculty member is questioned in writing by a majority of members of the department or unit, the department chairperson or unit head, the appropriate dean, the appropriate vice president, or the chief executive officer, then the appropriate vice president or equivalent administrator must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure at the institution. If during the periodic review, the performance of a tenured faculty member is not questioned in writing, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required.

- (3) Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.
- (4) Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than

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adequate performance rating shall constitute adequate cause for dismissal.

- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.
- i. Tenure for Academic Administrators
 - (1) "Academic administrators," for purposes of this topic, means the chief executive officer/presidents, chief academic officers/provosts, vice provosts or equivalent of the institutions, the deans, associate/assistant deans, and department chairs of the academic units of the institutions, and the vice presidents for research of the institutions, and shall not include persons occupying other administrative positions.
 - (2) An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit
 - (3) An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the institution's president.
 - (4) Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.
 - (5) An individual hired for a non-academic administrator position from outside the institution will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and president, if the individual will teach and otherwise contribute to that department.
 - (6) Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in accordance to policies established at each institution for the evaluation of an academic administrator.
- j. Terminal Contract of Employment - If a faculty member is not awarded tenure, the chief executive officer must notify the faculty member of the decision not to recommend tenure and may, at his or her discretion, either issue to the faculty member a contract for a terminal year of employment, or, at the sole

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- discretion of the chief executive officer, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.
- k. When authorized by the chief executive officer, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.
- l. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.
- (1) A non-tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
- (2) Before a non-tenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.
- (3) No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.
- (4) When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 11, 2011

UNIVERSITY OF IDAHO

SUBJECT

Multi-year contract for head intercollegiate women's swimming coach

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

The University of Idaho proposes to enter into the attached multi-year contract with new head women's swimming coach, Mark Sowa, and submits the contract to the Regents for approval. The primary terms of the agreement are set forth below.

IMPACT

The term of the Employment Contract is three years, commencing on July 11, 2011, and terminating on July 10, 2014.

The annual base salary is \$50,003.20 from appropriated funds. Coach is eligible to participate in university-wide changes in employee compensation as approved by the President and Athletic Director.

There is an annual media payment of \$10,000 and the following incentive/supplemental compensation provisions:

- Conference champions or co-champion = \$1,000
- Conference coach or co-coach of the year = \$1,000
- Academic achievement and behavior of team based on the following:
 - National rank within sport
 - 50th - 60th % = \$250
 - 60th - 70th % = \$300
 - 70th - 80th % = \$400
 - 80th % or above = \$450

Total potential annual compensation (base salary, media payment and maximum potential incentive) is \$62,453.20

Coach may terminate the contract for convenience prior July 10, 2014, but shall be obligated to pay \$5,000.

ATTACHMENTS

Attachment 1 – Employment Contract – clean	Page 3
Attachment 2 – Employment Contract – redline	Page 15
Attachment 3 – Contract Comparison Matrix	Page 29

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 11, 2011

STAFF COMMENTS AND RECOMMENDATIONS

This is a request to approve a three year employment contract for UI's new head women's swimming coach. The Board's model contract was used. The matrix on Tab 3, Page 29 provides a side-by-side comparison of substantive changes from the model contract. Staff notes that a paragraph was added in Section 3.1 which makes the contract consistent with UI's furlough policy. Staff recommends approval.

BOARD ACTION

I move to approve the University of Idaho's multi-year employment contract for head intercollegiate swimming coach, Mark Sowa, for a three year term commencing on July 11, 2011, and terminating on July 10, 2014, in substantial conformance with the contract submitted to the Board as Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho, and Mark Sowa (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University of Idaho shall employ Coach as the head coach of its intercollegiate women's swim 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 of Idaho'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 3.2.5 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on July 11, 2011, and terminating, without further notice to Coach, on July 10, 2014, unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$50,003.20 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation upon approval by the Director, the President, and the Board of Regents;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach will be less than the salary stated in Paragraph 3.1.1(a) above.

3.2 Supplemental Compensation.

3.2.1. Each year the women's swim team is the conference champion or co-champion or becomes eligible for the NCAA regional tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head women's swim coach as of the ensuing July 1st, the Coach shall receive supplemental compensation of \$1000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Coach shall be eligible to receive supplemental compensation each year based on the academic achievement and behavior of Team members if the Team's cumulative APR ranks nationally at the 50th percentile or higher for women's swim teams as follows:

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

3.2.3 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, Coach shall receive supplemental compensation of \$1,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4 The Coach shall receive the sum of \$10,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Each year, one-half of this sum shall be paid in July and one-half shall be paid after the last date of competition. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.5 Coach agrees that the University of Idaho 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 Teams is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University of Idaho. Coach recognizes that the University of Idaho has entered into an agreement with Nike to supply the University of Idaho with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University of Idaho'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 of Idaho. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head women's swim coach. In order to avoid entering into an agreement with a competitor of Nike, Coach shall submit all outside consulting agreements to the University of Idaho for review and approval prior to execution. Coach shall also report such outside income to the University of Idaho in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including Nike, and will not participate in any messages or promotional appearances that contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law

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

ARTICLE 4

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

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

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

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University of Idaho 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 Teams 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 of Idaho's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University of Idaho and Department at all times. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University of Idaho's Faculty-Staff Handbook; (c) University of Idaho's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the women's swim conference of which the University of Idaho is a member.

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

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

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall provide a detailed written account of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. Sources of such income include, but are not limited to, the following:

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

In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

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

4.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Teams' 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 policies, rules or regulations of the University, the University's governing board, the conference or the NCAA.

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

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

5.2 Termination of Coach for Convenience of University of Idaho.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains other employment, whichever occurs first; provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University of Idaho employee until the term of this Agreement ends or until Coach obtains other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other

compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such compensation by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach. Such compensation is not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University of Idaho shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience prior to July 10, 2014 he shall pay to the University the sum of \$5,000.00. Payment shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have bargained for and agreed to the foregoing 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 costs are extremely difficult to determine with certainty. The parties further agree that the payment of such sum by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University. Such payment is not, and shall not be construed to be, a penalty. This section 5.3.4

shall not apply if Coach terminates this Agreement because of a material breach by the University.

5.3.5 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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 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 of Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

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

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

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

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

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

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

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

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

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

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

UNIVERSITY OF IDAHO

COACH

M. Duane Nellis, President

Date: _____

Mark Sowa

Date: _____

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

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~~) of Idaho shall provide to Coach:

- a) An annual salary of \$ ~~_____~~ \$50,003.20 per year, payable in biweekly installments in accordance with normal University (~~College~~) procedures, ~~and such salary increases as may be determined appropriate~~ eligible to receive University-wide changes in employee compensation upon approval by the Director ~~and, the~~ President, and ~~approved by the~~ University (~~College~~)'s Board of ~~(Regents or Trustees)~~ _____;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)'s~~ 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.

Coach understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach will be less than the salary stated in Paragraph 3.1.1(a) above.

3.2 Supplemental Compensation.

3.2.1. Each year the ~~Team~~ women's swim team is the conference champion or co-champion ~~and also~~ becomes eligible for a ~~(bowl game the NCAA regional tournament 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)~~ women's swim coach as of the ensuing July 1st, the ~~University (College) Coach~~ shall ~~pay to Coach receive~~ 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.~~ \$1000. 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) each year 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 if the Team's cumulative APR ranks nationally at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation 50th percentile or higher 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. women's swim teams as follows:~~

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

~~3.2.43 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including of \$1,000. The University (College) students, staff, faculty, alumni and boosters; and shall determine the appropriate manner in which it shall pay Coach any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director.~~

~~3.2.5—4 The Coach shall receive the sum of (amount or computation) \$10,000 from the University (College) or the University (College)'s 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 Each year, one-half of this sum shall be paid in July and one-half shall be paid after the last date of competition. Coach's right to receive the second half of such a payment shall vest on the date of the~~

~~Team's~~Team's last regular season or post-season competition, whichever occurs later. ~~This sum shall be paid~~ ~~(terms or conditions of, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment)~~ ~~under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25.~~ Agreements requiring the Coach to participate in Programs related to his duties as an employee of University ~~(College)~~ are the property of the University ~~(College)~~. The University ~~(College)~~ shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University ~~(College)~~ in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any ~~competing~~ radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements ~~which~~that are broadcast on radio or television that conflict with those broadcast on the University (College)'s University's designated media outlets.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~

~~Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'s camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University (College)'s summer football camps, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the University (College). This amount shall be paid (terms of payment).~~

~~3.2.7~~ 3.2.5 ~~Coach agrees that the University (College)~~ Coach agrees that the

University of Idaho 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~~Teams is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University ~~(College) of Idaho~~. Coach recognizes that the University ~~(College) is negotiating or of Idaho~~ has entered into an agreement with ~~(Company Name) Nike~~ to supply the University ~~(College) of Idaho~~ with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University ~~(College)'s of Idaho's~~ reasonable request, Coach will consult with appropriate parties concerning 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) of Idaho~~. 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)–women’s swim~~ 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)of Idaho~~ for review and approval prior to execution. Coach shall also report such outside income to the University ~~(College)of Idaho~~ in accordance with NCAA-~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including ~~–(Company Name)–Nike~~, and will not participate in any messages or promotional appearances ~~which~~that contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

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

ARTICLE 4

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

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

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

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University ~~(College)of Idaho~~ 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~~Teams 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)’sof Idaho’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)of Idaho~~ and Department at all times. ~~The names or titles of employees whom Coach supervises are attached as Exhibit A.~~

The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University ~~(College) of Idaho's~~ Faculty-Staff Handbook; (c) University ~~(College) of Idaho'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)~~ women's swim conference of which the University ~~(College) of Idaho~~ is a member.

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

~~4.3~~ 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~~ provide a detailed written account of all such income and benefits to the ~~University (College)'s~~ University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University ~~(College)~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College),~~ Sources of such income include, but are not limited to, the following:

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

In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University ~~(College)~~ booster club, University ~~(College)~~ alumni association, University ~~(College)~~ foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University ~~(College),~~ the University (College)'s 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~~Teams, 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~~Teams' 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 policies, rules and/or regulations ~~of the University, the University's governing board, the conference or the NCAA.~~

5.1.1 In addition to the definitions contained in applicable policies, rules and/or regulations ~~of the University (College), the University's governing board, the conference or the NCAA, University~~ and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University ~~(College)~~;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University ~~(College)~~'s governing board, the conference or the NCAA ~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University (College)'s University's consent;

- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)~~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)~~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)~~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 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, 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 Teams 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)~~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 (~~NIAA~~) 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 (~~NIAA~~) enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations. This section applies to violations occurring at the University (~~College~~) of Idaho or at previous institutions at which the Coach was employed.

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

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

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

5.2.3 ~~The parties have both~~ University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations ~~and.~~ The parties have bargained for and agreed to the foregoing ~~liquidated damages~~ provision, giving consideration to the fact that the Coach may lose

certain benefits, supplemental compensation, or outside compensation relating to his employment with University ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such ~~liquidated damages compensation~~ by University ~~(College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach ~~for the damages and injury suffered by Coach because of such termination by University (College). The liquidated damages are. Such compensation is~~ not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College) of Idaho~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience ~~he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before _____, the sum of \$30,000.00; (b) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$10,000.00. The liquidated damages prior to July 10, 2014 he shall pay to the University the sum of \$5,000.00. Payment~~ 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 costs~~ are extremely difficult to determine with certainty. The parties further agree that the payment of such ~~liquidated damages sum~~ 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. Such payment is~~ not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University ~~(College)~~.

5.3.5 Except as ~~provide~~provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit ~~to the extent permitted by law~~ his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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 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.

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University (College) employees, if the University (College) suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University (College) from compliance with the notice, appeal, and similar employment-related rights ~~provide~~provided for in the State Board of Education and Board ~~of~~ 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~~ Agreement shall be subject to the approval of the University (College)'s University's Board of ~~(Regents or Trustees)~~, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of ~~(Regents or Trustees)~~ and University (College)'s University's rules regarding financial exigency.

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

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

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

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

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

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

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

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

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

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

the University ~~(College)~~: _____ Director of Athletics
_____ University of Idaho
_____ P.O. Box 442302
_____ Moscow, Idaho 83844-2302

with a copy to: President
_____ University of Idaho
_____ P.O. Box 443151
_____ Moscow, ID 83844-3151

the Coach: _____ Mark Sowa
Last known address on file with
University (College)'s University's Human Resource Services

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

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

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

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

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

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

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

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

UNIVERSITY (~~COLLEGE~~) OF IDAHO

COACH

M. Duane Nellis, President
Date: _____

Mark Sowa
Date: _____

Approved by the Board of ~~(Regents or Trustees)~~ on the ____ day of _____, 2000, 2011.

**MARK SOWA – HEAD WOMEN’S SWIMMING COACH
MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM**

Model Contract Section	UI Contract Section	Modification/Justification for Modification
3.1.1 Regular Compensation	3.1.1 Regular Compensation	Allows for annual increases consistent with University-wide salary increases.
3.1 Regular Compensation	3.1 Regular Compensation	Added final paragraph to keep contract consistent with University furlough policy
3.2.1 Supplemental Compensation	3.2.1 Supplemental Compensation	Allows for supplemental compensation if team is conference champion or co-champion, or becomes eligible for the NCAA regional tournament.
3.2.2 Supplemental Compensation	None	Deletes section providing for supplemental compensation based on ranking in national poll.
3.2.3 Supplemental Compensation	3.2.2 Supplemental Compensation	Allows for supplemental compensation if team’s cumulative APR ranks at certain levels nationally. This language establishes a more objective standard for academic achievement and has been used in past contracts approved by the Board.
3.2.4 Supplemental Compensation	3.2.3 Supplemental Compensation	Deletes existing provisions for supplemental compensation based on ticket sales, fundraising and outreach because swimming is not a revenue-generating sport and these provisions are therefore not applicable. Adds language allowing for additional compensation if coach is named Conference Coach or Co-Coach of the Year.
3.2.5 Supplemental Compensation	3.2.4 Supplemental Compensation	Language calls for media compensation to be paid ½ at the beginning of the regular season and ½ after the last date of competition. This recognizes that much media work has been done by the coach prior to commencement of the season, and at the same time retains ½ of the payment as motivation for completing the season. Payment is made contingent on coach’s compliance with University financial stewardship policies.
3.2.6 Summer Camps	none	Neither the University nor the Coach have interest in running summer camps
4.3 NCAA Rules	4.3 NCAA Rules	Revised to conform to NCAA Rule 11.2.2 effective 3/8/06. Rule requires a written detailed account of athletically related income and identifies some of the sources that must be reported as “including but not limited to...”
5.1.4 Termination of Coach for Cause	5.1.4	Adds suspension without pay and termination for significant or repetitive violations as possible disciplinary/corrective actions.
5.2.2 University Termination for Convenience	5.2.2 University Termination for Convenience	Language allows the University to offset salary received by Coach for lesser employment obtained after University termination for convenience. Prior language would allow coach to take lesser employment and continue to receive full termination payment. Language also requires Coach to inform University of the terms of any new employment so University can accurately determine the compensation, if any, to which Coach is entitled. References to liquidated damages are deleted because the compensation due upon termination for convenience flows from a contractual right to terminate and not from a breach of the contract. The non-terminating party is entitled to compensation, not damages for breach.
5.2.3 Representation by Counsel	5.2.3 Representation by Counsel; compensation for termination	Language clarifies that the parties have been represented by counsel or that Coach <u>chose to proceed without counsel</u> during the negotiations. The underlined language is new and recognizes the fact that we cannot require candidates to retain counsel. References to liquidated damages are deleted for the same reason as in 5.2.2.
5.3.3 Coach Termination for Convenience	5.3.3 Coach Termination for Convenience	References to liquidated damages are deleted for the same reason as in 5.2.2.

ATTACHMENT 3

Model Contract Section	UI Contract Section	Modification/Justification for Modification
5.3.4 Compensation for termination	5.3.4 Compensation for termination	References to liquidated damages are deleted for the same reason as in 5.2.2.
6.16 Opportunity to Consult with Attorney	6.16 Opportunity to Consult with Attorney	Adds language similar to 5.2.3 to make clear that Coach had the opportunity to consult with counsel and either did or chose not to.

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 11, 2011

UNIVERSITY OF IDAHO

SUBJECT

Multi-year contract for Director of Athletics

REFERENCE

August, 2004

Board approved original multi-year contract

August, 2007

Board approved addendum to extend contract term

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

The University of Idaho seeks to extend the contract term for the Director of Athletics, Robert Spear. The original contract was prepared in 2004 and has already been extended once in 2008 via an addendum. The University proposes a new contract so as to incorporate improvements and language changes that have become standard for all multi-year athletic contracts at the University. Compensation amounts for the Director are unchanged from the current contract terms.

The proposed contract replaces and supersedes the 2004 contract and all addendums. The term of the proposed contract is five years, which will expire on August 12, 2016. This affects a 4 year extension beyond the existing contract term.

IMPACT

The annual base salary is currently \$169,988.40 paid from appropriated funds. The Director will receive supplemental compensation (media payment) of \$15,000 per year.

The term of the Employment Contract is five years, commencing on August 13, 2011, and terminating on August 12, 2016.

Total potential annual compensation (base salary and media payment) is \$184,988.40.

ATTACHMENTS

Attachment 1 – Employment Contract – clean

Page 3

Attachment 2 – Employment Contract – redline

Page 15

Attachment 3 – Contract Comparison Matrix

Page 31

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 11, 2011

STAFF COMMENTS AND RECOMMENDATIONS

This is a request to extend the employment contract for UI's athletic director for a term of five years. The contract is consistent with the Board's model contract where applicable. The contract does vest athletic department hiring authority in the president, except when specifically delegated to the director. In addition, the contract stipulates the director shall consult with the president upon request regarding scheduling of athletic games and events. There are no changes in the director's compensation. Staff recommends approval.

BOARD ACTION

I move to approve the University of Idaho's multi-year employment contract for Athletic Director, Robert Spear, for a five year term commencing on August 13, 2011, and terminating on August 12, 2016, in substantial conformance with the contract submitted to the Board as Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University) and Robert Spear (Director).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Director as the Director of its intercollegiate athletics program (Program). Director represents and warrants that Director is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Director shall report and be responsible directly to the University's President or the President's designee (collectively "President"). Director shall abide by the reasonable instructions of the President and shall confer with the President on all major administrative matters.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in relation to the Program or the University as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time upon 14 days' written notice, to reassign Director to duties at the University other than as Director of the Program, provided that Director's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years commencing on August 13, 2011, and terminating, without further notice to Director, on August 12, 2016, unless sooner terminated in accordance with other provisions of this Agreement. This Agreement replaces and supersedes the Agreement between Director and University approved by the University's Board of Regents August 12, 2004 and all addendums thereto.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Director, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's Board of Regents. This Agreement in no way grants to Director a claim to tenure in employment, nor shall Director'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 Director's services and satisfactory performance of this Agreement, the University shall provide to Director:

- a) An annual salary of \$169,988.40 payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Regents ("Regents");
- b) Such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) Such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Director will be less than the salary stated in Paragraph 3.1.1(a) above.

3.2. Supplemental Compensation. The Director shall receive the sum of \$15,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively "Appearances"). Director's right to receive such payment shall vest on January 1 of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. This sum shall be paid in two equal installments in January and July of each year. Agreements requiring the Director to participate in Appearances 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 Director. Director agrees to cooperate with the University in order for the Appearances to be successful and agrees to provide his services to and perform on the Appearances and to cooperate in their production, broadcasting, and telecasting. It is understood that Director shall not appear without the

prior written approval of the President on any radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director shall not appear in any commercial endorsements that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

3.4. Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.

3.5 General Conditions of Compensation. All compensation provided by the University to Director is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Director participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Director, 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. Director's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Director, in addition to the obligations set forth elsewhere in this Agreement, shall:

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

4.1.2. Develop and implement programs and procedures with respect to the management and operation of the Department and the management, performance, evaluation, recruitment, and training of Department personnel;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and work with Department personnel to encourage Program participants to perform to their highest academic potential and to graduate in a timely manner;

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 Director's assistant and associate directors, any other employees for whom Director is administratively responsible, and the participants in the Program know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's Director of Compliance if Director 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. Director shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Faculty-Staff 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 conference of which the University is a member.

4.2 Outside Activities. Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Director from devoting Director's full time and best efforts to the performance of Director'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 the Program. Subject to the terms and conditions of this Agreement, Director may, with the prior written approval of the President, enter into separate arrangements for outside activities and endorsements that are consistent with Director's obligations under this Agreement. Director may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the President.

4.3. NCAA Rules. In accordance with NCAA rules, Director shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall provide a written detailed account

of the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. Sources of such income include, but are not limited to, the following:

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

In no event shall Director 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. Director shall have the responsibility and the sole authority to recommend to the President the hiring and termination of Department personnel, but, except as delegated by the President, the decision to hire or terminate shall be made by the President and shall, when necessary or appropriate, be subject to the approval of the University's Board of Regents.

4.5 Scheduling. Director shall be responsible for the scheduling of athletic games and events but shall consult with the President as the President requests.

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

ARTICLE 5

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

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

- a) A deliberate or major violation of Director's duties under this Agreement or the refusal or unwillingness of Director to perform such duties in good faith and to the best of Director's abilities;
- b) The failure of Director 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, as determined by the University, by Director of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA;
- d) Ten (10) working days' absence of Director from duty without the University's consent;
- e) Any conduct of Director 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 Director to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Director 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 Director 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 any Department employee, any other employees for whom Director is administratively responsible, or a Participant in the Program; 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 any employees for whom Director is administratively responsible, or a Participant in the Program if

Director 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 President shall provide Director 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. Director shall then have an opportunity to respond. After Director responds or fails to respond, University shall notify Director 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 Director, 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, Director shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations.

5.2 Termination of Director 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 Director.

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Director the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Director obtains employment, whichever occurs first; provided, however, in the event Director obtains lesser employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Director as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Director under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Director 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 Director obtains employment or any other employment providing Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Director specifically agrees to inform University

within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Director agrees not to accept employment for compensation at less than the fair value of Director's services, as determined by all circumstances existing at the time of employment. Director further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and Director has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that Director may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such sums by University and the acceptance thereof by Director shall constitute adequate and reasonable compensation to Director. Such compensation is not, and shall not be construed to be, a penalty.

5.3 Termination by Director for Convenience.

5.3.1 Director recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. Director 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 Director, 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 Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. Director shall pay to the University the following sum: (a) if the Agreement is terminated on or before August 12, 2012, the sum of \$5,000.00; (b) if the Agreement is terminated between August 13, 2012 and August 12, 2013 inclusive, the sum of \$2,500.00; (c) if the Agreement is terminated between August 13, 2013 and August 12, 2014 inclusive, the sum of \$2,000.00; (d) if the Agreement is terminated between August 14, 2013 and August 12, 2015 inclusive, the sum of \$1,500.00; (e) if the Agreement is terminated between August 13, 2015 and August 12, 2016 inclusive, the sum of \$1,000.00. The applicable sum shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 University has been represented by legal counsel, and Director has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Director, in addition to potentially increased compensation costs, if Director terminates this Agreement for convenience. The parties agree that such costs are extremely difficult to determine with certainty. The parties further agree that the payment of such sums by Director and the acceptance thereof by University shall constitute adequate and reasonable compensation to University. Such payments are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Director terminates this Agreement because of a material breach by the University.

5.3.5 Except as provided elsewhere in this Agreement, if Director 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 Director.

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Director 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 Director, or dies.

5.4.2 If this Agreement is terminated because of Director's death, Director's salary and all other benefits shall terminate as of the last day worked, except that Director'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 Director's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because Director 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 Director, all salary and other benefits shall terminate, except that Director 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 Director. In the event of termination or suspension, Director agrees that Director 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 Director for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either

party or due to death or disability or the suspension of Director, regardless of the circumstances.

5.7 Waiver of Rights. Because Director 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 Director, or terminates this Agreement for good or adequate cause or for convenience, Director shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rules Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Director by the University or developed by Director on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Director'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, Director shall immediately cause any such personal property, materials, and articles of information in Director's possession or control to be delivered to the University.

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. Director hereby consents and agrees that this document may be released and made available to the public after it is signed by Director. Director 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: Office of the President
University of Idaho
P.O. Box 443151
Moscow, Idaho 83844-3151

with a copy to: Office of University Counsel
University of Idaho
P.O. Box 443158
Moscow, ID 83844-3158

the Director: Robert Spear
Last known address on file with
University's Human Resource Services

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

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____~~(the University (College), of Idaho (University))~~ and _____~~(Coach Robert Spear (Director))~~.

ARTICLE 1

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

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

1.3. Duties. ~~Coach~~Director shall manage and supervise the ~~Team~~Program and shall perform such other duties in relation to the Program or the University ~~(College)'s athletic program~~ as the ~~Director~~President may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time upon 14 days' written notice, to reassign ~~Coach~~Director to duties at the University ~~(College)~~ other than as ~~head coach~~Director of the ~~Team~~Program, provided that ~~Coach's~~Director'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) section 3.2~~ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of _____ ~~(— five (5) years,~~ commencing on _____August 13, 2011, and terminating, without further notice to ~~Coach~~Director, on _____August 12, 2016, unless sooner terminated in accordance with other provisions of this Agreement. This Agreement replaces and supersedes the Agreement between Director and University approved by the University's Board of Regents August 12, 2004 and all addendums thereto.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University ~~(College)~~ and an acceptance by ~~Coach~~Director, 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~~ Director a claim to tenure in employment, nor shall ~~Coach's~~ Director's service pursuant to this agreement count in any way toward tenure at the University ~~(College)~~.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~_____ per year,~~ \$169,988.40 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)~~ (“Regents”);
- b) ~~The opportunity to receive such~~ Such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) ~~The opportunity to receive such~~ Such employee benefits as the ~~University (College)'s~~ University's Department of Athletics (Department) provides generally to its employees of a comparable level. ~~Coach~~ Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

~~3.2~~ Supplemental Compensation

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

~~3.2.2 _____ Each year the Team is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football~~

~~teams) , and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

~~3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.~~

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

~~3.2.5 The Coach Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Director will be less than the salary stated in Paragraph 3.1.1(a) above.~~

~~3.2. Supplemental Compensation. The Director shall receive the sum of (amount or computation) \$15,000 from the University (College) or the University (College)'s 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 collectively "Appearances". Director's right to receive such a payment shall vest on the date January 1 of the Team's last regular season or post season competition, whichever occurs later each fiscal year of this~~

Agreement and is expressly contingent on Director's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. This sum shall be paid ~~—(terms or conditions of payment)—~~ in two equal installments in January and July of each year. Agreements requiring the CoachDirector to participate in ProgramsAppearances 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. CoachDirector. Director agrees to cooperate with the University (College) in order for the ProgramsAppearances to be successful and agrees to provide his services to and perform on the ProgramsAppearances and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coachesDirector shall not appear without the prior written approval of the DirectorPresident on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director, Coach shall not appear in any commercial endorsements whichthat are broadcast on radio or television that conflict with those broadcast on the University (College)'sUniversity's designated media outlets.

3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE)) Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'s camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University (College)'s summer football camps, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the University (College). This amount shall be paid (terms of payment).

3.2.7 Coach agrees that the University (College)

3.3. Director 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 CoachDirector, during official practices and games and during times when CoachDirector or the Team isProgram participants are being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University (College). Coach. Director 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. CoachDirector agrees that, upon the University (College)'sUniversity's reasonable request, CoachDirector will consult with appropriate parties concerning an (Company Name) product'sNike products' design or performance, shall act as an instructor at a clinic sponsored in whole or in part by

~~(Company Name), or Nike, and~~ give a lecture at an event sponsored in whole or in part by ~~(Company Name), or Nike, and~~ make other educationally-related appearances as may be reasonably requested by the University ~~(College)~~. Notwithstanding the foregoing sentence, ~~CoachDirector~~ shall retain the right to decline such appearances as ~~CoachDirector~~ reasonably determines to conflict with or hinder his duties and obligations as ~~head (Sport) coachDirector~~. In order to avoid entering into an agreement with a competitor of ~~(Company Name), Coach Nike, Director~~ shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. ~~CoachDirector~~ shall also report such outside income to the University ~~(College)~~ in accordance with NCAA ~~(or NAIA)~~ rules. ~~CoachDirector~~ further agrees that ~~CoachDirector~~ will not endorse any athletic footwear, apparel and/or equipment products, including ~~(Company Name) Nike~~, and will not participate in any messages or promotional appearances ~~which that~~ contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.4. Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.

~~3~~ .5 General Conditions of Compensation. All compensation provided by the University ~~(College)~~ to ~~CoachDirector~~ is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which ~~CoachDirector~~ participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University ~~(College)~~ to ~~CoachDirector~~, 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'sDirector's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, ~~CoachDirector~~, in addition to the obligations set forth elsewhere in this Agreement, shall:

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University ~~(College),~~ the University (College)'s governing board, the conference, and the NCAA ~~(or NAIA);~~; supervise and take appropriate steps to ensure that Coach's Director's assistant coaches and associate directors, any other employees for whom Coach Director is administratively responsible, and the members of participants in the Team Program know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director President and to the Department's Director of Compliance if Coach Director 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 Director shall cooperate fully with the University ~~(College) and~~ Department at all times. ~~The names or titles of employees whom Coach supervises are attached as Exhibit A.~~ The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University (College)'s University's Faculty-Staff 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)~~ conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach Director from devoting Coach's Director's full time and best efforts to the performance of Coach's Director'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 or the Program.~~ Subject to the terms and conditions of this Agreement, Coach Director may, with the prior written approval of the ~~Director, who may consult with the~~ President, enter into separate arrangements for outside activities and endorsements ~~which that~~ are consistent with Coach's Director's obligations under this Agreement. Coach Director 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 Director shall obtain prior written approval from the University (College)'s University's President for all athletically related income and benefits from sources outside the University ~~(College) and~~ shall ~~report~~ provide a written detailed account of the source and amount of all such income and benefits to the ~~University (College)'s~~ President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University

~~(College)~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. Sources of such income include, but are not limited to, the following:

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

In no event shall ~~Coach~~Director 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)~~University's governing board, the conference, or the NCAA ~~(or NAIA)~~.

4.4 Hiring Authority. ~~Coach~~Director shall have the responsibility and the sole authority to recommend to the ~~Director~~President the hiring and termination of ~~assistant coaches for the Team Department personnel~~, but, except as delegated by the President, the decision to hire or terminate ~~an assistant coach~~ shall be made by the ~~Director~~President and shall, when necessary or appropriate, be subject to the approval of ~~President and the University (College)~~the 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~~Director shall be responsible for the scheduling of athletic games and events but shall consult with the President as the President requests.

4.76 Other Coaching Opportunities. ~~Coach~~Director shall not, under any circumstances, interview for, negotiate for, or accept employment as a ~~coach~~director of athletics 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~~President. Such approval shall not unreasonably be withheld.

ARTICLE 5

5.1 Termination of CoachDirector for Cause. The University ~~(College)~~ may, in its discretion, suspend ~~Coach~~Director from some or all of ~~Coach's~~Director's duties, temporarily or permanently, and with or without pay; reassign ~~Coach~~Director to other

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

5.1.1 In addition to the definitions contained in applicable ~~rules-policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, University and regulations, University (College) and Coach~~Director 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~~Director's duties under this ~~agreement~~Agreement or the refusal or unwillingness of ~~Coach~~Director to perform such duties in good faith and to the best of ~~Coach's~~Director's abilities;
- b) The failure of ~~Coach~~Director to remedy any violation of any of the terms of this ~~agreement~~Agreement within 30 days after written notice from the University ~~(College);~~;
- c) A deliberate or major violation, as determined by ~~Coach~~the University, by Director of any applicable law or the policies, rules or regulations of the University ~~(College);~~, the University ~~(College)~~'s governing board, the conference or the NCAA ~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of ~~Coach~~Director from duty without the ~~University (College)'s~~University's consent;
- e) Any conduct of ~~Coach~~Director 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~~Director to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of ~~Coach~~Director 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 CoachDirector 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 Department employee, any other employees for whom CoachDirector is administratively responsible, or a ~~member of Participant in~~ the TeamProgram; 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 CoachDirector is administratively responsible, or a ~~member of Participant in~~ the TeamProgram if CoachDirector 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~~ President shall provide CoachDirector 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. CoachDirector shall then have an opportunity to respond. After CoachDirector responds or fails to respond, University ~~(College)~~ shall notify CoachDirector 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 CoachDirector, 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, CoachDirector 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.~~ enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations.

5.2 Termination of CoachDirector 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 CoachDirector.

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

5.2.3 ~~The parties have both University has~~ been represented by legal counsel, ~~and Director has either been represented by legal counsel or has chosen to proceed without legal counsel~~ in the contract negotiations ~~and.~~ The parties have bargained for and agreed to the foregoing ~~liquidated damages~~ provision, giving consideration to the fact that ~~the Coach~~ Director may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University ~~(College),~~ which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such ~~liquidated damages~~ sums by University ~~(College)~~ and the acceptance thereof by ~~Coach~~ Director 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~~ Director. Such compensation is not, and shall not be construed to be, a penalty.

5.3 Termination by CoachDirector for Convenience.

5.3.1 ~~The CoachDirector~~ recognizes that his promise to work for University ~~(College)~~ for the entire term of this Agreement is of the essence of this Agreement. ~~The CoachDirector~~ 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 Director~~, 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 CoachDirector~~ 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~~ ~~Director~~ 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 ~~August 12, 2012~~, the sum of \$~~305,000.00~~; (b) if the Agreement is terminated between ~~August 13, 2012~~ and ~~August 12, 2013~~ inclusive, the sum of \$~~20,000,500.00~~; (c) if the Agreement is terminated between ~~August 13, 2013~~ and ~~August 12, 2014~~ inclusive, the sum of \$~~2,000.00~~; ~~(d) if the Agreement is terminated between August 14, 2013~~ and ~~August 12, 2015~~ inclusive, the sum of \$~~1,500.00~~; ~~(e) if the Agreement is terminated between August 13, 2015~~ and ~~August 12, 2016~~ inclusive, the sum of \$~~1,000.00~~. The ~~liquidated damages~~ ~~applicable sum~~ shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 ~~The parties have both~~ University has been represented by legal counsel, ~~and Director has either been represented by legal counsel or has chosen to proceed without legal counsel~~ in the contract negotiations ~~and~~. ~~The parties~~ have bargained for and agreed to the foregoing ~~liquidated damages~~ provision, giving consideration to the fact that the University ~~(College)~~ will incur administrative and recruiting costs in obtaining a replacement for ~~CoachDirector~~, in addition to potentially increased compensation costs, if ~~CoachDirector~~ terminates this Agreement for convenience, ~~which damages~~. ~~The parties agree that such costs~~ are extremely difficult to determine with certainty. The parties further agree that the payment of such ~~liquidated damages~~ ~~sums~~ by ~~CoachDirector~~ and the acceptance thereof by University ~~(College)~~ shall constitute adequate and reasonable compensation to University ~~(College)~~ ~~for the damages and injury suffered by it because of such termination by Coach~~. ~~The liquidated damages~~, Such payments are not, and shall not be construed to be, a penalty. This section 5.3.4

shall not apply if CoachDirector terminates this Agreement because of a material breach by the University ~~(College)~~.

—————5.3.5 Except as ~~provide~~provided elsewhere in this Agreement, if CoachDirector 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 CoachDirector.

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

5.4.2 If this Agreement is terminated because of Coach'sDirector's death, Coach'sDirector's salary and all other benefits shall terminate as of the last day worked, except that ~~the Coach'sDirector'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'sDirector's~~ estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because ~~the CoachDirector~~ becomes totally or permanently disabled as defined by the ~~University (College)~~University's disability insurance carrier, or becomes unable to perform the essential functions of the position of ~~head coach~~CoachDirector, all salary and other benefits shall terminate, except that ~~the CoachDirector~~ 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 CoachDirector. In the event of termination, ~~or~~ suspension, ~~or reassignment,~~ CoachDirector agrees that CoachDirector will not interfere with the ~~University (College)~~University's student-athletes or otherwise obstruct the ~~University (College)~~University's ability to transact business or operate its intercollegiate athletics program.

5.6- No Liability. The University ~~(College)~~ shall not be liable to CoachDirector 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 CoachDirector, regardless of the circumstances.

5.7-————— Waiver of Rights. Because ~~the CoachDirector~~ 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~~Director, or terminates this Agreement for good or adequate cause or for convenience, ~~Coach~~Director shall have all the rights provided for in this Agreement but hereby releases the University ~~(College)~~ from compliance with the notice, appeal, and similar employment-related rights ~~provide~~provided for in the State Board of Education and Board or Regents of the University of Idaho ~~Rule~~Rules Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University ~~(College)~~ Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University (College) Property. All personal property (excluding vehicle(s) provided through the ~~_____~~Vandal Wheels program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to ~~Coach~~Director by the University ~~(College)~~ or developed by ~~Coach~~Director 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~~Director'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~~Director shall immediately cause any such personal property, materials, and articles of information in ~~Coach's~~Director's possession or control to be delivered to the ~~Director~~University.

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~~ Director 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~~ Director. Director 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:~~ _____ Office of ~~Athletic~~ the
President

University of Idaho
P.O. Box 443151
Moscow, Idaho 83844-3151

with a copy to: ~~President~~ Office of University Counsel

University of Idaho
P.O. Box 443158
Moscow, ID 83844-3158

the ~~Coach:~~ _____ Director: Robert Spear
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~~ Director 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~~ Director acknowledges that he has had the opportunity to consult and review this Agreement with an attorney, and has either consulted with legal counsel or chosen not to. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

UNIVERSITY ~~(COLLEGE)~~ _____ COACH _____
DIRECTOR

_____, President _____

ATTACHMENT 2

M. Duane Nellis Date _____ Robert Spear
Date

President _____ Director, Department of Athletics

Approved by the Board of ~~(Regents or Trustees)~~ on the ____ day of _____, 2000.
_____, 201 .

**ROB SPEAR – ATHLETIC DIRECTOR
MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM**

Model Contract Section	UI Contract Section	Modification/Justification for Modification
2.1 Term	2.1 Term	Last sentence denotes that this is contract for the extended term fully replaces the prior contract (2004) and extension addendum (2008)
3.1 Regular Compensation	3.1 Regular Compensation	Added final paragraph to keep contract consistent with University furlough policy
3.2 Supplemental Compensation	3.2 Supplemental Compensation	Eliminate subsections 3.2.1 through 3.2.4 as inapplicable to Athletic Director position.
3.2.5 Supplemental Compensation	3.2 Supplemental Compensation	Revision makes supplemental media compensation expressly contingent upon compliance with the University’s financial stewardship policies and breaks total payment into two equal installments.
3.2.5 Supplemental Compensation	3.2. Supplemental Compensation	Language calls for media compensation to be paid ½ at the beginning of the calendar year and ½ in July. This recognizes that much media work has been done by the director during the fall, and at the same time retains ½ of the payment as motivation for completing the season. Payment is made contingent on director’s compliance with University financial stewardship policies.
3.2.6 Summer Camps	none	Summer camps are not applicable to the Athletic Director
None	3.4 Professional Development	Commits the University to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.
4.3 NCAA Rules	4.3 NCAA Rules	Revised to conform to NCAA Rule 11.2.2 effective 3/8/06. Rule requires a written detailed account of athletically related income and identifies some of the sources that must be reported as “including but not limited to...”
4.4 <u>Hiring Authority.</u>	4.4 <u>Hiring Authority.</u>	Revised to clarify that the President is the final decision authority on hiring and termination, unless specifically delegated to the Director
4.5 <u>Scheduling.</u>	4.5 <u>Scheduling.</u>	Revised to require the Director to consult with the President, as the President requests, for the scheduling of athletic games and events.
5.1 Termination of Coach for Cause	5.1. Termination of Coach for Cause	Continues reference to “the University, the University’s governing board, the conference, or the NCAA” that was in the approved 2004 agreement. (also referenced in 5.1.1)
5.1.1.c) and 5.1.4	5.1.1.c) and 5.1.4	Eliminates language not applicable to Director (he was never previously employed as a coach or athletic director).
5.1.4 Termination of Coach for Cause	5.1.4	Adds suspension without pay and termination for significant or repetitive violations as possible disciplinary/corrective actions.
5.2.2 University Termination for Convenience	5.2.2 University Termination for Convenience	Language allows the University to offset salary received by Director for lesser employment obtained after University termination for convenience. Prior language would allow coach to take lesser employment and continue to receive full termination payment. Language also requires Director to inform University of the terms of any new employment so University can accurately determine the compensation, if any, to which Director is entitled. References to liquidated damages are deleted because the compensation due upon termination for convenience flows from a contractual right to terminate and not from a breach of the contract. The non-terminating party is entitled to compensation, not damages for breach.
5.2.3 Representation by Counsel	5.2.3 Representation by Counsel; compensation for termination	Language clarifies that the parties have been represented by counsel or that Coach <u>chose to proceed without counsel</u> during the negotiations. The underlined language is new and recognizes the fact that we cannot require candidates to retain counsel. References to liquidated damages are deleted for the same reason as in 5.2.2.
5.3.3 Coach Termination for Convenience	5.3.3 Coach Termination for Convenience	References to liquidated damages are deleted for the same reason as in 5.2.2. Establishes liquidated damages declining scale of payment.
5.3.4 Compensation for termination	5.3.4 Compensation for termination	References to liquidated damages are deleted for the same reason as

ATTACHMENT 3

Model Contract Section	UI Contract Section	Modification/Justification for Modification
		in 5.2.2.
6.16 Opportunity to Consult with Attorney	6.16 Opportunity to Consult with Attorney	Adds language similar to 5.2.3 to make clear that Coach had the opportunity to consult with counsel and either did or chose not to.