

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011**

TAB	DESCRIPTION	ACTION
1	AMENDMENT TO BOARD POLICY Sections II.A., C., F., G., H., and P – First Reading	Motion to approve
2	BOISE STATE UNIVERSITY Employment Agreement – Head Women’s Softball Coach	Motion to approve
3	BOISE STATE UNIVERSITY Employment Agreement – Head Track & Cross Country Coach	Motion to approve
4	BOISE STATE UNIVERSITY Employment Agreement – Head Swimming & Diving Coach	Motion to approve
5	IDAHO STATE UNIVERSITY Employment Agreement – Athletic Director	Motion to approve
6	IDAHO STATE UNIVERSITY Employment Agreement – Head Women’s Softball Coach	Motion to approve
7	BOISE STATE UNIVERSITY Employment Addendum – Head Football Coach	Motion to approve

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

SUBJECT

Board Policy, Section II. Subsections A., C., F., G., H. and P. – First Reading

APPLICABLE STATUTES, RULE OR POLICY

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

BACKGROUND / DISCUSSION

Board staff has conducted a thorough audit of reporting requirements in State Board of Education Policy. Some reports required by Board policy are no longer regularly submitted by the institutions, or collected and used by the Board office. In addition, some reporting requirements are duplicated in other sections of policy.

IMPACT

Updating Board policy will clarify and streamline reporting requirements, and focus Board policy on reports that are most relevant to the Board's governance responsibilities. Eliminating unnecessary reports will also free up time and resources at the institutions.

ATTACHMENTS

Attachment 1 – Policy II.A. Authority & Scope	Page 3
Attachment 2 – Policy II.C. Reporting & Accountability	Page 5
Attachment 3 – Policy II.F. Policies Regarding Nonclassified Employees	Page 7
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Attachment 6 – Policy II.P. General Policies and Procedures	Page 27

STAFF COMMENTS AND RECOMMENDATIONS

Staff is continually reviewing Board policy for accuracy and relevance as circumstances and needs change over time.

All reports in Section II of policy relate to human resources. In February 2010, the Board revised its policy to clarify the powers delegated to the institution chief executive officers to manage their workforce. These proposed revisions would make the Board's policy internally consistent by giving the institution chief executive officers discretion and flexibility to determine necessary internal reporting related to human resources.

Staff finds that the reports identified in the attachments are unnecessary, duplicative, or discretionary. Staff recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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BOARD ACTION

I move to approve the first reading of the amendments to Board Policy II. A., C., F., G., H. and P., as presented.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: A. Authority and Scope**~~December 2008~~**December 2011**

The State Board of Education and the Board of Regents of the University of Idaho (the Board) is designated by the Idaho Constitution and Code as the employer for the institutions (Boise State University, Idaho State University, Lewis-Clark State College, University of Idaho, and Eastern Idaho Technical College), agencies (Division of Professional-Technical Education, Division of Vocational Rehabilitation, Idaho Educational Public Broadcasting System, and Office of the State Board of Education under its governance (*reference Idaho Code Title 33, 67-53, and 59-16*)).

All employees at the institutions and agencies are governed by these personnel policies and procedures. The employees of the State Department of Education are subject to Section 33-127, Idaho Code, which authorizes the state superintendent of public instruction to hire and dismiss employees of the State Department of Education.

The primary responsibility for personnel management is delegated to the chief executive officers by the Board. The Board establishes these general personnel policies and procedures as an integral part of efficient and effective personnel management. The institutions and agencies may establish additional policies and procedures necessary for the management of personnel that further amplify and are consistent with the Governing Policies and Procedures of the Board. ~~Such policies and procedures as established by the institution and agencies shall be submitted to the executive director on July 1 annually, who shall review them for consistency with these governing policies and procedures and maintain them on file at the Office of the State Board of Education.~~

Any personnel policies and procedures created by the chief executive officers must be described in the context of the respective purposes and missions of the various entities under the governance of the Board. It shall be the responsibility of each chief executive officer to ensure that all employees under their supervision have access to such policies and procedures and that a copy of such procedures is on file at the Office of the State Board of Education. If there is a conflict between a Board governing policy or procedure and an institutional or agency policy or procedure, the provisions of these Governing Policies and Procedures will apply and control.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: A. Authority and Scope

~~December 2008~~December 2011

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: C. Reporting and Accountability****April 2002/December 2011**

1. The Board, in entrusting its vested personnel authority to the chief executive officers, expects compliance with these policies and procedures and with the directives and orders of the Board. To ensure this, the Board requires complete accountability from the chief executive officers.
2. The Board may, at any time, require reports or schedules of any and all personnel actions delegated to the chief executive officers.

The executive director is hereby delegated the full authority to call for, at any time, any such reports or schedules that the Board itself could require.

3. All reports and schedules shall be uniform and in the form and content as directed by the Board or, in the absence of Board specifications, as prescribed by the executive director.
4. In addition to any reports or schedules requested by the Board, the following schedules and reports shall be standing directives to the chief executive officers:

- a. In October–February of each year, a report of the supplemental or additional compensation (or payment of bonuses or contractual incentive pay) made to athletic department personnel (at the institutions only) in the preceding year, and including anticipated costs in the ensuing year. Additionally, the October–February report should include information on each coach's performance relative to the academic incentives of his or her contract.

- b. A semi-annual—Upon request, a report of all one or more of the items listed below, which should include, the name of the appointee, position to which appointed, area or department of assignment, salary and effective date of appointment, and any other information as prescribed by the executive director:

~~(1) a list of all employees receiving an increase in salary in excess of twenty percent (20%) or greater than \$15,000;~~

~~(2) a list of those employees appointed to positions at the level of dean or assistant vice president or higher, or who report directly to the chief executive officer, not otherwise reported or requiring Board approval;~~

~~(3) a statistical summary report of benefit-eligible employees appointed to any type of non-classified position, not otherwise reported or requiring prior Board approval;~~

~~(4) a list of supplemental compensation to non-classified employees in addition to their regular salaries;~~

~~(5)~~(1) a list of faculty members that were granted tenure;

~~(6)~~(2) a list of employees granted a change in faculty rank;

a list of employees granted professional leave or sabbatical leave with or without compensation, along with a brief statement of the purposes of each.

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: C. Reporting and Accountability

~~April 2002~~December 2011

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GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees** ~~February 2010~~ December 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

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: F. Policies Regarding Non-classified Employees** ~~February 2010~~ December 2011

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

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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.

4. Performance Evaluation

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

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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.
 - 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

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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) ~~June 2010~~ December 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. Sabbatical Leave

(1) Eligibility

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

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~ December 2011**

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 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.

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- 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.
 - b. Request For Review
 - (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

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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 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.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~December 2011**

- (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.
 - (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.

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~ December 2011****(4) Exceptional Cases**

- (a) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.
 - (b) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.
- e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
- f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given
- g. Periodic Performance Review of Tenured Faculty Members - It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department.
 - (1) Procedures for periodic review - Each institution must establish procedures for the performance review of tenured faculty members at the

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~ December 2011**

institution. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.

- (2) Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

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

- (3) Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.

- (4) Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.

- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.
- i. Tenure for Academic Administrators

GOVERNING POLICIES AND PROCEDURES**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~June 2010~~December 2011**

- (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 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.

GOVERNING POLICIES AND PROCEDURES

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- 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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GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors ~~December 2010~~December 2011

1. Agreements Longer Than One Year

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

2. Agreements For One Year Or Less

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

3. Academic Incentives

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

4. Part-time Coaches Excepted

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

GOVERNING POLICIES AND PROCEDURES

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5. Assistant Coaches

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

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: P. General Policies and Procedures – All Employees ~~December 2008~~ December 2011

1. Nondiscrimination Policy

It is the policy of the Board that the institutions or agency under its governance provide equal employment opportunities to applicants for employment and equal benefits to employees without regard to race, color, national origin, religion, sex, age, disability, or veteran's status in accordance with applicable state and federal laws.

2. Equal Employment Opportunity

The policy of the Board is to pursue a continuing program of specific positive practices designed to achieve the realization of equal employment opportunity without regard to race, color, national origin, religion, sex, age, disability, or veteran's status in accordance with applicable state and federal laws.

To implement this policy, the Board directs the chief executive officers of its institutions or agencies to:

- a. recruit, hire, train, and promote persons without discrimination in accordance with applicable state and federal laws and the governing policies of the Board;
- b. make decisions on employment so as to further the principle of equal employment opportunity;
- c. ensure that promotion decisions are in accordance with the principles of equal employment opportunity; and
- d. ensure that all personnel actions affecting such matters as compensation, benefits, transfer, termination, layoff, return from layoff, sponsored training, education, and social and recreational programs are administered without discrimination.

Each chief executive officer or his or her designee is specifically responsible for ensuring that there are no obstacles to equal employment opportunity by establishing a program of affirmative action, ensuring internal adherence to such a program, and evaluating its progress.

3. Sexual Harassment Policy

It is the policy of the Board that no employee should be subject to illegal sexual harassment. Each institution and agency must establish and maintain policies prohibiting sexual harassment and an internal process for investigating allegations of

GOVERNING POLICIES AND PROCEDURES

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sexual harassment and addressing and remedying violations of applicable law and policies prohibiting sexual harassment.

4. Personnel Files

a. Employee Files

Each institution and agency must maintain for each employee a personnel file, which is open for examination by the employee in accordance with the provisions of the Idaho public records act, Idaho Code 9-337 et seq., and other applicable law.

- (1) The employee may, pursuant to the Idaho public records act, request in writing an amendment of any record pertaining to that employee. Within ten days of the receipt of the request, the custodian of the files will make any correction of any portion of the file which the employee establishes is inaccurate, irrelevant, or incomplete; or inform the employee in writing of the refusal to amend the record(s) in accordance with the request and the reasons for the refusal, as set forth in the Idaho public records act.
- (2) In accordance with the Idaho public records act and other applicable law, an employee may obtain copies of materials in his or her personnel file.

b. Personnel Records Exempt From Disclosure

Each institution and agency will comply with the provisions of the Idaho public records act and other applicable law concerning the maintenance, disclosure and confidentiality of personnel records and information.

c. File Maintenance and Retention

- (1) Each institution and agency must maintain personnel files under such conditions as are necessary to ensure the integrity and safekeeping of the file and may establish additional policies and procedures for the maintenance of personnel files consistent with the Idaho public records act and other applicable law.
- (2) Any personnel files related to and involving legal action must be retained through any time period in which legal action may be taken.
- (3) Personnel files must be retained for a minimum of three (3) years following severance of an employment relationship with an institution or agency. A summary record of employment relationships must be kept indefinitely.

5. Miscellaneous Policies and Procedures

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: P. General Policies and Procedures – All Employees ~~December 2008~~ December 2011

a. Political Activities of Employees

Employees retain unimpaired all of their individual and political rights of citizenship. However, employees may not exercise those political rights in the name of any institution or agency, or through the use of Board facilities, or through the use of forms or official stationery or in any way that might involve an institution or agency in partisan political activity or controversy.

- (1) The Board or any of its members, agents, representatives, or employees must not prevent, threaten, harass, or discriminate against any employee who chooses to run for public office.
- (2) Employees are permitted to campaign freely in a manner that does not violate Board Governing Policies and Procedures or applicable provisions of the Idaho Code.
- (3) Employees may choose to request a leave without compensation in order to campaign for elective office or to serve in an elective office by using the procedures established at an institution or agency in addition to these policies and procedures.

b. Loyalty Oaths

No loyalty oath shall be required of any Board employee.

c. Outside Employment

The maintenance of a high standard of honesty, impartiality, and conduct by Board employees is essential to ensure the proper performance of its business and to strengthen the faith and confidence of the people of the State of Idaho in the integrity of state employees. The Board recognizes that employees may engage in outside employment of a professional or personal nature, directly related to the professional or other competencies of the employee. However, no employee may undertake outside employment that interferes with the employee's assigned duties to the Board or the agency. In all outside employment, the outside employer must be informed that the employee is acting in a private capacity and that the institution or agency is in no way a party to the outside employment, and is not liable or responsible for the performance thereof.

d. Other Services to the Institution or Agency.

GOVERNING POLICIES AND PROCEDURES

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Subsection: P. General Policies and Procedures – All Employees ~~December 2008~~ December 2011

An employee may be requested by the Chief Executive Officer or his or her designee to perform responsibilities or provide services beyond the primary scope of his or her appointment.

Each institution and agency must establish policies and procedures that do not conflict with policies and procedures of the Board regarding additional responsibilities or services.

Payment in addition to regular salaries must be authorized by the Chief Executive Officer ~~and reported to the Board as an informational item.~~

**BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE
OCTOBER 20, 2011**

BOISE STATE UNIVERSITY

SUBJECT

Approval of a four year contract for a Head Women's Softball Coach

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a new multi-year contract for its current Head Women's Softball Coach Erin Bridges-Thorpe. The contract will be for four years. The salary is \$58,458 per year with incentives as follows:

Athletic Incentive Pay may be earned as follows:

The larger of:

Conference Championship \$3,000

OR

Qualify Team for NCAA Regionals \$2,000

Conference Coach of the Year \$2,000

NCAA Regional Coach of the Year \$2,000

Top 25 National Ranking at the end of the Season \$2,000

Academic Incentive Pay may be earned as follows:

National Score Within Sport

50th - 60th % = \$1,400

60th - 70th % = \$1,600

70th - 80th % = \$1,800

80th % or above = \$2,000

Liquidated damages for the Coach leaving early are not included. The Coach was originally employed in 2007. Now that the coach has served four full years and is in contract renewal, the liquidated damages were removed.

IMPACT

The Contract is similar to the standard issued by Boise State University.

ATTACHMENTS

Attachment 1 – Proposed Contract Page 3

Attachment 2 – Proposed Addendum Page 15

Attachment 3 – Redline from the SBOE Model Page 19

Attachment 4 – Matrix Page 33

BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE
OCTOBER 20, 2011

STAFF COMMENTS AND RECOMMENDATIONS

Source of funds for this position is appropriated funds.

Maximum potential annual compensation under this contract (base salary plus maximum potential supplemental compensation) would be \$69,458.

The contract follows the Board-approved model contract with the exception of the use of an addendum which contains additional terms and conditions, annual salary amount and supplemental compensation amounts.

The contract does add the following three new terms outside of the model contract:

- A list of sources of outside income that must receive prior approval by the President and the Athletic Director.
- The coach cannot pursue other employment without prior notice.
- Requires coach to use all accumulated annual leave prior to the end of the contract year if the coach's contract is non-renewed or terminated.
- Requires any termination of convenience by the coach to occur outside the team's season and post-season competition.

The contract provides an opportunity for earning academic incentive pay which tops out at a dollar amount equivalent to qualifying for NCAA regionals or coach of the year awards.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to enter into a multi-year employment contract with Erin Bridges-Thorpe, Head Women's Softball Coach, for a term commencing June 26, 2011 and terminating June 25, 2015, in substantial conformance to the contract submitted to the Board as Attachments 1 and 2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this _____ day of _____, 2011 (“Effective Date”) by and between Boise State University (“University”) and Erin Bridges-Thorpe (“Coach”).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate women’s softball team (the “Position”). 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 (the “Director”) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee and shall confer with the Director or the Director’s designee on all administrative and technical matters. Coach shall also be under the general supervision of the University’s President (the “President”).

1.3. Duties. Coach shall manage and supervise the University’s intercollegiate women’s softball team (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 and any addenda hereto. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on June 26, 2011 and terminating, without further notice to Coach, on June 25, 2015 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. University may provide supplemental compensation, as set forth in the attached Addendum.

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

3.2.2 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's 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 Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach 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, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.3 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

3.2.4 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with National Collegiate Athletic Association (the "NCAA") rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Executive Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report 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. 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. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

4.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team's 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 set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

ARTICLE 5

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

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

ATTACHMENT 1

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the

nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that Coach's 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 Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract term.

5.3.2 The Coach may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination.

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

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies or Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property, 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 state district court in Ada County, Boise, Idaho.

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

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental

controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

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

with a copy to: Boise State University
 Office of the President
 1910 University Drive
 Boise, Idaho 83725-1000

the Coach: Erin Bridges-Thorpe
 1910 University Drive
 Boise, Idaho 83725-1025

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Director of Athletics

Erin Bridges-Thorpe

Dr. Robert Kustra, President

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

**Addendum to Employment Agreement between
Boise State University and Erin Bridges-Thorpe**

This Addendum (the “Addendum”) to the Employment Agreement (the “Agreement”) dated _____, 2011, by and between Boise State University (the “University”) and Erin Bridges-Thorpe (“Coach”), is entered into this _____ day of _____, 2011 (“Effective Date”).

NOW THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the parties make the following additions to the Agreement.

1. NCAA Compliance. Coach shall have a strong working knowledge and understanding of all National Collegiate Athletic Association (the “NCAA”) Rules and Regulations (“NCAA Rules”) regarding compliance issues. Per NCAA policy, Coach must annually pass the NCAA Coaches Certification Test before contacting any prospects off-campus.
2. NCAA Violations. In the event Coach or Coach’s Team (as that term is defined in Section 1.3 of the Agreement) is found in violation of NCAA Rules, Coach shall be subject to disciplinary or corrective action up to and including as provided for in Section 5.1 of the Agreement.
3. University Name/Logo. Coach shall not use, directly or by implication, the University name or logo in the endorsement of commercial products or services for personal gain without obtaining prior written approval from the Director of Athletics (the “Director”) and University President (the “President”).
4. Additional Rules and Regulations. Coach shall be subject to the State Board of Education Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, University policies, the rules of the conference of which the University is a member, and the NCAA Rules as they now exist, and as they may be amended from time-to-time during the term of Coach’s employment. Material violation of any of the above rules shall constitute cause for which the University may in its discretion institute discipline up to and including termination of employment as provided in Section 5.1 of the Agreement.
5. Specific Duties of Coach. In addition to the duties outlined in the Agreement, Coach is expected to devote full-time to recruitment and coaching duties as appropriate. Coach will attend all staff meetings, public relations functions, dinners, awards banquets, and will make appearances as directed by the Director.

6. Compensation. University shall provide to Coach an annual salary of \$58,458 per year.

7. Athletic Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

Conference Championship:	\$3,000
OR	
Qualify team for NCAA Regional's:	\$2,000
NCAA Regional Coach of the Year:	\$2,000
Conference Coach of the Year:	\$2,000
Top 25 National Ranking at End of Season:	\$2,000

Supplemental pay earned pursuant to this paragraph shall be paid on or before July 1st following the academic year in which it is earned, if Coach is still employed by the University on that date.

8. Academic Incentive Pay. Coach may qualify for Academic Incentive Pay if the four year Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Softball:

National Rank within Sport

50 th - 59.9%	=	\$1,400
60 th - 69.9%	=	\$1,600
70 th - 79.9%	=	\$1,800
80% or above	=	\$2,000

If Coach qualifies for Academic Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

9. Effect on Agreement. No other terms or conditions of the Agreement shall be negated or changed as a result of this Addendum.

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

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions of this Addendum and have executed this Addendum freely and agree to be bound hereby as of the Effective Date.

Signed:

Dr. Robert Kustra
President

Athletic Director

Erin Bridges-Thorpe
Head Coach - Women's Softball

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

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EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this _____ day of _____, 2011 (“Effective Date”) by and between Boise State University (“University”) and Erin Bridges-Thorpe (“Coach”).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate women’s softball team (the “Position”). 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 (the “Director”) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee and shall confer with the Director or the Director’s designee on all administrative and technical matters. Coach shall also be under the general supervision of the University’s President (the “President”).

1.3. Duties. Coach shall manage and supervise the University’s intercollegiate women’s softball team (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 and any addenda hereto. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on June 26, 2011 and terminating, without further notice to Coach, on June 25, 2015 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. University may provide supplemental compensation, as set forth in the attached Addendum.

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

~~3.2.2. Each year the Team is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

~~3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the University (College)'s Board of (Regents or Trustees). The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere.1 Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.~~

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

3.2.2 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs). ~~Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment).~~". Agreements requiring the Coach to participate in Programs related to Coach's 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 Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach 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, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any

commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.3 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

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

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Executive Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report 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. 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. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

ARTICLE 5

5.1 Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with

or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules, regulations, or policies.

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (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 National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team;
or

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be

entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that Coach's 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 Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract term.

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

occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

~~5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before _____, the sum of \$30,000.00; (b) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.~~

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

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

5.4 Termination Due to Disability or Death of Coach.

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

5.4.2 If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe

benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries hereunder.

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies or Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property, 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 state district court in Ada County, Boise, Idaho.

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices

shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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

with a copy to: Boise State University
 Office of the President
 1910 University Drive
 Boise, Idaho 83725-1000

the Coach: Erin Bridges-Thorpe
 1910 University Drive
 Boise, Idaho 83725-1025

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

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

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

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

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

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

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

Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Director of Athletics

Erin Bridges-Thorpe

Dr. Robert Kustra, President

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

Erin Bridges-Thorpe, Boise State University, Head Women’s Softball Coach – 2011 – Multi-Year Contract

	Model Contract Section	Contract Section	Justification for Modification
3.2	Supplemental Compensation	3.2 Supplemental Compensation; language added	Language added regarding specific supplemental compensation information to be provided in the attached Addendum.
3.2.1, 3.2.2, 3.2.3, 3.2.4	Supplemental Compensation	3.2 Supplemental Compensation; language deleted	Language deleted, as specific supplemental compensation information is provided in attached Addendum.
3.2.5	Supplemental Compensation	3.2.2 Supplemental Compensation; language deleted	Deleted language specific to Coach’s right to receive payments for participation in media programs and public appearances.
3.2.6	Supplemental Compensation; Summer Camp Operated by University	3.2.3 Supplemental Compensation; summer camp; language deleted	Deleted language regarding summer camp operated by coach.
3.2.7	Supplemental Compensation	3.2.4 Supplemental Compensation; language deleted	Deleted unnecessary language regarding athletic footwear, apparel and equipment contracts.
4.3	Outside Income	4.3 Outside Income; added language	Added a list of sources of outside income that must receive prior approval by the President and the Athletic Director.
4.7	Other Coaching Opportunities	4.6 Other Coaching Opportunities; added language	Added language providing that Coach cannot pursue other employment without prior notice.
5.2	Termination of Coach for Convenience of University	5.2.4 Termination of Coach for Convenience of University; added language	Added language requiring Coach to use all accumulated annual leave

ATTACHMENT 4

Erin Bridges-Thorpe, Boise State University, Head Women’s Softball Coach – 2011 – Multi-Year Contract

			prior to the end of the contract year, if the Coach’s contract is non-renewed or terminated.
5.3	Termination by Coach for Convenience	5.3.2 Termination by Coach for Convenience; added language	Added language requiring any termination of convenience by Coach to occur outside the team’s season and post-season competition.
5.3.3, 5.3.4	Termination by Coach for Convenience	5.3.3 Termination by Coach for Convenience; deleted language	Deleted liquidated damages language, as Coach has already been with the University for 4 years.
6.15	Entire Agreement; Amendments	6.15 Entire Agreement; Amendments; added language	Added language clarifying that the attached Addendum is also a part of the entire agreement between the parties.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

BOISE STATE UNIVERSITY

SUBJECT

Approval of a four year contract for a Head Track and Cross Country Coach

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a new multi-year contract for its current Head Track and Cross Country Coach. The contract will be for four years. The salary is \$85,010 per year with incentives as follows:

Athletic Incentive Pay may be earned as follows:

Conference Championship	\$3,000
National Championship	\$10,000

(one of the following)

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

Academic Incentive Pay may be earned as follows:

National Score Within Sport		
50 th - 60 th %	=	\$1,400
60 th - 70 th %	=	\$1,600
70 th - 80 th %	=	\$1,800
80 th % or above	=	\$2,000

Liquidated damages for the Coach leaving early are not included. The Coach was originally employed in 2009 and liquidated damages were in the original employment agreement. Now that the Coach has served two full years and is in contract renewal, the liquidated damages were removed.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

IMPACT

The Contract is similar to the standard issued by Boise State University.

ATTACHMENTS

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

STAFF COMMENTS AND RECOMMENDATIONS

The source of funds for base salary and supplemental compensation is local program revenue.

Maximum potential annual compensation under this contract (base salary plus maximum potential supplemental compensation) would be \$113,760.

The contract follows the Board-approved model contract with the exception of the use of an addendum which contains additional terms and conditions, annual salary amount and supplemental compensation amounts.

The contract does add the following three new terms outside of the model contract:

- A list of sources of outside income that must receive prior approval by the President and the Athletic Director.
- The coach cannot pursue other employment without prior notice.
- Requires coach to use all accumulated annual leave prior to the end of the contract year if the coach's contract is non-renewed or terminated.
- Requires any termination of convenience by the coach to occur outside the team's season and post-season competition.

The contract provides an opportunity for earning academic incentive pay which tops out at a dollar amount equivalent to top 20 national ranking at end of season.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to enter into a multi-year employment contract with James Hardy, Head Track and Cross Country Coach, for a term commencing June 26, 2011 and terminating June 25, 2015, in substantial conformance to the contract submitted to the Board as Attachments 1 and 2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this _____ day of _____, 2011 (“Effective Date”) by and between Boise State University (“University”) and James W. Hardy (“Coach”).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its track and field team (the “Position”). 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 (the “Director”) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee and shall confer with the Director or the Director’s designee on all administrative and technical matters. Coach shall also be under the general supervision of the University’s President (the “President”).

1.3. Duties. Coach shall manage and supervise the University’s intercollegiate track and field team (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 and any addenda hereto. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on June 26, 2011 and terminating, without further notice to Coach, on June 25, 2015 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. University may provide supplemental compensation, as set forth in the attached Addendum.

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

3.2.2 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's 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 Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach 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, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.3 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

3.2.4 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with National Collegiate Athletic Association (the "NCAA") rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Executive Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report 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. 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. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

4.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team's 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 set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

ARTICLE 5

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

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

ATTACHMENT 1

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the

nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that Coach's 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 Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract term.

5.3.2 The Coach, may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination.

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

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and

Governing Policies and Procedures Manual, and the University Policies or Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property, 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 state district court in Ada County, Boise, Idaho.

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

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

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

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

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

with a copy to: Boise State University
 Office of the President
 1910 University Drive
 Boise, Idaho 83725-1000

the Coach: James W. Hardy
 1910 University Drive
 Boise, Idaho 83725-1025

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

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

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

ATTACHMENT 1

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

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Director of Athletics

James W. Hardy

Dr. Robert Kustra, President

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

**Addendum to Employment Agreement between
Boise State University and James W. Hardy**

This Addendum (the “Addendum”) to the Employment Agreement (the “Agreement”) dated _____, 2011, by and between Boise State University (the “University”) and James W. Hardy (“Coach”), is entered into this _____ day of _____, 2011 (“Effective Date”).

NOW THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the parties make the following additions to the Agreement.

1. NCAA Compliance. Coach shall have a strong working knowledge and understanding of all National Collegiate Athletic Association (the “NCAA”) Rules and Regulations (“NCAA Rules”) regarding compliance issues. Per NCAA policy, Coach must annually pass the NCAA Coaches Certification Test before contacting any prospects off-campus.
2. NCAA Violations. In the event Coach or Coach’s Team (as that term is defined in Section 1.3 of the Agreement) is found in violation of NCAA Rules, Coach shall be subject to disciplinary or corrective action up to and including as provided for in Section 5.1 of the Agreement.
3. University Name/Logo. Coach shall not use, directly or by implication, the University name or logo in the endorsement of commercial products or services for personal gain without obtaining prior written approval from the Director of Athletics (the “Director”) and the University President (the “President”).
4. Additional Rules and Regulations. Coach shall be subject to the State Board of Education Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, University policies, the rules of the conference of which the University is a member, and the NCAA Rules as they now exist, and as they may be amended from time-to-time during the term of Coach’s employment. Material violation of any of the above rules shall constitute cause for which the University may in its discretion institute discipline up to and including termination of employment as provided in Section 5.1 of the Agreement.
5. Specific Duties of Coach. In addition to the duties outlined in the Agreement, Coach is expected to devote full-time to recruitment and coaching duties as appropriate. Coach will attend all staff meetings, public relations functions, dinners, awards banquets, and will make appearances as directed by the Director.
6. Compensation. University shall provide to Coach an annual salary of \$85,010.

7. Athletic Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

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

Supplemental pay earned pursuant to this paragraph shall be paid on or before July 1st following the academic year in which it is earned, if Coach is still employed by the University on that date.

8. Academic Incentive Pay. Coach may qualify for Academic Incentive Pay if the four year Academic Progress Rate (“APR”) for the Team meets the following levels in the National Ranking within Indoor or Outdoor Track & Field (only qualify for one per gender, whichever is higher):

<i>National Rank within Sport</i>		
50 th -59.9%	=	\$1,400
60 th - 69.9 %	=	\$1,600
70 th – 79.9 %	=	\$1,800
80 th % or above	=	\$2,000

If Coach qualifies for Academic Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

9. Effect on Agreement. No other terms or conditions of the Agreement shall be negated or changed as a result of this Addendum.

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

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions of this Addendum and have executed this Addendum freely and agree to be bound hereby as of the Effective Date.

Signed:

Dr. Robert Kustra
President

Athletic Director

James W. Hardy
Head Coach - Track & Field

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

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EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this _____ day of _____, 2011 (“Effective Date”) by and between Boise State University (“University”) and James W. Hardy (“Coach”).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its track and field team (the “Position”). 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 (the “Director”) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee and shall confer with the Director or the Director’s designee on all administrative and technical matters. Coach shall also be under the general supervision of the University’s President (the “President”).

1.3. Duties. Coach shall manage and supervise the University’s intercollegiate track and field team (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 and any addenda hereto. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on June 26, 2011 and terminating, without further notice to Coach, on June 25, 2015 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. University may provide supplemental compensation, as set forth in the attached Addendum.

~~3.2.1. Each year the Team is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs), and if Coach continues to be employed as University (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.~~

~~3.2.12. Each year the Team is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

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

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

3.2.2 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs). ~~Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment).~~". Agreements requiring the Coach to participate in Programs related to ~~his~~ Coach's 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 Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach 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, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any

commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.3 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

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

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Executive Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report 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. 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. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

ARTICLE 5

5.1 Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with or without pay; reassign Coach to other duties; or terminate this Agreement at any time

for good or adequate cause, as those terms are defined in applicable rules, regulations, and policies.

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (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 National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team;
or

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be

entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that Coach's 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 Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract term.

5.3.2 The Coach, may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so

as to minimize the impact on the program.

~~5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University (College) shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before _____, the sum of \$30,000.00; (b) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.~~

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

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

5.4 Termination Due to Disability or Death of Coach.

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

5.4.2 If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe

benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries hereunder.

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies or Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property, 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 state district court in Ada County, Boise, Idaho.

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices

shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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

with a copy to: Boise State University
Office of the President
1910 University Drive
Boise, Idaho 83725-1000

the Coach: James W. Hardy
1910 University Drive
Boise, Idaho 83725-1025

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

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

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

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

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

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

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

ATTACHMENT 3

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.

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Director of Athletics

James W. Hardy

Dr. Robert Kustra, President

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

James W. Hardy, Boise State University, Head Track and Field Coach – 2011 – Multi-Year Contract

	Model Contract Section	Contract Section	Justification for Modification
3.2	Supplemental Compensation	3.2 Supplemental Compensation; language added	Language added regarding specific supplemental compensation information to be provided in the attached Addendum.
3.2.1, 3.2.2, 3.2.3, 3.2.4	Supplemental Compensation	3.2 Supplemental Compensation; language deleted	Language deleted, as specific supplemental compensation information is provided in attached Addendum.
3.2.5	Supplemental Compensation	3.2.2 Supplemental Compensation; language deleted	Deleted language specific to Coach’s right to receive payments for participation in media programs and public appearances.
3.2.6	Supplemental Compensation; Summer Camp Operated by University	3.2.3 Supplemental Compensation; summer camp; language deleted	Deleted language regarding summer camp operated by coach.
3.2.7	Supplemental Compensation	3.2.4 Supplemental Compensation; language deleted	Deleted unnecessary language regarding athletic footwear, apparel and equipment contracts.
4.3	Outside Income	4.3 Outside Income; added language	Added a list of sources of outside income that must receive prior approval by the President and the Athletic Director.
4.7	Other Coaching Opportunities	4.6 Other Coaching Opportunities; added language	Added language providing that Coach cannot pursue other employment without prior notice.
5.2	Termination of Coach for Convenience of University	5.2.4 Termination of Coach for Convenience of University; added language	Added language requiring Coach to use all accumulated annual leave

James W. Hardy, Boise State University, Head Track and Field Coach – 2011 – Multi-Year Contract

			prior to the end of the contract year, if the Coach’s contract is non-renewed or terminated.
5.3	Termination by Coach for Convenience	5.3.2 Termination by Coach for Convenience; added language	Added language requiring any termination of convenience by Coach to occur outside the team’s season and post-season competition.
5.3.3, 5.3.4	Termination by Coach for Convenience	5.3.3 Termination by Coach for Convenience; deleted language	Deleted liquidated damages language, as Coach has already been with the University for 2 years.
6.15	Entire Agreement; Amendments	6.15 Entire Agreement; Amendments; added language	Added language clarifying that the attached Addendum is also a part of the entire agreement between the parties.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011**

BOISE STATE UNIVERSITY

SUBJECT

Approval of a four year contract for a Head Women's Swimming and Diving Coach

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a new multi-year contract for its current Head Women's Swimming and Diving Coach Kristin Hill. The contract will be for four years. The salary is \$60,000 per year with incentives as follows:

Athletic Incentive Pay may be earned as follows:

Conference Championship	\$3,000
Conference Coach of the Year	\$2,000
NCAA Regional Coach of the Year	\$2,000
Top 50 at NCAA Championships	\$2,000

Academic Incentive Pay may be earned as follows:

National Score Within Sport		
50 th - 60 th %	=	\$1,400
60 th - 70 th %	=	\$1,600
70 th - 80 th %	=	\$1,800
80 th % or above	=	\$2,000

Liquidated damages for the Coach leaving early are not included. The Coach was originally employed in 2006. Now that the Coach has served five full years and is in contract renewal, the liquidated damages were removed.

IMPACT

The Contract is similar to the standard issued by Boise State University.

ATTACHMENTS

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

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

STAFF COMMENTS AND RECOMMENDATIONS

Source of funds for this position is appropriated funds.

Maximum potential annual compensation under this contract (base salary plus maximum potential supplemental compensation) would be \$71,000.

The contract follows the Board-approved model contract with the exception of the use of an addendum which contains additional terms and conditions, annual salary amount and supplemental compensation amounts.

The contract does add the following three new terms outside of the model contract:

- A list of sources of outside income that must receive prior approval by the President and the Athletic Director.
- The coach cannot pursue other employment without prior notice.
- Requires coach to use all accumulated annual leave prior to the end of the contract year if the coach's contract is non-renewed or terminated.
- Requires any termination of convenience by the coach to occur outside the team's season and post-season competition.

The contract provides an opportunity for earning academic incentive pay which tops out at a dollar amount equivalent to coach of the year awards or a top 50 finish at NCAA championships.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to enter into a multi-year employment contract with Kristin Hill, Head Women's Swimming and Diving Coach, for a term commencing June 26, 2011 and terminating June 25, 2015, in substantial conformance to the contract submitted to the Board as Attachments 1 and 2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this _____ day of _____, 2011 (“Effective Date”) by and between Boise State University (“University”) and Kristin Hill (“Coach”).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate women’s swimming and diving team (the “Position”). 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 (the “Director”) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee and shall confer with the Director or the Director’s designee on all administrative and technical matters. Coach shall also be under the general supervision of the University’s President (the “President”).

1.3. Duties. Coach shall manage and supervise the University’s intercollegiate women’s swimming and diving team (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 and any addenda hereto. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on June 26, 2011 and terminating, without further notice to Coach, on June 25, 2015 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. University may provide supplemental compensation, as set forth in the attached Addendum.

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

3.2.2 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's 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 Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach 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, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.3 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

3.2.4 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with National Collegiate Athletic Association (the "NCAA") rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Executive Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report 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. 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. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

4.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team's 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 set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

ARTICLE 5

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

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

ATTACHMENT 1

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the

nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that Coach's 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 Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract term.

5.3.2 The Coach, may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination.

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

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies or Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property, 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 state district court in Ada County, Boise, Idaho.

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

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable

substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

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

with a copy to: Boise State University
 Office of the President
 1910 University Drive
 Boise, Idaho 83725-1000

the Coach: Kristin Hill
 1910 University Drive
 Boise, Idaho 83725-1025

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Director of Athletics

Kristin Hill

Dr. Robert Kustra, President

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

**Addendum to Employment Agreement between
Boise State University and Kristin Hill**

This Addendum (the “Addendum”) to the Employment Agreement (the “Agreement”) dated _____, 2011, by and between Boise State University (the “University”) and Kristin Hill (“Coach”), is entered into this _____ day of _____, 2011 (“Effective Date”).

NOW THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the parties make the following additions to the Agreement.

1. NCAA Compliance. Coach shall have a strong working knowledge and understanding of all National Collegiate Athletic Association (the “NCAA”) Rules and Regulations (“NCAA Rules”) regarding compliance issues. Per NCAA policy, Coach must annually pass the NCAA Coaches Certification Test before contacting any prospects off-campus.
2. NCAA Violations. In the event Coach or Coach’s Team (as that term is defined in Section 1.3 of the Agreement) is found in violation of NCAA Rules, Coach shall be subject to disciplinary or corrective action up to and including as provided for in Section 5.1 of the Agreement.
3. University Name/Logo. Coach shall not use, directly or by implication, the University name or logo in the endorsement of commercial products or services for personal gain without obtaining prior written approval from the Director and University President.
4. Additional Rules and Regulations. Coach shall be subject to the State Board of Education Rules (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, Boise State University policies, the rules of the conference of which the University is a member, and the NCAA Rules as they now exist, and as they may be amended from time-to-time during the term of Coach’s employment. Material violation of any of the above rules shall constitute cause for which the University may in its discretion institute discipline up to and including termination of employment as provided in Section 5.1 of the Agreement.
5. Specific Duties of Coach. In addition to the duties outlined in the Agreement, Coach is expected to devote full-time to recruitment and coaching duties as appropriate. Coach will attend all staff meetings, public relations functions, dinners, awards banquets, and will make appearances as directed by the Director.

- 6. Compensation. University shall provide to Coach an annual salary of \$60,000 per year.
- 7. Athletic Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

Conference Championship:	\$3,000
NCAA Regional Coach of the Year:	\$2,000
Conference Coach of the Year:	\$2,000
Top 50 at NCAA Championships:	\$2,000

Supplemental pay earned pursuant to this paragraph shall be paid on or before July 1st following the academic year in which it is earned, if Coach is still employed by the University on that date.

- 8. Academic Incentive Pay. Coach may qualify for Academic Incentive Pay if the four year Academic Progress Rate (“APR”) for the Team meets the following levels in the National Ranking within Women’s Swimming & Diving:

National Rank within Sport

50 th - 59.9%	=	\$1,400
60 th - 69.9%	=	\$1,600
70 th - 79.9%	=	\$1,800
80% or above	=	\$2,000

If Coach qualifies for Academic Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

- 9. Effect on Agreement. No other terms or conditions of the Agreement shall be negated or changed as a result of this Addendum.
- 10. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions of this Addendum and have executed this Addendum freely and agree to be bound hereby as of the date first above written.

Signed:

Dr. Robert Kustra
President

Athletic Director

Kristin Hill
Head Coach - Women's Swimming & Diving

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

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EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this _____ day of _____, 2011 (“Effective Date”) by and between Boise State University (“University”) and Kristin Hill (“Coach”).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate women’s swimming and diving team (the “Position”). 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 (the “Director”) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee and shall confer with the Director or the Director’s designee on all administrative and technical matters. Coach shall also be under the general supervision of the University’s President (the “President”).

1.3. Duties. Coach shall manage and supervise the University’s intercollegiate women’s swimming and diving team (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 and any addenda hereto. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on June 26, 2011 and terminating, without further notice to Coach, on June 25, 2015 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount set forth in the attached Addendum, payable in biweekly installments in accordance with normal University procedures (except as provided in the Addendum), and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. University may provide supplemental compensation, as set forth in the attached Addendum.

~~3.2.1. Each year the Team is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs), and if Coach continues to be employed as University (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.~~

~~3.2.12. Each year the Team is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

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

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

3.2.2 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs). ~~Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment).~~". Agreements requiring the Coach to participate in Programs related to Coach's 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 Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach 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, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any

commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.3 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

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

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Executive Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report 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. 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. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

ARTICLE 5

5.1 Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with

or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules, regulations, and policies.

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (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 National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom

Coach is administratively responsible, or a member of the Team;
or

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross

salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that Coach's 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 Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract term.

5.3.2 The Coach, may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience ~~at any time~~, all obligations of the University shall cease as of the effective date of the termination. ~~If the Coach terminates this Agreement for his convenience he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before _____, the sum of \$30,000.00; (b) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.~~

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

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

5.4 Termination Due to Disability or Death of Coach.

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

5.4.2 If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the

Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries hereunder.

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies or Faculty-Staff Handbook.

ARTICLE 6

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

6.2 University Property. All personal property, 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 state district court in Ada County, Boise, Idaho.

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

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

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

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

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

with a copy to: Boise State University
 Office of the President
 1910 University Drive
 Boise, Idaho 83725-1000

the Coach: Kristin Hill
 1910 University Drive
 Boise, Idaho 83725-1025

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Director of Athletics

Kristin Hill

Dr. Robert Kustra, President

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

Kristin Hill, Boise State University, Head Women’s Swimming and Diving Coach – 2011 – Multi-Year Contract

	Model Contract Section	Contract Section	Justification for Modification
3.2	Supplemental Compensation	3.2 Supplemental Compensation; language added	Language added regarding specific supplemental compensation information to be provided in the attached Addendum.
3.2.1, 3.2.2, 3.2.3, 3.2.4	Supplemental Compensation	3.2 Supplemental Compensation; language deleted	Language deleted, as specific supplemental compensation information is provided in attached Addendum.
3.2.5	Supplemental Compensation	3.2.2 Supplemental Compensation; language deleted	Deleted language specific to Coach’s right to receive payments for participation in media programs and public appearances.
3.2.6	Supplemental Compensation; Summer Camp Operated by University	3.2.3 Supplemental Compensation; summer camp; language deleted	Deleted language regarding summer camp operated by coach.
3.2.7	Supplemental Compensation	3.2.4 Supplemental Compensation; language deleted	Deleted unnecessary language regarding athletic footwear, apparel and equipment contracts.
4.3	Outside Income	4.3 Outside Income; added language	Added a list of sources of outside income that must receive prior approval by the President and the Athletic Director.
4.7	Other Coaching Opportunities	4.6 Other Coaching Opportunities; added language	Added language providing that Coach cannot pursue other employment without prior notice.
5.2	Termination of Coach for Convenience of University	5.2.4 Termination of Coach for Convenience of University; added language	Added language requiring Coach to use all accumulated annual leave

Kristin Hill, Boise State University, Head Women’s Swimming and Diving Coach – 2011 – Multi-Year Contract

			prior to the end of the contract year, if the Coach’s contract is non-renewed or terminated.
5.3	Termination by Coach for Convenience	5.3.2 Termination by Coach for Convenience; added language	Added language requiring any termination of convenience by Coach to occur outside the team’s season and post-season competition.
5.3.3, 5.3.4	Termination by Coach for Convenience	5.3.3 Termination by Coach for Convenience; deleted language	Deleted liquidated damages language, as Coach has already been with the University for 5 years.
6.15	Entire Agreement; Amendments	6.15 Entire Agreement; Amendments; added language	Added language clarifying that the attached Addendum is also a part of the entire agreement between the parties.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

IDAHO STATE UNIVERSITY

SUBJECT

Multi-year contract for Athletic Director

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University seeks to provide a three-year agreement for its Athletic Director, Jeffrey K. Tingey. Mr. Tingey initially served as Acting Athletic Director from March 6, 2008 to June 28, 2008. He was appointed Interim Athletic Director June 29, 2008 through June 27, 2009, after which he was appointed Athletic Director. Mr. Tingey successfully turned the athletics program from an overall budgetary deficit to a program with a balanced budget and has continued to improve overall performance. The University desires to add stability to the program by offering this agreement. Incentives for academic performance and combined gross ticket sales growth incentives are included. If approved, the remainder of the current year's contract would be merged into the multi-year agreement for a total of a three year contract period.

IMPACT

The current annual base salary will remain at \$95,014.40. Performance incentives for academic and combined gross ticket sales are included, with the potential for the equivalent of up to four (4) weeks additional compensation.

The term of the Employment Agreement is three years, commencing July 1, 2011, and terminating June 30, 2014.

Total potential annual compensation is \$102,323.20 (base salary plus potential incentives).

ATTACHMENTS

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement – Redline	Page 15
Attachment 3	Model Contract Changes Matrix	Page 31

STAFF COMMENTS AND RECOMMENDATIONS

This contract follows the Board-approved model contract. Sources of funds for base salary will be appropriated funds, and for incentives will be local funds.

Potential supplemental compensation includes:

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

- University teams all exceed their respective APR in any given year: 1/26 of annual salary or \$3,654.40
- Combined gross ticket sales for football, men's and women's basketball, women's volleyball and softball exceed prior year by 10%: 1/26 of annual salary or \$3,654.40

Staff recommends approval.

BOARD ACTION

I move to approve the request by Idaho State University to execute a multi-year employment agreement with Jeffrey K. Tingey, Athletic Director, for a term commencing July 1, 2011 and terminating June 30, 2014 in substantial conformance to 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 Idaho State University (University) and Jeffrey K. Tingey (Athletic Director, hereafter “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 his/her designee. Director shall abide by the reasonable instructions of the President or his/her designee and shall confer with the President or his/her designee on all administrative and technical matters.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in the University’s athletic program as the President or his/her designee may assign and as may be described elsewhere in this Agreement. Independent of the University’s right to reassign Director other duties for cause as set forth elsewhere in this Agreement, the University shall have the right, at any time, 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 to the extent described elsewhere in this Agreement.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on July 1, 2011 and terminating, without further notice to Director, on June 30, 2014 unless sooner terminated in accordance with other provisions of this Agreement. Upon approval by the University’s Board of Trustees, the remaining portion of any existing agreement between the parties shall be superseded by, and merged into, this Agreement.

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 Trustees. 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 \$95,014.40 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees.

3.2 Supplemental Compensation. Each year (July 1 through June 30) during the term of this Agreement in which the Director achieves the following performance measures, he will be paid supplemental compensation as set forth below.

- a) If the University teams all exceed their respective Academic Progress Rates (A.P.R.) as established and published by the NCAA in any given year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation, (1/26 of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.
- b) If in any year during the term of this Agreement the combined gross ticket sales for football, women's basketball, men's basketball, women's volleyball, and women's soccer is ten percent (10%) higher than the immediately prior year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation, (1/26 of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.

Any supplemental compensation paid to the Director shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Public Records Act. Further, eligibility for supplemental compensation as set forth above shall also be contingent upon the President's assessment of the Director's role in overseeing the conduct of the University's team members on the University campus, at authorized University activities, in the community, and elsewhere, and upon continuing overall improvement in the University's athletic programs.

3.3 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 evaluation, recruitment, training, of coaching staff and departmental employees which enable them to compete successfully and reasonably protect the health, safety, and well-being of staff and athletes;

4.1.3. Require coaches, staff and athletes to observe and uphold all academic standards, requirements, and policies of the University and encourage athletes 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 coaches and assistant coaches, any other employees for whom Director is administratively responsible, and the Program's athletes 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 there is 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 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 Policies and Procedures; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Big Sky 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 its athletic program.

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 report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall 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 head coaches for the Program, but the decision to hire or terminate an assistant coach shall be made by the Director after recommendation by the head coach, and, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees.

4.5 Other Opportunities. Director shall not, under any circumstances, interview for, negotiate for, or accept employment as an athletic director 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 written 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 applicable rules and regulations.

5.1.1 In addition to the definitions contained in applicable rules and regulations, University and 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 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 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, including but not limited to any such violation which may have occurred during the employment of Director at another NCAA or member institution;
- 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 a coach, assistant coach, or any other employee for whom Director is administratively responsible, or a member of any team of 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 the Director or one of coaches or assistant coaches, or any other employee for whom Director is administratively responsible, or a member of the any team of 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 or his designee 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. This section applies to violations occurring at the University or at previous institutions at which the Director was employed.

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, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Director under the other employment, then subtracting from this adjusted gross compensation deduction 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 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 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 had the opportunity to seek legal counsel in the contract negotiations and have bargained for and agreed to the liquidated damages provision contained herein, giving consideration to the fact that the 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 liquidated damages by University and the acceptance thereof by Director shall constitute adequate and reasonable compensation to Director for the damages and injury suffered by Director because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Director for Convenience.

5.3.1 The Director recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The 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 The 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 the Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Director terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June, 2012, the sum of \$50,000.00; (b) if the Agreement is terminated between July 1, 2012 and June 30, 2013 inclusive, the sum of \$40,000.00; (c) if the Agreement is terminated between July 1, 2013 and June 30, 2014 inclusive, the sum of \$30,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both had the opportunity to seek legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Director, in addition to potentially increased compensation costs if Director terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Director and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Director. The liquidated damages 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 head coach, 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 the 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 the Director's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because the 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 athletic director, all salary and other benefits shall terminate, except that the 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, suspension, or reassignment, Director agrees that Director will not interfere with the University's employees or 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 or reassignment of Director, regardless of the circumstances.

5.7 Waiver of Rights. Because the 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 or reassigns 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 provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Policies and Procedures.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees and 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 Trustees and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car Program), material, and articles of information, including, without limitation, keys, credit cards, cellular telephones, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to 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 President or his/her designee.

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

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

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

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

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

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

6.9 Confidentiality. The Director hereby consents and agrees that this document, or any version thereof submitted for Board of Trustees approval may, at the sole discretion of the University, be publicly available or released in accordance with the public records laws of Idaho, and may further be made available to the public after it is signed by the Director.

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

And/or last known address on file with

University's Human Resources Department

the President:

Dr. Arthur C. Vailas
921 S. 8th Ave. Stop 8310
Pocatello, ID 83209-8310

with copy to:

Vice President for Finance & Administration
921 S. 8th Ave. Stop 8219
Pocatello, ID 83209-8219

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

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

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

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

IDAHO STATE UNIVERSITY

DIRECTOR

Arthur C. Vailas, President Date

Jeffrey K. Tingey Date

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

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~~(MODEL ATHLETICS CONTRACT)~~

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____
Idaho State University (University ~~(College)~~), and Jeff Tingey _____
~~(Coach)~~-(Athletic Director, hereafter "Director").

ARTICLE 1

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

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

1.3. Duties. CoachDirector shall manage and supervise the Team—Program and shall perform such other duties in the University—(College)'s's athletic program as the DirectorPresident or his/her designee may assign and as may be described elsewhere in this Agreement. Independent of the University's right to reassign Director other duties for cause as set forth elsewhere in this Agreement, ~~the~~ University-(College) shall have the right, at any time, to reassign CoachDirector to duties at the University-(College) other than as head coachDirector of the Team,Program provided that Coach'sDirector's compensation and benefits shall not be affected by any such reassignment, except ~~that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through (Depending on supplemental pay provisions used) — shall cease to the extent described elsewhere in this Agreement.~~

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of _____ (—)3 years, commencing on July 1, 2011_____ and terminating, without further notice to CoachDirector, on June 30, 2014_____ unless sooner terminated in accordance with other provisions of this Agreement. Upon approval by the University's Board of Trustees, the remaining portion of any existing agreement between the parties shall be superseded by, and merged into, this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University-(College) and an acceptance by CoachDirector, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's

~~(College)'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~~ ~~University~~(College).

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$95,014.40~~ per year, payable in biweekly installments in accordance with normal University (College) procedures, and such salary increases as may be determined appropriate by the ~~Director and~~ President and approved by the ~~University~~ (College)'s Board of ~~(Regents or Trustees);~~;
- b) The opportunity to receive such employee benefits as the ~~University~~ (College) provides generally to non-faculty exempt employees; ~~and~~
- c) ~~The opportunity to receive such employee benefits as the University (College)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.~~

3.2 Supplemental Compensation. Each year (July 1 through June 30) during the term of this agreement in which the Director achieves the following performance measures, he will be paid supplemental compensatin as set forth below.

- a) If the University teams all exceed their respective Academic Progress Rates (A.P.R.) as established and published by the NCAA in any given year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation, (1/26 of the amount set forth I Article 3.1.1(a)), said amount to be paid no later than sixty (60)days after the compensation is earned.
- b) If any year during the term of this Agreement the combined gross ticket sales for football, women's basketball, men's basketball, women's volleyball, and women's soccer is ten percent (10%)

higher than the immediately prior year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation, (1/26 of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.

3.2 Any supplemental compensation paid to the Director shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Public Records Act. Further, eligibility for supplemental compensation as set forth above shall also be contingent upon the President's assessment of the Director's role in overseeing the conduct of the University's team members on the University campus, at authorized University activities, in the community, and elsewhere, and upon continuing overall improvement in the University's athletic programs.

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

~~3.2.2 Each year the Team is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

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

to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.

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

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

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

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

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

~~camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

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

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

4.1.1. Devote ~~Coach's~~ Coach's ~~Director's~~ Director'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 ~~staff and departmental employees of Team members~~ which enable them to compete successfully and reasonably protect their health, safety, and well-being ~~of staff and athletes~~;

4.1.3. ~~Require coaches, staff and athletes to~~ Require coaches, staff and athletes to observe and uphold all academic standards, requirements, and policies of the University ~~(College)~~ and encourage ~~Team athletes 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's ~~(College)'s~~ governing board, the conference, and the NCAA; ~~(or NAIA)~~; supervise and take appropriate steps to ensure that ~~Coach's~~ Coach's ~~and~~ assistant coaches, any other employees for whom ~~Coach~~ Coach ~~Director~~ is administratively responsible, and the members of the ~~Team Program's athletes~~ 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 there is~~ reasonable cause to believe that any person or entity, including without limitation representatives of the University's ~~(College)'s~~ athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. ~~Coach~~ 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 C.~~ The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies ~~and Procedures and Rule Manual and Procedures and Rule Manual~~; (b) University ~~(College)'s Handbook Policies and Procedures~~; (c) ~~University (College)'s Administrative Procedures Manual~~; ~~(d)~~ the policies of the Department; ~~(e)~~ (d) NCAA ~~(or NAIA)~~ rules and regulations; and ~~(f)~~ (e) the rules and regulations of the ~~Big Sky (Sport)~~ conference of which the University ~~(College)~~ is a member.

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

4.3 NCAA (or NAIA) Rules. In accordance with NCAA ~~(or NAIA)~~ rules, ~~Coach~~ Coach ~~Director~~ shall obtain prior written approval from the University's ~~(College)'s~~ President for

all athletically related income and benefits from sources outside the University ~~(College)~~ and shall report the source and amount of all such income and benefits to the University's ~~sy (College)'s~~ President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University ~~(College)~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University ~~(College)~~ booster club, University ~~(College)~~ alumni association, University ~~(College)~~ foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University ~~(College)~~, the University's ~~(College)'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 the hiring and termination of ~~assistant~~head coaches for the ~~Team~~Program, but the decision to hire or terminate an assistant coach shall be made by the Director ~~after recommendation by the head coach, and, and shall,~~ when necessary or appropriate, be subject to the approval of President and the University ~~(College)~~'s Board of ~~_ Trustees (Trustees or Regents) —.~~

~~4.54.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.~~

4.7 Other ~~Coaching~~—Opportunities. ~~Coach~~Director shall not, under any circumstances, interview for, negotiate for, or accept employment as an ~~athletic director~~ ~~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~~President. Such approval shall not unreasonably be withheld.

ARTICLE 5

5.1 Termination of ~~Coach~~Director for Cause. The University ~~(College)~~ may, in its discretion, suspend ~~Coach~~Director from some or all of Coach'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 applicable rules and regulations.

5.1.1 In addition to the definitions contained in applicable rules 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 or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of ~~Coach's~~Director's abilities;

- b) The failure of CoachDirector 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 CoachDirector of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University's ~~(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 CoachDirector at another NCAA or ~~NAIA~~-member institution;
- d) Ten (10) working days' absence of CoachDirector from duty without the University ~~(College)~~'s consent;
- e) Any conduct of CoachDirector that constitutes moral turpitude or that would, in the University's ~~(College)~~'s judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Director Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of CoachDirector 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's ~~(College)~~'s governing board, the conference, or the NCAA ~~(NAIA)~~;
- h) The failure of DirectorCoach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University's ~~(College)~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, by ~~one of a~~ Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of any ~~the~~ Team ~~of the Program~~; or
- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University's ~~(College)~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, by ~~one of the~~ Director, or one of ~~Coach'es,~~ assistant coaches, any other employees for whom CoachDirector is administratively responsible, or a member of any ~~the~~ Team of the Program 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 DirectorPresident or his designee 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 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's (College)'s obligation to provide compensation and benefits to DirectorCoach, 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, DirectorCoach 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 DirectorCoach was employed.

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

determined by all circumstances existing at the time of employment. CoachDirector further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 The parties have both had the opportunity to seek legal counsel ~~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 CoachDirector may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University (College), which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University (College) and the acceptance thereof by DirectorCoach shall constitute adequate and reasonable compensation to CoachDirector for the damages and injury suffered by CoachDirector because of such termination by University (College). The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by 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 DirectorCoach 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 CoachDirector, 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 DirectorCoach 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 CoachDirector terminates this Agreement for his convenience he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June 12, 2012, the sum of \$350,000.00; (b) if the Agreement is terminated between July 1, 2012 and June 30, 2013 inclusive, the sum of \$240,000.00; (c) if the Agreement is terminated between July 1, 2013 and June 30, 2014 inclusive, the sum of \$130,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both had the opportunity to seek ~~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 CoachDirector, in

addition to potentially increased compensation costs if CoachDirector terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by 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 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 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 Coach becomes totally or permanently disabled as defined by the University's (College)'s disability insurance carrier, becomes unable to perform the essential functions of the position of head-coachDirector, or dies.

5.4.2 If this Agreement is terminated because of Coach'sDirector's death, Coach'Director's salary and all other benefits shall terminate as of the last day worked, except that the Coach'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-(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)'s disability insurance carrier, or becomes unable to perform the essential functions of the position of Directorhead coach, 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, suspension, or reassignment, DirectorCoach agrees that DirectorCoach will not interfere with the University's (College)'s student-athletes or otherwise obstruct the University's (College)'s ability to transact business or operate its intercollegiate athletics program.

5.76 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.

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

ARTICLE 6

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

6.2 University (College) Property. All personal property (excluding vehicle(s) provided through the Courtesy Car program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to CoachDirector by the University (College) or developed by CoachDirector on behalf of the University (College) or at the University (College)'s direction or for the University's (College)'s use or otherwise in connection with CoachDirector'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, CoachDirector shall immediately cause any such personal property, materials, and articles of information in Director's Coach's possession or control to be delivered to the President or his/her designee. 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~~ Director hereby consents and agrees that this document, or any version thereof submitted for Board of Trustees approval may, at the sole discretion of the University be publicly available or released in accordance with the public records laws of Idaho, and may further be made available to the public after it is signed by the Director. ~~may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University (College)'s sole discretion.~~

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

The Director ~~he University (College):~~ Jeffrey K. Tingey ~~Director of Athletics~~
921 South 8th Ave. Stop 8173
Pocatello, ID 83209-8173

And/or last known address on file with
University's Human Resources Department

The President ~~with a copy to:~~ President
-Dr. Arthur C. Vailas
921 South 8th Ave. Stop 8310
Pocatello, ID 83209-8310

With a copy to: ~~the Coach:~~ Vice President for Finance and Administration
921 S. 8th Ave. Stop 8219
Pocatello, ID 83209-8219

Last known address on file with
University (College)'s Human Resource Services

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

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

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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's (College)'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. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

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

Arthur C. Vailas, President _____ Date _____, ~~Presid~~ Jeffrey K. Tingey _____ Date
_____ Date

Approved by the Board of ~~-(Regents or Trustees)~~ on the _____ day of _____, 201011.

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JEFF TINGEY – ATHLETIC DIRECTOR - MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM (AS ADPATED FROM MODEL COACH FORM)			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	MODIFICATON/JUSTIFICATION FOR MODIFICATION
1	2.1 Term	2.1	Merges remaining balance of current contract into term of contract for a <i>total</i> three-year term
2	3.2 Supplemental Compensation	With exceptions noted, most forms of supplemental compensation eliminated as inapplicable to Athletic Director position	Adds potential for supplemental compensation based upon all teams exceeding Academic Progress Rates (APR), and improvement of 10% or more for <i>combined</i> gross ticket sales for revenue sports: football, women’s basketball, men’s basketball, women’s volleyball, and women’s soccer
3	3.2.6 Summer Camp Operated by University	None	N/A

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

IDAHO STATE UNIVERSITY

SUBJECT

Approval of multi-year employment agreement for Julia Write, Head Women's Softball Coach

APPLICABLE STATUTE, RULE OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University requests approval for a three-year employment agreement for Julia Wright, Head Women's Softball Coach. The salary is \$47,008 per year with incentives as follows:

Athletic Incentive Pay may be earned as follows:

Conference Champion or Co-Champion	\$1,808
Pacific Coach Conference	\$1,808
OR	
Big Sky Conference	\$1,808
OR	
NCAA Tournament berth	\$1,808

NCAA Tournament

Round 1	Advancement to Regional Championship	\$5,000
Round 2	Advancement to Super Regional	\$6,000
Round 3	Advancement to WCWS	\$9,000
Round 4	Advancement to Bracket Championship	\$12,000
Round 5	Advancement to WCWS Championship	\$15,000
Round 6	Championship Title	\$18,000

Academic Incentive Pay may be earned as follows:

Team APR Ranking

50%-59%	\$2,000
60%-69%	\$4,000
70%-79%	\$6,000
80% or above	\$8,000

University shall pay any net revenues resulting from summer softball camps per year as supplemental compensation.

IMPACT

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011**

ATTACHMENTS

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement – Redline	Page 15
Attachment 3	Model Contract Changes Matrix	Page 31

STAFF AND COMMENTS AND RECOMMENDATIONS

The employment agreement follows the Board-approved model contract. Maximum potential annual compensation under this contract (base salary plus maximum potential supplemental compensation) would be \$123,624.

Sources of funds for base salary will be appropriated funds, and for incentives will be local funds.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Idaho State University to execute a multi-year employment agreement with Julia Wright, Head Women's Softball Coach for a term commencing June 5, 2011 and terminating June 5, 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 Idaho State University (University) and Julia Wright (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.6 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on June 05, 2011 and terminating, without further notice to Coach, on June 05, 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 Trustees. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$47,008.00 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University’s Board of Trustees);
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University’s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

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

3.2.2. Each year the Team either wins the Pacific Coach Conference / Big Sky Conference tournament or obtains an NCAA Women’s Softball Tournament berth, and if Coach continues to be employed as University's head Women’s Softball coach as of the ensuing June 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week’s pay (2/52 x Annual Salary) of Coach’s Annual Salary during the fiscal year in which the post-season participation are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$8,000 based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the University’s Board of Trustees. The determination shall be based on the following factors: the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere and the Team’s four-year APR national ranking based on attainment of the following levels:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
50%-59%	\$ 2,000.00
60%-69%	\$ 4,000.00
70%-79%	\$ 6,000.00

80% or above \$ 8,000.00

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

3.2.4 Each year the Team advances in the NCAA Women’s Softball Tournament, and if Coach continues to be employed as University's head Women’s Softball coach as of the ensuing June 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Round 1	64 Teams	Advancement to Regional Championship	\$5,000.00
Round 2	32 Teams	Advancement to Super Regional	\$6,000.00
Round 3	16 Teams	Advancement to WCWS	\$9,000.00
Round 4	8 Teams	Advancement to Bracket Championship	\$12,000.00
Round 5	4 Teams	Advancement to WCWS Championship	\$15,000.00
Round 6	2 Teams	Championship Title	\$18,000.00

Possible national championship winner computation bonus total: \$65,000.00

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

3.2.6 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University is negotiating or has entered into an agreement with Nike to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University’s reasonable request, Coach will consult with appropriate parties concerning a Nike product’s design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Nike, or give a lecture at an event sponsored in whole or in part by Nike, or make other educationally-related appearances as may be reasonably requested by the

University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head Women's Softball coach. In order to avoid entering into an agreement with a competitor of Nike, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including Nike, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

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

ARTICLE 4

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

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

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

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

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

Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky conference of which the University is a member.

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

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

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

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

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

ARTICLE 5

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

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

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

whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including

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

5.2.3 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for her convenience she shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before July 01, 2012, the sum of \$20,000.00; (b) if the Agreement is terminated between July 02, 2012 and July 01, 2013 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to

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

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from

compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

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

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

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

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

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

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

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

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore,

governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

the University: Director of Athletics

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

with a copy to: President

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

the Coach:

Julia Wright
Last known address on file with
University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY

COACH

Arthur C. Vailas, President

Date

Julia Wright

Date

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

(MODEL ATHLETICS CONTRACT)

EMPLOYMENT AGREEMENT

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

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University (College)'s University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University (~~College~~) shall have the right, at any time, to reassign Coach to duties at the University (~~College~~) other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~(Depending on supplemental pay provisions used)~~ 3.2.6 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of _____ (~~three (3)~~) years, commencing on _____June 05, 2011 and terminating, without further notice to Coach, on _____June 05, 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 (~~College~~) and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University (College)'s University's Board of ~~(Regents or Trustees)~~. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University (~~College~~).

2.2.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~_____~~ \$47,008.00 per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the ~~University (College)'s~~ University's Board of ~~(Regents or Trustees) _____~~;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)'s~~ University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

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

3.2.2 Each year the Team ~~is ranked in either wins the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams) Pacific Coach Conference / Big Sky Conference tournament or obtains an NCAA Women's Softball Tournament berth,~~ and if Coach continues to be employed as ~~University (College)'s~~ University's head ~~(Sport) Women's Softball~~ coach as of the ensuing ~~July~~ June 1st, the University ~~(College)~~

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

3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to ~~_(amount or computation) — \$8,000~~ based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the ~~University (College)'s~~ University's Board of ~~_(Regents or Trustees) —~~. The determination shall be based on the following factors: ~~grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at risk students;~~ the conduct of Team members on the University ~~(College)~~ campus, at authorized University ~~(College)~~ activities, in the community, and elsewhere ~~— and the Team's four-year APR national ranking based on attainment of the following levels:~~

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
<u>50%-59%</u>	<u>\$ 2,000.00</u>
<u>60%-69%</u>	<u>\$ 4,000.00</u>
<u>70%-79%</u>	<u>\$ 6,000.00</u>
<u>80% or above</u>	<u>\$ 8,000.00</u>

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

3.2.4 Each year the Team advances in the NCAA Women's Softball Tournament, and if Coach continues to be employed as University's head Women's Softball coach as of the ensuing June 1st, the University shall be eligible to receive pay Coach supplemental compensation in an amount ~~u~~equal 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 terms below.~~ The ~~determination of whether~~ University shall determine the appropriate manner in which it shall pay Coach ~~will receive~~any such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the ~~University (College)'s~~ Board of ~~_(Regents or Trustees) —~~.

3.2.5 ~~The Coach shall receive the sum of~~ (amount or computation) ~~from the University (College) or the University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest~~

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

Round 1	64 Teams	Advancement to Regional Championship	\$5,000.00
Round 2	32 Teams	Advancement to Super Regional	\$6,000.00
Round 3	16 Teams	Advancement to WCWS	\$9,000.00
Round 4	8 Teams	Advancement to Bracket Championship	\$12,000.00
Round 5	4 Teams	Advancement to WCWS Championship	\$15,000.00
Round 6	2 Teams	Championship Title	\$18,000.00

Possible national championship winner computation bonus total: \$65,000.00

~~3.2.65 (SUMMER CAMP—OPERATED BY UNIVERSITY (COLLEGE))~~
 Coach agrees that the University ~~(College)~~ has the exclusive right to operate youth ~~(Sport)—Softball~~ camps on its campus using University ~~(College)~~ facilities. The University ~~(College)~~ shall allow Coach the opportunity to earn supplemental compensation by assisting with the ~~University (College)'s~~University's camps in Coach's capacity as a University ~~(College)~~ employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the ~~University (College)'s~~University's ~~football~~softball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the ~~University (College)'s~~University's summer ~~football~~softball camps, ~~the University (College) shall pay Coach (amount) any net revenues resulting from the camp~~ per year as supplemental compensation during each year of ~~his~~her employment as head ~~(Sport)—Softball~~ coach at the University ~~(College)~~, ~~or direct those net revenues as an enhancement to the Softball program budget at the University.~~ This amount shall be paid ~~(terms of payment) _____~~ within 30 days after all camp bills have been paid.

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

- a) ~~The summer youth camp operation reflects positively on the University (College) and the Department;~~

- ~~b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University (College) personnel, equipment, or facilities without the prior written approval of the Director;~~
- ~~c) Assistant coaches at the University (College) are given priority when the Coach or the private enterprise selects coaches to participate;~~
- ~~d) The Coach complies with all NCAA (NAIA), Conference, and University (College) rules and regulations related, directly or indirectly, to the operation of summer youth camps;~~
- ~~e) The Coach or the private enterprise enters into a contract with University (College) and _____ (campus concessionaire) for all campus goods and services required by the camp.~~
- ~~f) The Coach or private enterprise pays for use of University (College) facilities including the _____.~~
- ~~g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.~~
- ~~h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff \$1 million; (2) catastrophic coverage: camper and staff \$1 million maximum coverage with \$100 deductible;~~
- ~~i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- ~~j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with~~

~~Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

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

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

ARTICLE 4

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

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

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

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

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

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

4.3 NCAA (or NAIA) Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s~~ University's President for all athletically related income and benefits from sources outside the University ~~(College)~~ and shall report the source and amount of all such income and benefits to the ~~University (College)'s~~ University's President whenever reasonably requested, but in no event less than

annually before the close of business on June 30th of each year or the last regular University ~~(College)~~-work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University ~~(College)~~ booster club, University ~~(College)~~ alumni association, University ~~(College)~~ foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University ~~(College)~~, the University ~~(College)~~'s University's governing board, the conference, or the NCAA ~~(or NAIA)~~.

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

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

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

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University ~~(College)~~;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University

~~(College)~~'s ~~University~~'s governing board, the conference or the NCAA ~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or ~~NAIA~~ member institution;

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

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

5.1.3 In the event of any termination for good or adequate cause, the ~~University (College)~~'s ~~University~~'s obligation to provide compensation and benefits to Coach, whether

direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University ~~(College)~~ shall not be liable for the loss of any collateral business opportunities or other benefits, prerequisites, or income resulting from outside activities or from any other sources.

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

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

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

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

5.2.3 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University ~~(College)~~.

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

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his/her 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/her employment by entering into this Agreement and that its investment would be lost were heshe to resign or otherwise terminate his/her employment with the University ~~(College)~~ before the end of the contract term.

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his/her convenience heshe 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 _____, July 01, 2012, the sum of ~~\$3020,000.00~~; (b) if the Agreement is terminated between _____ July 02, 2012 and _____ ~~inclusive, the sum of \$20,000.00~~; (c) ~~if the Agreement is terminated between _____ and _____ July 01, 2013 inclusive, the sum of \$10,000.00~~. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

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

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

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

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

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

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

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

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

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

with a copy to: _____ President

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

the Coach:

Julia Wright
Last known address on file with
University (College)'s University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY ~~(COLLEGE)~~
COACH

Arthur C. Vailas, President Date _____ Julia Wright

Approved by the Board of ~~(Regents or Trustees)~~ on the ____ day of _____, ~~2010.~~
2011.

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JULIE WRIGHT, HEAD SOFTBALL COACH - MULTI-YEAR CONTRACT CHANGES			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	3.2.1 Supplemental Compensation	3.2.1 Supplemental Compensation	2 weeks pay bonus for Team being conference champion or co-champion not made contingent on bowl game or post-season tournament/playoff eligibility as post season play is not necessarily available for this Team even if they win the conference.
2	3.2.2 Supplemental Compensation	3.2.2 Supplemental Compensation	2 weeks pay bonus for attaining top 25 ranking replaced with same bonus for Team winning the Pacific Coach Conference / Big Sky Conference tournament or obtaining an NCAA Women's Softball Tournament berth as this is more applicable to the situation.
3	3.2.3 Supplemental Compensation	3.2.3 Supplemental Compensation	This bonus of up to \$8,000 is based on the Team's 4-year APR ranking as the criteria for academic achievement as this has been a key focus and issue for the University.
4	3.2.4 Supplemental Compensation	3.2.4 Supplemental Compensation	Changed bonus opportunity based on program development, ticket sales and fundraising to a bonus opportunity of up to \$65,000 based on advancement in the NCAA Women's Softball Tournament as this would bring prestige and funds into the Program.
5	3.2.5 Supplemental Compensation	None	Deleted bonus opportunity for media participation as this is not applicable to this sport in this area.
6	3.2.6 Summer Camp Operated by University	3.2.5 Summer Camp Operated by University	University has decided to provide a University-operated summer camp only. Coach has the option not to take supplemental compensation for assisting with this camp and to instead have the funds used to enhance the budget of the Softball Program.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011

BOISE STATE UNIVERSITY

SUBJECT

Approval of a revised Employment Addendum with BSU Head Football Coach Chris Petersen

REFERENCE

April 2010	Board approved 5 year employment agreement
February 2011	Board approved two merit-based pay adjustments

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

In April, 2010, the Board approved a new 5 year employment contract for Mr. Petersen. In February, 2011, the Board approved BSU's request to make a one-time payment to Mr. Petersen in the amount of \$50,000 based upon performance, and an increase to his base salary in the amount of \$35,000. The University was also directed to return to the Board with an amended contract in conformance with those changes.

The new addendum makes the following changes:

1. Increases the base salary by \$35,000.
2. Extension Year (as earned by having a season with at least 8 wins) salary increase changed from \$50,000 to \$100,000.
3. Deletes the one-time payment for the coach of the year award.
4. Increases the conference championship and the BCS appearance additional pay amounts by \$25,000.
5. Simplifies the longevity payments without making a substance change to the payments.
6. Makes technical corrections to the paragraph 13 Supplemental Retirement payments as required by IRS Code and the Board's related Plan documents without making a substance change to the amount of the payments.

No other substantive changes are made. The addendum is for a new 5 year period but that term is already contractually required under the terms of the existing contract.

IMPACT

As with all payments under this employment agreement, no state funds are used and these amounts are paid only from athletic department revenues, media, public appearance fees, donations and other non-state funds.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20, 2011**

ATTACHMENTS

Attachment 1 – Proposed Contract Addendum #2 Page 3
Attachment 2 – Redline of the changes from Addendum #1 Page 9

STAFF COMMENTS AND RECOMMENDATIONS

Mr. Petersen’s annual compensation schedule, not including supplemental pay for performance, is currently as follows:

Contract Year Ending	Regular Compensation	Deferred Compensation	Total Guaranteed Compensation	Longevity Incentive	TOTAL
1/31/2012	\$1,175,000	\$250,000	\$1,425,000	\$200,000	\$1,625,000
1/31/2013	\$1,275,000	\$250,000	\$1,525,000	\$100,000	\$1,625,000
1/31/2014	\$1,375,000	\$250,000	\$1,625,000	\$100,000	\$1,725,000
1/31/2015	\$1,475,000	\$250,000	\$1,725,000	\$100,000	\$1,825,000
1/31/2016	\$1,575,000	\$250,000	\$1,825,000	\$100,000	\$1,925,000

The changes set forth in the Addendum incorporate the base salary increase approved by the Board in February 2011. In addition, the Addendum makes several supplemental compensation changes (as enumerated in #2 - #4 in Background/Discussion, above).

Based on these proposed changes, maximum potential annual compensation to Mr. Petersen under this contract through January 31, 2012 could be \$1,795,000.

BSU should be prepared to discuss the following: (1) the Base Plan referenced in paragraph 13; (2) the fact that the referenced Base Plan is not the “Boise State University Section 403(b) Base Plan” approved by the Board in November 2009; and (3) what future plans the university may have with regard to the Base Plan.

Board staff received a revised Addendum just prior to the Board Agenda going to print which made several changes to paragraph 13. Thus, there is no staff recommendation pending review by Board tax counsel. A revised cover page will be sent prior to the Board meeting with any updated comments as a result of conversations with tax counsel.

BOARD ACTION

I move to approve the request by Boise State University to amend the Employment Agreement with Head Football Coach Chris Petersen as submitted with Addendum #2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

ADDENDUM NO. 2 TO EMPLOYMENT AGREEMENT (2010 – 2015)

1. This is a Second Addendum to the Employment Agreement 2010-2015 between BOISE STATE UNIVERSITY (BSU) and Chris Petersen (COACH) dated and effective the 1st day of February, 2010 (Agreement). This Second Addendum supersedes and replaces Addendum No. 1 to the Agreement for periods on and after February 1, 2011, and any reference in the Agreement to the "Addendum" shall refer to this Second Addendum.
2. The COACH is hired for the position of Head Football Coach.
3. Accordingly, the following terms as used in the Agreement will be defined as indicated:
 - a. "Position" will mean the position described in paragraph 2, above.
 - b. "Relevant season" will mean the Football season commencing on the first day of fall practice and ending with the last game of the season, including any bowl game, of the Boise State University Broncos.
 - c. "Program" shall mean the Football program.
 - d. "Applicable conference" as of the date of this Addendum means the Mountain West Conference.
 - e. "NCAA" means the National Collegiate Athletic Association.
 1. "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
 - f. "Athletic Director" means the BSU Director of Athletics or his designee.
 - g. "Coaching" means to direct and supervise the athletes participating in the program.
 - h. "BAA" means the Bronco Athletic Association.
 - i. "Post-season" means participation in a Bowl game.
 - j. "BCS" mean the Bowl Championship Series organization.
4. As of the date of this Second Addendum, the term of the Agreement (as set forth in Section 2.1 of the Agreement) has been extended through the 31st day of January, 2016 in accordance with the terms of Section 2.3 of the Agreement); provided, however,

that this provision is subject to the terms and conditions of Article IV of the Agreement concerning termination. Neither party shall have the right to terminate the Agreement prior to its date of expiration except as provided therein.

5. Specific duties and responsibilities of COACH. In addition to those set forth in the Agreement, the COACH is expected to devote full-time to coaching and recruitment involving the Football team as the Head Coach. Additional duties and responsibilities not listed will be those customarily attendant to the position of a Head Football Coach at a Division 1-A university. If COACH is required to perform any such additional duties that are not defined in the contract, COACH will be notified of his responsibility to perform these duties within a reasonable time frame.

COACH will attend all staff meetings, public relation functions, dinners, awards banquets and make appearances as directed by the Director of Athletics unless excused by the Director of Athletics. The Athletic Director shall not unreasonably withhold approval for non-attendance. Such functions shall include, but are not limited to the following:

- ◆ The annual BAA Bar-b-que
- ◆ The weekly BAA functions during the relevant season
- ◆ The annual BAA Endowment Dinner
- ◆ The BSU Athletic Hall of Fame Dinner
- ◆ The BAA Bronze Bronco Award Banquet
- ◆ The BAA/Alumni Auction Dinner
- ◆ All Athletic Department staff meetings called by the Director of Athletics
- ◆ Athletic Department Graduation Reception
- ◆ Bronco Golf Series Tournaments

The University shall have the right to use the COACH's name, likeness and image to promote the Team, the Athletics Department and the University and the right to license COACH's name, likeness and image in a manner that is in good taste and will not negatively reflect upon the COACH.

6. COACH agrees to supervise any staff serving under COACH and to insure, to the maximum extent possible, that all staff persons follow all applicable University policies, NCAA, or applicable conference rules and regulations at all times.

7. Regular Compensation: COACH will be compensated for services (from media/public appearance/donations/non-state funds) under the Agreement with a base salary as referred to in section 3.1 of the Agreement as follows:

<u>YEAR</u>	<u>COMPENSATION</u>
February 1, 2011 – January 31, 2012	\$1,175,000
February 1, 2012 – January 31, 2013	\$1,275,000
February 1, 2013 – January 31, 2014	\$1,375,000

February 1, 2014 – January 31, 2015	\$1,475,000
February 1, 2015 – January 31, 2016	\$1,575,000

COACH's Regular Compensation shall be increased by \$100,000 for each additional year that the term is extended after January 31, 2016 pursuant to Section 2.3 of the Agreement.

The Regular Compensation outlined above may be paid to the COACH by the UNIVERSITY or by radio or television stations or other third parties that own the rights to UNIVERSITY broadcasts, or by other third party sources, or by any combination of the UNIVERSITY, radio station, television station and other sources. COACH understands this potential for payment from multiple sources and that the fringe benefits are not paid or based on sources of payment other than the direct payment from the UNIVERSITY (as referred to in section 3.3 of the Agreement). In such cases, the University is not legally obligated to make payments to the COACH to the extent that such amounts are actually payable by such third parties and the COACH will be responsible for all taxes including, without limitation, withholding taxes related to payments by such third parties.

a. Shoe, Apparel and Equipment Contracts: Consistent with section 3.2.4 of the Agreement, compensation to the COACH shall be negotiated on a contract-by-contract basis and shall require prior express approval by the Athletic Director.

8. Additional Pay based upon performance (Agreement section 3.2.1) relating to regular season and post season competition shall be based on one of the following (whichever is greater):

- (i) \$100,000 for winning the conference championship; or,
- (ii) \$35,000 for a post season bowl appearance without a conference championship; or,
- (iii) \$150,000 if the football team participates in any one of the five BCS bowl games.

Any additional pay for performance earned pursuant to this section shall be paid on February 1st following the football season in which earned.

9. Academic Incentive Pay may be earned as follows (Agreement section 3.2):

- a. \$20,000 if the annual football team APR rating (for the previous fall and spring semesters) equals 955 or higher.

Any pay earned pursuant to this section shall be paid on October 1st each year.

10. COACH shall have a "public relations" account of \$7,500 per year to be used for reimbursement for meals and other acceptable and appropriate activities relating to the

furtherance of the business of the University and such funds shall be expended only in accordance with University and State Board of Education policies.

11. COACH's Repayment Obligation: Shall be as provided for in section 5.3.3. of the Agreement.

12. Longevity Incentive: The University will pay to COACH a longevity incentive in the amount of \$100,000 on each February 1 that COACH remains employed in the Position and is not in material breach of the Agreement.

13. Supplemental Retirement Contributions: In addition to other retirement plans sponsored by the University that are available to COACH, the University shall make an employer contribution to a retirement plan ("Base Plan") on behalf of COACH equal to \$250,000 (or, if less, 100% of COACH's compensation as limited by section 401(a)(17) of the Internal Revenue Code, as amended (Code)) for each plan year that COACH remains employed in the Position as of the last day of the plan year ("Supplemental Contribution"); provided, however, that if COACH terminates employment prior to the end of the plan year, the Supplemental Contribution will be pro-rated accordingly for that year. COACH shall be 100% vested in his Supplemental Contributions at all times. Any portion of the Supplemental Contribution that cannot be made to the Base Plan due to the limits under Code section 415(c) will be allocated to an account on behalf of COACH under a qualified governmental excess benefit plan ("Excess Plan") subject to and in accordance with the terms and conditions of the Base Plan and the Excess Plan. The University will make the Supplemental Contribution to the Base Plan and the Excess Plan, as applicable, as soon as administratively feasible after the earlier of the (i) end of each plan year or (ii) if COACH terminates employment prior to the end of the plan year, the last day of employment. The Supplemental Contribution shall be allocated to COACH's accounts under the Base Plan and Excess Plan, as applicable, as of the last day of the plan year or, if earlier, as of the last day of employment that year.

The Base Plan and the Excess Plan shall be governed by separate written plan documents that shall reflect the contribution amounts and other terms specifically set forth in this paragraph 13, but whose other terms and conditions shall control in all respects and shall be subject to amendment at the sole discretion of the Idaho State Board of Education or Boise State University.

COACH

BOISE STATE UNIVERSITY

Chris Petersen
Head Football Coach

By: _____
Robert W. Kustra
President

Date

Date

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

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ADDENDUM NO. 12 TO EMPLOYMENT AGREEMENT —(2010 to 2015)

1. This is ~~ana~~ Second Addendum to the Employment Agreement (~~Agreement~~)2010-2015 between BOISE STATE UNIVERSITY (BSU) and Chris Petersen (COACH) dated and effective the 1st day of February, 2010, ~~subject to the approval of the State Board of Education (Agreement). This Second Addendum supersedes and replaces Addendum No. 1 to the Agreement for periods on and after February 1, 2011, and any reference in the Agreement to the "Addendum" shall refer to this Second Addendum.~~
2. The COACH is hired for the position of Head Football Coach.
3. Accordingly, the following terms as used in the Agreement will be defined as indicated:
 - a. "Position" will mean the position described in paragraph 2, above.
 - b. "Relevant season" will mean the Football season commencing on the first day of fall practice and ending with the last game of the season, including any bowl game, of the Boise State University Broncos.
 - c. "Program" shall mean the Football program.
 - d. "Applicable conference" as of the date of this Addendum means the Western Athletic Mountain West Conference.
 - e. "NCAA" means the National Collegiate Athletic Association.
 1. "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
 - f. "Athletic Director" means the BSU Director of Athletics or his designee.
 - g. "Coaching" means to direct and supervise the athletes participating in the program.
 - h. "BAA" means the Bronco Athletic Association.
 - i. "Post-season" means participation in a Bowl game.
 - j. "BCS" mean the Bowl Championship Series organization.
4. As of the date of this Second Addendum, the term of ~~this~~the Agreement (as set forth in Section 2.1 of the Agreement) ~~shall commence February 1st, 2010 and shall continue until the Agreement terminates on~~ has been extended through the 31st day of January, ~~2015;~~2016 in accordance with the terms of Section 2.3 of the Agreement);

provided, however, that this provision is subject to the terms and conditions of Article IV of the Agreement concerning termination. Neither party shall have the right to terminate the Agreement prior to its date of expiration except as provided therein.

5. Specific duties and responsibilities of COACH. In addition to those set forth in the Agreement, the COACH is expected to devote full-time to coaching and recruitment involving the Football team as the Head Coach. Additional duties and responsibilities not listed will be those customarily attendant to the position of a Head Football Coach at a Division 1-A university. If COACH is required to perform any such additional duties that are not defined in the contract, COACH will be notified of his responsibility to perform these duties within a reasonable time frame.

COACH will attend all staff meetings, public relation functions, dinners, awards banquets and make appearances as directed by the Director of Athletics unless excused by the Director of Athletics. The Athletic Director shall not unreasonably withhold approval for non-attendance. Such functions shall include, but are not limited to the following:

- ◆ The annual BAA Bar-b-que
- ◆ The weekly BAA ~~noon luncheons~~ functions during the relevant season
- ◆ The annual BAA Endowment Dinner
- ◆ The BSU Athletic Hall of Fame Dinner
- ◆ The BAA Bronze Bronco Award Banquet
- ◆ The BAA/Alumni Auction Dinner
- ◆ All Athletic Department staff meetings called by the Director of Athletics
- ◆ Athletic Department Graduation Reception
- ◆ Bronco Golf Series Tournaments

The University shall have the right to use the COACH's name, likeness and image to promote the Team, the Athletics Department and the University and the right to license COACH's name, likeness and image in a manner that is in good taste and will not negatively reflect upon the COACH.

6. COACH agrees to supervise any staff serving under COACH and to insure, to the maximum extent possible, that all staff persons follow all applicable University policies, NCAA, or applicable conference rules and regulations at all times.

7. Regular Compensation: COACH will be compensated for services (from media/public appearance/donations/non-state funds) under the Agreement with a base salary as referred to in section 3.1 of the Agreement -as follows:

<u>YEAR</u>	<u>COMPENSATION</u>
February 1, 2010 – January 31, 2011	\$1,044,053
February 1, 2011 – January 31, 2012	\$1,440,175,000
February 1, 2012 – January 31, 2013	\$1,240,275,000
February 1, 2013 – January 31, 2014	\$1,340,375,000

February 1, 2014 – January 31, 2015	\$1,440,475,000
<u>February 1, 2015 – January 31, 2016</u>	<u>\$1,575,000</u>

~~Pursuant to Section 2.3 of the Agreement, COACH's Regular Compensation shall be increased by \$100,000 for each additional year added to that the term of this Agreement, Coach shall receive a \$50,000 increase in Regular Compensation beginning February 1 of each additional year so added is extended after January 31, 2016 pursuant to Section 2.3 of the Agreement.~~

The Regular Compensation outlined above may be paid to the COACH by the UNIVERSITY or by radio or television stations or other third parties that own the rights to UNIVERSITY broadcasts, or by other third party sources, or by any combination of the UNIVERSITY, radio station, television station and other sources. COACH understands this potential for payment from multiple sources and that the fringe benefits are not paid or based on sources of payment other than the direct payment from the UNIVERSITY (as referred to in section 3.3 of the Agreement). In such cases, the University is not legally obligated to make payments to the COACH to the extent that such amounts are actually payable by such third parties and the COACH will be responsible for all taxes including, without limitation, withholding taxes related to payments by such third parties.

a. Shoe, Apparel and Equipment Contracts: Consistent with section 3.2.4 of the Agreement, compensation to the COACH shall be negotiated on a contract-by-contract basis and shall require prior express approval by the Athletic Director.

~~b. Coach of the Year. For receiving a second "Bear Bryant Coach of the Year" award, the University shall make a one-time payment of \$10,500 to COACH upon execution of this Agreement.~~

8. Additional Pay based upon performance (Agreement section 3.2.1) relating to regular season and post season competition shall be based on one of the following (whichever is greater):

- (i) ~~\$75,100~~,000 for winning the conference championship; or,
- (ii) \$35,000 for a post season bowl appearance without a conference championship; or,
- (iii) ~~\$125,150~~,000 if the football team participates in any one of the five BCS bowl games.

Any additional pay for performance earned pursuant to this section shall be paid on February 1st following the football season in which earned.

9. Academic Incentive Pay may be earned as follows (Agreement section 3.2):

- a. \$20,000 if the annual football team APR rating (for the previous fall and spring semesters) equals 955 or higher.

Any pay earned pursuant to this section shall be paid on October 1st each year.

10. COACH shall have a “public relations” account of \$7,500 per year to be used for reimbursement for meals and other acceptable and appropriate activities relating to the furtherance of the business of the University and such funds shall be expended only in accordance with University and State Board of Education policies.

11. ~~Liquidated damages~~COACH's Repayment Obligation: Shall be as provided for in section 5.3.3. of the Agreement.

12. Longevity Incentive: The University will pay to COACH ~~longevity incentives if the following conditions are met:~~a longevity incentive in the amount of \$100,000 on each February 1 that COACH remains employed in the Position and is not in material breach of the Agreement.

- ~~a. If COACH stays employed in the position until February 1, 2011 without being in material breach the University will pay the sum of \$200,000 to the COACH.~~
- ~~b. If COACH stays employed in the position until February 1, 2012 without being in material breach the University will pay the sum of \$100,000 to the COACH.~~
- ~~c. If COACH stays employed in the position until February 1, 2013 without being in material breach the University will pay the sum of \$100,000 to the COACH.~~
- ~~d. If COACH stays employed in the position until February 1, 2014 without being in material breach the University will pay the sum of \$100,000 to the COACH.~~
- ~~e. If COACH stays employed in the position until February 1, 2015 without being in material breach the University will pay the sum of \$100,000 to the COACH.~~

13. Supplemental Retirement Contributions: In addition to other retirement plans sponsored by the University that are available to COACH, the University shall make an employer contribution to a retirement plan ("Base Plan") on behalf of COACH equal to \$250,000 (or, if less, 100% of COACH's compensation as limited by section 401(a)(17) of the Internal Revenue Code, as amended (Code)) for each plan year that COACH remains employed in the Position as of the last day of the plan year ("Supplemental Contribution"); provided, however, that if COACH terminates employment prior to the end of the plan year, the Supplemental Contribution will be pro-rated accordingly for that year. COACH shall be 100% vested in his Supplemental Contributions at all times. Any portion of the Supplemental Contribution that cannot be made to the Base Plan due to the limits under Code section 415(c) will be allocated to an account on behalf of COACH under a qualified governmental excess benefit plan ("Excess Plan") subject to and in accordance with the terms and conditions of the Base Plan and the Excess Plan. The University will make the Supplemental Contribution to the Base Plan and the Excess Plan, as applicable, as soon as administratively feasible after the earlier of the (i) end of each plan year or (ii) if COACH terminates employment prior to the end of the plan year, the last day of employment. The Supplemental Contribution shall be allocated to COACH's accounts under the Base Plan and Excess Plan, as applicable,

as of the last day of the plan year or, if earlier, as of the last day of employment that year.

The Base Plan and the Excess Plan shall be governed by separate written plan documents that shall reflect the contribution amounts and other terms specifically set forth in this paragraph 13, but whose other terms and conditions shall control in all respects and shall be subject to amendment at the sole discretion of the Idaho State Board of Education or Boise State University.

~~Certain Contributions to a Section 403(b) Plan and Excess Benefit Plan: In addition to other retirement plans~~

~~sponsored by the University that are available to COACH, the University shall make nonforfeitable contributions to COACH's account under The Boise State University Section 403(b) Base Plan ("Base Plan") for the each calendar year of COACH's employment as provided in this section 13,, The University contributions to COACH's account under the Base Plan shall (except as limited by section 415(c) of the Internal Revenue Code, as amended ("Code")) be equal to the following percentages (but in no case to exceed \$250,000) of his Base Plan allowable compensation (as compensation is defined in the Base Plan and as it is limited by section 401(a) (17) of the Code) for such years, provided that COACH is continuously employed by the University up to and including each of the dates listed for each year and is not in material breach of this Agreement:~~

~~2010 - 50% on 7/15/2010 and 50% on 12/31/2010*~~

~~2011 - 50% on 7/15/2011 and 50% on 12/31/2011*~~

~~2012 - 50% on 7/15/2012 and 50% on 12/31/2012*~~

~~2013 - 50% on 7/15/2013 and 50% on 12/31/2013*~~

~~2014 - 50% on 7/15/2014 and 50% on 12/31/2014*~~

~~(*Note: Provided, however, Coach that, subject to and in accordance with the terms of the Plan, if the Agreement is terminated due to any reason, with or without cause, during the course of the year, then the University will only make the prorated contribution attributed to the length of service performed so far for the calendar year in which the Agreement is so terminated.)~~

~~If in any year, the contribution percentage listed above would cause the Base Plan contribution to exceed the maximum limits for contributions to the Base Plan as set forth under section 415(c) of the Code, then such excess amounts shall be handled in a manner set forth under The Boise State University Qualified Governmental Excess Benefit Plan ("Excess Plan Notwithstanding anything to the contrary, the Base Plan and the Excess Plan shall be incorporated into the Agreement by reference and their terms shall override any inconsistent terms of the Agreement. Contributions to the Base Plan and the Excess Plan will be made as soon as administratively feasible after the University determines the COACH has satisfied the eligibility requirements for the contributions.~~

COACH

BOISE STATE UNIVERSITY

Chris Petersen
Head Football Coach

By: _____
Robert W. Kustra
President

Date

Date

Approved by the State Board of Education on the _____ day of _____, 2011. |