

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
APRIL 19, 2012**

---

<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AMENDMENT TO BOARD POLICY</b> Section II.I.4. – Leaves (All Employees) – Second Reading	Motion to approve
<b>2</b>	<b>BOISE STATE UNIVERSITY</b> Multi-Year Employment Contract – Head Football Coach	Motion to approve
<b>3</b>	<b>STATE BOARD OF EDUCATION</b> Compensation Adjustments for Agency Heads	Motions to approve
<b>4</b>	<b>UNIVERSITY of IDAHO</b> Settlement Agreement	Motion to approve

**THIS PAGE INTENTIONALLY LEFT BLANK**

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**SUBJECT**

Amendment to Board Policy, Section II.I.4. – Second Reading

**REFERENCE**

February 2012

Board approved first reading

**APPLICABLE STATUTES, RULE OR POLICY**

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

**BACKGROUND / DISCUSSION**

Idaho State Board of Education Policy II.I. establishes all holidays to be observed by institutions and agencies governed by the Board, and provides that the Board's executive director must be notified if a president desires to designate a holiday that is different from those specified. Amendments to Board Policy II.I. eliminate the requirement that institution presidents notify the Board's Executive Director if these designations are made.

**IMPACT**

Elimination of this notification requirement and directly authorizing presidents to designate alternate holidays will align policy with current accepted practice and eliminate unnecessary paperwork and reporting.

**ATTACHMENTS**

Attachment 1 – Policy II.I.4. Leaves – All Employees

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

There were no changes between first and second reading. Staff recommends approval.

**BOARD ACTION**

I move to approve the second reading of the amendment to Board Policy II.I.4., as presented.

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

**THIS PAGE INTENTIONALLY LEFT BLANK**

1. Annual Leave

For all categories of employees, annual leave shall be as set forth in the respective subsection outlining policies for that category of employee (i.e., classified, non-classified, faculty, etc.)

2. Sick Leave

a. All employees accrue sick leave as provided for in Chapter 53, Title 67, Idaho Code, and rules of the Idaho Division of Human Resources. Sick leave shall be used in accordance with state law and internal institution or agency policies.

b. At the employee's option, annual leave may be used in lieu of sick leave.

3. Disability, Workers' Compensation, and Family Medical Leave

Disability, Workers' Compensation, and Family Medical leave shall be in accordance with applicable state and federal law.

4. Holidays

A holiday is a day of exemption from work granted to employees and for which they are compensated as if they had actually worked.

a. The following holidays are recognized by statute and the Board:

- January 1 (New Year's Day)
- Third Monday in January (Martin Luther King, Jr. Day/Human Rights Day)
- Third Monday in February (Presidents' Day)
- Last Monday in May (Memorial Day or Decoration Day)
- July 4 (Independence Day)
- First Monday in September (Labor Day)
- Second Monday in October (Columbus Day)
- November 11 (Veterans Day)
- Fourth Thursday in November (Thanksgiving)
- December 25 (Christmas)

b. In addition, any day may be designated by the President of the United States or the Governor of Idaho for a public fast, Thanksgiving, or holiday.

c. In the event that a holiday occurs on a Saturday, the preceding Friday is recognized as a holiday. If a holiday falls on a Sunday, the following Monday is recognized as a holiday.

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: I. Leaves – All Employees**

April 2012

- d. Institution chief executive officers are authorized to designate holidays different than those specified above in order to accommodate planning for academic calendars.

5. Other Leave

All other types of leave for classified employees shall be in accordance with Chapter 53, Title 67, Idaho Code, and the rules of the State Division of Human Resources. Other types of leave for University of Idaho classified employees shall be in accordance with the policies of the University of Idaho.

All other types of leave for non-classified employees, including faculty employees, shall be in accordance with the internal policies of each institution or agency and with the following:

a. Leave for Court Required Service

- i. An employee who is summoned for jury duty or subpoenaed as a witness before a court of competent jurisdiction or as a witness in a proceeding before any federal or state administrative agency will be granted leave with pay and any jury or witness fees may be retained by the employee.
- ii. An employee must request annual leave or leave without compensation for:
  - 1) appearing as a party in a non-job-related proceeding involving the employee;
  - 2) appearing as an expert witness when the employee is compensated for such appearance; or
  - 3) appearing as a plaintiff or complainant, or as counsel for a plaintiff or complainant, in a proceeding in which the Board or any of its institutions or agencies is a defendant or respondent.

b. Military Leave

Leave for the purpose of military service shall be in accordance with applicable state and federal law.

c. Leave Without Pay

- i. Any employee may apply for leave without pay. Leave without pay is granted at the discretion of the Chief Executive Officer. The initial grant of leave without pay may be for a period of up to one (1) calendar year. Extensions of

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: I. Leaves – All Employees**

April 2012

- 
- such leave for one (1) year at a time may be granted by the Chief Executive Officer not to exceed a total of three (3) successive calendar years.
- ii. It is the Board's intent that the state salary not be duplicated to an employee serving in the Legislature. Therefore, an employee of an institution or agency who is elected or appointed to the Idaho State Legislature must be placed on leave without compensation for hours not worked during such time as the Legislature is in session. Any such employee must complete a time sheet every pay period during the session and may only be compensated for actual hours worked for the institution or agency. All hours short of forty (40) per week must be leave without compensation.
  - iii. Benefits While on Leave Without Pay. An employee who has received approval from the chief executive officer for leave without pay may continue to contribute toward and receive the benefits of any state or institutional insurance and retirement programs, if the laws, rules, regulations, policies, and procedures governing the administration of such insurance and retirement programs permit.
  - d. At the discretion of the Chief Executive Officer, an employee may be granted administrative leave with pay when the agency or institution will benefit as a result of such leave.

**THIS PAGE INTENTIONALLY LEFT BLANK**



**BUSINESS AFFAIRS & HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**BOISE STATE UNIVERSITY**

**SUBJECT**

Five year contract for Head Football Coach Chris Petersen

**REFERENCE**

April 2010	Board approves employment agreement for 2010-2015
February 2011	Board approves request to amend employment agreement
October 2011	Board approves Addendum 2 for 2010-2015
January 2012	Board approves request to amend employment agreement for 2012-2017

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Chris Petersen is the Head Football Coach at Boise State University. In April of 2010, the Board approved a new five year employment contract for Mr. Petersen. The Board approved changes and updates to that agreement in February and October of 2011. In January of 2012, the Board approved the request to increase the base compensation for Mr. Petersen to \$2,000,000 for the 2012-2013 year, and to bring to the Board an amended employment contract for approval at the February 2012 Board meeting.

The new contract makes the following changes from the prior version:

1. Extends the contract through January 31, 2017;
2. Increases the overall compensation package by \$175,000 for each year of the agreement;
3. Allocates the compensation between salary, longevity pay and two deferred compensation plans (one existing 415(m) plan and one new 401(a) plan);
4. Decreases the conference championship performance payment and adds a payment for participation in a conference championship game (if applicable)
5. Includes an additional pay in the amount of \$250,000 for participation in the BCS National Championship game;
6. Increases the Academic Incentive to \$40,000; and
7. Increases the buyout provision (i.e. liquidated damages) to \$750,000.

The contract is for a new 5 year period but that term is already contractually required under the terms of the existing contract. As before, the contract continues to provide for extension years each time the football team has an eight-win season.

**BUSINESS AFFAIRS & HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**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. The compensation is allocated as follows:

<u>Contract Year</u>	<u>Base Salary</u>	<u>Longevity Incentive</u>	<u>Current 415(m) Deferred Comp Plan</u>	<u>New Supp. Pension Plan</u>	<u>TOTAL</u>
02-01-12 to 01-31-13	\$1,331,333	N/A	\$250,000	\$114,583	<b>\$1,706,333</b>
02-01-13 to 01-31-14	\$1,423,000	\$100,000	\$250,000	\$125,000	<b>\$1,898,000</b>
02-01-14 to 01-31-15	\$1,523,000	\$200,000	\$250,000	\$125,000	<b>\$2,098,000</b>
02-01-15 to 01-31-16	\$1,723,000	\$200,000	\$250,000	\$125,000	<b>\$2,298,000</b>
02-01-16 to 01-31-17	\$1,923,000	\$200,000	\$250,000	\$125,000	<b>\$2,498,000</b>

In addition to the employment contract, the University will enter into a contract with a corporate entity that Mr. Petersen has formed to license the use of his likeness and image rights. The contract will provide for the University's use of such rights for an annual fee of \$250,000. The term agreement will be the same as that of the employment agreement. The agreement would be extended or terminated if and when the employment agreement is extended or terminated.

**Additional Pay for Performance**

1. Regular season and post season competition shall be based on one of the following (whichever is greater):
  - (a) \$80,000 for winning the Conference championship; or,
  - (b) \$80,000 for participating in an official Conference championship game (if applicable), but not winning that game; or,
  - (c) \$35,000 for a post season bowl appearance without a Conference championship or participation in a Conference championship game; or,
  - (d) \$150,000 if the football team participates in any one of the five BCS bowl games; or,
  - (e) \$250,000 if the football team participates in the BCS National Championship game.
2. Academic Incentive Pay: \$40,000 if the annual football team APR ratings equals 955 or higher

**BUSINESS AFFAIRS & HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**Supplemental Compensation**

The University will provide the opportunity for Mr. Petersen to earn supplemental compensation by assisting with the University's camps in his capacity as an employee.

**ATTACHMENTS**

Attachment 1 – Proposed Base Contract 2012-2017	Page 5
Attachment 2 – Proposed Base Contract 2012-2017 - Redline	Page 21
Attachment 3 – Proposed Contract Addendum One	Page 37
Attachment 4 – Proposed Contract Addendum One - Redline	Page 43
Attachment 3 – Proposed License Agreement	Page 51
Attachment 4 – Proposed 401(a) Plan Document	Page 59

**STAFF COMMENTS AND RECOMMENDATIONS**

At the October 2011 meeting the Board reviewed a number of coach contracts. Board member Atchley stated that the Athletic Committee wants the institutions to be aware the Board is looking for four criteria when looking at contracts: 1) timelines, 2) meaningful academic incentives, 3) three-year terms (with some exceptions) and 4) liquidated damages. Ms. Atchley reiterated that future contracts need to contain these criteria to be considered and follow the model contract in Board policy.

The Base Contract for Mr. Petersen follows the basic template of the Board-approved model contract with the following exceptions:

1. Changes from Mr. Petersen's current Board-approved contract are highlighted in the redline version.
2. Principal compensation amounts and terms are set forth in the Addendum instead of the Base Contract itself.

Based on the proposed contract changes, the maximum potential annual compensation (including pay for performance incentives) to Mr. Petersen through January 31, 2013 would be **\$2,246,333**.

Liquidated damages to the coach resulting from termination for convenience by the University would be as follows:

- i. the regular compensation amount plus \$250,000;
- ii. single payment equal to pro rata share of the longevity incentive to which the coach would have otherwise been entitled;
- iii. amounts equal to contributions which would otherwise have been made to the 403(B) Plan and the Supplemental Defined Contribution Plan, and the principal credits which would otherwise have accrued under the Supplemental Pension Plan;
- iv. an amount necessary to cover state and federal income and employment tax withholding to the extent any such payments are taxable; and
- v. Health and group life insurance

**BUSINESS AFFAIRS & HUMAN RESOURCES**  
**APRIL 19, 2012**

---

until expiration of the contract or until the coach obtains reasonably comparable employment.

BSU also seeks to enter into a licensing agreement with the entity "Chris Petersen Enterprises, LLC" for the use of Mr. Petersen's name, image, voice, signature, etc. Establishing, protecting and licensing the intellectual property rights in the likeness of the coach makes this an agreement of first impression for the Board.

Finally, BSU has worked with outside tax counsel in the formation of a 401(a) defined benefit plan. Mr. Petersen would be the sole eligible employee for this plan. In December 2011 the Board also approved BSU's adoption of a new 401(a) base plan and 415(m) excess benefit plan for the exclusive benefit of Mr. Petersen. The 415(m) and the proposed 401(a) are both deferred compensation vehicles for Mr. Petersen.

The effective date of the contract, license agreement and 401(a) supplemental pension plan is February 1, 2012.

**BOARD ACTION**

I move to approve the request by Boise State University for retroactive approval of the following:

1. Mr. Petersen's five year employment agreement and addendum;
2. a license agreement with Chris Petersen Enterprises, LLC; and
3. a 401(a) supplemental pension plan document

as presented and effective February 1, 2012; and to authorize the Vice President for Finance and Administration to execute any necessary documents related to the 401(a) plan provided for above on behalf of the Board of Trustees.

The University is authorized to request an IRS private letter ruling or determination letter, as applicable, as the Board cannot comment on the tax consequences of the supplemental pension plan pending IRS action.

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

**EMPLOYMENT AGREEMENT  
2012-2017**

This Employment Agreement (“Agreement”) is entered into by and between Boise State University (“University”) and Chris Petersen (“Coach”).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University’s athletic program as the Director may assign and as may be described elsewhere in this Agreement. Coach shall, to the best of his ability and consistent with University policies, perform all duties and responsibilities customarily associated with an NCAA Football Bowl Subdivision head football coach.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on February 1, 2012 and terminating, without further notice to Coach, on January 31, 2017 unless extended (in section 2.3 only) or unless sooner terminated in accordance with other provisions of this Agreement

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least eight (8)

regular season (not including bowl games) victories. Meaning, one (1) additional year is added for each eight (8) win season.

2.3.1. By way of example, and for the avoidance of doubt, section 2.3 is to be interpreted so that the term of this Agreement will function as a rolling five year term as long as the football team wins eight (8) regular season games. If any season results in less than eight (8) regular season victories, then the term shall not extend for an additional year, rendering this Agreement as a potential rolling four (4) year term if a season with eight (8) regular season victories follows such year or a potential rolling three (3) year term if a subsequent season is less than eight (8) victories. Subsequent seasons of eight (8) victories or more, or less than eight (8) victories, will have the same effects as described in this section until this Agreement is terminated as otherwise provided herein.

### 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 base salary as set forth in the attached Addendum paragraph 7, generally payable in biweekly installments in accordance with normal University procedures (except as provided in 3.2.2 and 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 (within the limits of such plans and benefits) as the University provides generally to non-faculty, non-classified, professional staff 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 Compensation terms. As set forth in the attached Addendum.

3.2.1 Any additional or supplemental compensation paid to Coach may be accompanied with a detailed justification for the 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 Media Programs, Public Appearances and Endorsements.

- a) Coach shall appear on or participate in, as requested by the Director, and make all reasonable efforts to make successful University sanctioned television, radio and internet programs (the “Programs”) concerning the University and University’s intercollegiate football program. Agreements requiring the Coach to participate in Programs and public appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. The reasonable efforts required of Coach under this section shall be such efforts as are customary for head football coaches in the promotion and production of similar radio, television and internet programs at other institutions of higher education with major football programs.
- b) Coach shall have no right, title or interest of any kind or nature whatsoever in or to any of the materials, works or results of the Programs or in any component part thereof and the University shall own all rights to the Programs and shall be entitled, at its option, to produce and market the Programs or negotiate with third parties for the production and marketing of the Programs. The University shall be entitled to retain all revenue generated by the Programs including but not limited to that received from Program sponsors for commercial endorsements used during the Programs.

3.2.3 Intellectual Property Rights.

- a) Coach may not use the marks or intellectual property of the University, including without limitation its logos, slogans, trademarks, service marks, copyrights, trade dress, color scheme, or other indicia, without a specific, written licensing agreement relating to the same. Coach agrees that all logos, slogans, trademarks, service marks, copyrights, trade dress, color scheme, or other indicia, including all copyright and other intellectual property rights therein,

which relate to the University, including any of its athletic programs, or which would compete with the University's registered marks that are developed or created by Coach or by others at Coach's direction, shall be owned solely by the University.

- b) Coach hereby grants University a perpetual, worldwide, royalty-free non-exclusive license to use Coach's name, image, nickname, signature, voice and photograph for historical and archival purposes in records and publications related to Coach's performance of his duties as the University's head football coach. Further, Coach hereby grants University a perpetual, worldwide, royalty-free non-exclusive license to use his name, image, nickname, signature, voice and photograph for the limited purpose of selling or distributing commemorative items which depict him during his tenure as the head coach of the Team in a historically accurate and positive light, so long as his name, image, nickname, signature, voice and photograph, as the case may be, (i) is displayed on the item together with former Team members and/or coaches, or (ii) is not shown predominantly on the item. Coach consents to the University's appropriation of his privacy rights in connection with the grant of the license in this section.

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

3.2.5 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 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 directly from the University to Coach, and within any applicable compensation limits established by such plans and except to the extent required by the terms and conditions of a specific fringe benefit program.

3.4 Additional Compensation. Coach may be eligible (as provided in the terms of the Addendum) to receive additional pay for performance, academic incentive pay, longevity payments and supplemental retirement benefits as set forth in Addendum paragraphs 7, 8, 9, 12, 13 and 14.

#### 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 A. The applicable laws,

policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University'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 football conference of which the University is a member.

4.2 Outside Activities. Coach shall not appear without the prior written approval of the Director on, or in, any radio, television or internet programs or other electronic medium other than those produced or sponsored by University, except routine news media interviews for which no compensation is received. Coach shall not appear in or make any commercial or commercial endorsement without the prior written approval of the Director. 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 nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

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

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

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without giving prior notice to the Director. Coach shall deliver such notice in writing, or by electronic mail, and shall give such notice as soon as reasonably practical but no less than 24 hours prior to such activity.

**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 policies, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension or termination of this Agreement:

- a) A deliberate or major or repetitive 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 or repetitive violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;

- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the 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 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 or continue to pay Coach, as applicable, as liquidated damages and not a penalty, (i) the then applicable regular compensation as set forth in sections 3.1.1 and 3.2.2 and the attached Addendum paragraph 7 (without regard to any increase that otherwise would have taken effect for an additional year granted pursuant to section 2.3 in the case of any such additional year that commences after the effective date of the University's termination of this Agreement), plus an additional amount at the annual rate of \$250,000, payable on the regular paydays of the University, (ii) a single payment, payable on the February 15 immediately following the effective date of the termination of this Agreement (the "vesting date"), in an amount equal to the longevity incentive to which Coach otherwise would have become entitled on said February 15 pursuant to Addendum paragraph 12, reduced pro-rata to reflect Coach's period of service of less than twelve (12) months immediately preceding the vesting date, (iii) amounts equal to the contributions that otherwise would have been made to the 403(b) Plan and the Supplemental Defined Contribution Plan on behalf of the Coach, plus the principal credits that otherwise would have accrued under the Supplemental Pension Plan on behalf of the Coach, for periods following the effective date of the termination of this Agreement pursuant to Addendum paragraphs 13 and 14, as applicable, payable to the Coach on the dates that they would have been made to the respective plans as prescribed by said Addendum paragraphs 13 and 14, until the expiration of the term of this Agreement (as the term then exists with earned extensions (if any) pursuant to section 2.3 but without further opportunity to earn additional extensions pursuant to section 2.3) ends, or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains 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 employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1 and 3.2.2 (before deductions required by law) by the gross compensation paid to the Coach under the employment, then subtracting from this adjusted gross compensation deductions according to law (a "Severance Reduction"). 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 under this Agreement or the Addendum or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay

compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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 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.

5.2.4 The parties acknowledge that Internal Revenue Code (“Code”) section 457(f) (“IRC 457(f)”) will require some or all of the payments described in section 5.2.2 to be taxable to Coach before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University's counsel Code Section 457(f) does not so apply, the University shall pay the Applicable Portion (as defined below) of amounts due under section 5.2.2 before the scheduled payment date (a "Tax Distribution"). Each subsequent payment shall be reduced by a prorated portion of any Tax Distribution. Any Severance Reduction that occurs after a Tax Distribution shall be applied first to reduce amounts that are taxable when paid and then to amounts that have previously been taxed. If a Severance Reduction applies and the remaining amounts payable hereunder are not sufficient to fully apply such reduction because of a Tax Distribution, then Coach shall pay the University such deficiency in equal installments over the remainder of the payment term. The "Applicable Portion" means the amount the University determines is necessary to satisfy all applicable state and federal income and employment tax withholding on amounts described in section 5.2.2 that are taxable before the scheduled payment date under IRC 457(f). If the University's counsel deems it necessary, the parties shall also work in good faith to amend this Agreement to minimize the extent to which the payments described in section 5.2.2 are taxable before the scheduled payment dates pursuant to IRC 457(f) in a manner that maintains the economic arrangement of section 5.2.2 to the maximum extent possible and is in the best interests of the University and Coach generally. All payments under this section 5.2 will be made in accordance with the requirements of Code section 409A, and there will be no acceleration or deferral of payments except as permitted under Code section 409A.

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also

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

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after written notice is given to the University. Such termination must occur at a time outside the football playing season (including bowl game season) 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 prior to January 31, 2017 and at any time on or before the earlier of (a) January 31, 2017, or (b) the later of (i) the first (1<sup>st</sup>) day of the eleventh (11th) calendar month after the month in which Coach terminated the Agreement pursuant to this paragraph, or (ii) the December 1<sup>st</sup> next following the Coach's termination of the Agreement pursuant to this paragraph, Coach commences, or agrees to commence, Impermissible Employment (as defined in this paragraph 5.3.3), then Coach, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as head coach of the Team through January 31, 2017, shall be obligated to pay to the University the sum of \$750,000; this payment shall be due and payable within ninety (90) days of the effective date of the commencement, or agreement to commence, of Impermissible Employment, and any unpaid amount shall bear simple interest at the rate twelve (12) percent per annum until paid. (By way of example and for the avoidance of doubt, if Coach terminated this Agreement pursuant to this paragraph in December 2013, the foregoing repayment obligation would not apply if Coach accepted employment as head football coach of another FBS football program on December 1, 2014; if, however, Coach terminated the Agreement in March 2013, the repayment obligation would apply if he accepted the position any time before February 1, 2014.) For purposes of this Section 5.3.3, "Impermissible Employment" means employment as (whether by title of position or by performing the duties regularly associated with such position) (a) the head football coach of any university or college that maintains a FBS football program, (b) an assistant coach of a university or college that (i) is a member of the conference in which the University is then a member, or (ii) belongs to a conference which the University then has a binding commitment to join prior to January 31, 2017, or (c) the head football coach of a National Football League (NFL) team.

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 provision imposing a repayment obligation on Coach, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, that the University will lose the benefit of its investment in the Coach, and that the University may face potentially increased compensation costs if Coach terminates this Agreement for convenience, all of which

amounts are extremely difficult to determine with certainty. The parties further agree that the payment of this obligation by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for any and all damages and injury suffered by it because of such termination by Coach. The Coach's repayment obligation is not, and shall not be construed to be, a penalty.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive any form of compensation described herein and in the attached Addendum that he has not earned or accrued based his service through the effective date of his termination.

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 he is entitled by virtue of employment with the University.

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

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

5.8 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and



opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) 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 furloughs or financial exigency.

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

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

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

6.5 Severability and Survival. 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. To the extent necessary to enforce a term of this Agreement after the expiration or termination of this Agreement, the relevant and necessary terms shall survive such expiration or termination.

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

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

the University:	Director of Athletics 1910 University Drive Boise, Idaho 83725-1020
with a copy to:	President 1910 University Drive Boise, Idaho 83725-1000
the Coach:	Chris Petersen Last known address on file with University's Human Resource Services
with a copy to:	Bennett H. Speyer, Esq. Shumaker, Loop & Kendrick, LLP 1000 Jackson Street Toledo, Ohio 43604-5573

**ATTACHMENT 1**

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 (including the attached Addendum) constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter, except for the matters covered by that certain License Agreement attached to the Addendum as Exhibit B. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

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

UNIVERSITY

COACH

\_\_\_\_\_  
Robert Kustra, President      Date

\_\_\_\_\_  
Chris Petersen      Date

Approved by the Board on the \_\_\_\_ day of April, 2012.

**THIS PAGE INTENTIONALLY LEFT BLANK**

**EMPLOYMENT AGREEMENT**

~~2010-2015~~

2012-2017

This Employment Agreement (~~("Agreement")~~) is entered into by and between Boise State University (~~("University")~~) and Chris Petersen (~~("Coach")~~).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. Coach shall, to the best of his ability and consistent with University policies, perform all duties and responsibilities customarily associated with an NCAA Football Bowl Subdivision head football coach.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (~~-5-~~) years, commencing on February 1, ~~2010~~2012 and terminating, without further notice to Coach, on January 31, ~~2015~~2017 unless extended (in section 2.3 only) or unless sooner terminated in accordance with other provisions of this Agreement

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least eight (8) regular season (not including bowl games) victories. Meaning, one (1) additional year is added for each eight (8) win season.

2.3.1. By way of example, and for the avoidance of doubt, section 2.3 is to be interpreted so that the term of this Agreement will function as a rolling five year term as long as the football team wins eight (8) regular season games. If any season results in less than eight (8) regular season victories, then the term shall not extend for an additional year, rendering this Agreement as a potential rolling four (4) year term if a season with eight (8) regular season victories follows such year or a potential rolling three (3) year term if a subsequent season is less than eight (8) victories. Subsequent seasons of eight (8) victories or more, or less than eight (8) victories, will have the same effects as described in this section until this Agreement is terminated as otherwise provided herein.

### 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 base salary as set ~~forth~~ in the attached Addendum ~~section~~paragraph 7, generally payable in biweekly installments in accordance with normal University procedures (except as provided in 3.2.2 and 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 (within the limits of such plans and benefits) as the University provides generally to non-faculty, non-classified, professional staff 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 Compensation terms. As set forth in the attached Addendum.

3.2.1 Any additional or supplemental compensation paid to Coach may be accompanied with a detailed justification for the 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~~ Media Programs, Public Appearances and Endorsements.

a) ~~Coach may receive~~shall appear on or participate in, as requested by the compensation (Addendum section 7) hereunder from the Director, and make all reasonable efforts to make successful 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 mediasanctioned television, radio and internet programs and public appearances (Programs) (the "Programs") concerning the University and University's intercollegiate football program. Agreements requiring the Coach to participate in Programs and public appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. ~~Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets. The reasonable efforts required of Coach under this section shall be such efforts as are customary for head football coaches in the promotion and production of similar radio, television and internet programs at other institutions of higher education with major football programs.~~

b) Coach shall have no right, title or interest of any kind or nature whatsoever in or to any of the materials, works or results of the Programs or in any component part thereof and the University shall own all rights to the Programs and shall be entitled, at its option, to produce and market the Programs or negotiate with third parties for the production and marketing of the Programs. The University shall be entitled to retain all revenue generated by the Programs including but not limited to that received from Program sponsors for commercial endorsements used during the Programs.

### 3.2.3 Intellectual Property Rights.

a) Coach may not use the marks or intellectual property of the University, including without limitation its logos, slogans, trademarks, service marks, copyrights, trade dress, color scheme, or other indicia, without a specific, written licensing agreement relating to the same. Coach agrees that all logos, slogans, trademarks, service marks, copyrights, trade dress, color scheme, or other indicia, including all copyright and other intellectual property rights therein, which relate to the University, including any of its athletic programs, or which would compete with the University's registered marks that are developed or created by Coach or by others at Coach's direction, shall be owned solely by the University.

b) Coach hereby grants University a perpetual, worldwide, royalty-free non-exclusive license to use Coach's name, image, nickname, signature, voice and photograph for historical and archival purposes in records and publications related to Coach's performance of his duties as the University's head football coach. Further, Coach hereby grants University a perpetual, worldwide, royalty-free non-exclusive license to use his name, image, nickname, signature, voice and photograph for the limited purpose of selling or distributing commemorative items which depict him during his tenure as the head coach of the Team in a historically accurate and positive light, so long as his name, image, nickname, signature, voice and photograph, as the case may be, (i) is displayed on the item together with former Team members and/or coaches, or (ii) is not shown predominantly on the item. Coach consents to the University's appropriation of his privacy rights in connection with the grant of the license in this section.



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

3.2.45 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 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 directly from the University to Coach, and within any applicable compensation limits established by such plans and except to the extent required by the terms and conditions of a specific fringe benefit program.

3.4 Additional Compensation. Coach may be eligible (as provided in the terms of the Addendum) to receive additional pay for performance, academic incentive pay, longevity payments and ~~deferred compensationsupplemental retirement benefits~~ as set forth in Addendum ~~sectionsparagraphs 7-d, 8, 9, 12, 13 and 14.~~

## 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 ~~CA~~. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the football conference of which the University is a member.

4.2 Outside Activities. Coach shall not appear without the prior written approval of the Director on, or in, any radio, television or internet programs or other electronic medium other than those produced or sponsored by University, except routine news media interviews for which no compensation is received. Coach shall not appear in or make any commercial or commercial endorsement without the prior written approval of the Director. 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 nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

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

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

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without giving prior notice to the Director. Coach shall deliver such notice in writing, or by electronic mail, and shall give such notice as soon as reasonably practical but no less than 24 hours prior to such activity.

## 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 policies, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension or termination of this Agreement:

- a) A deliberate or major or repetitive 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 or repetitive violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the 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 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 or continue to pay Coach, as applicable, as liquidated damages and not a penalty, (i) the then applicable regular compensation as set forth in sections 3.1.1 and 3.2.2 and the attached Addendum ~~section~~paragraph 7 (without regard to any increase that otherwise would have taken effect for an additional year granted pursuant to section 2.3 in the case of any such additional year that commences after the effective date of the University's termination of this Agreement), plus an additional amount at the annual rate of \$250,000, payable on the regular paydays of the University, (ii) a single payment, payable on the February ~~15~~ immediately following the effective date of the termination of this Agreement (the "vesting date"), in an amount equal to the longevity incentive to which Coach otherwise would have become entitled on said February ~~15~~ pursuant to Addendum ~~section~~paragraph 12, reduced pro-rata to reflect Coach's period of service of less than twelve (12) months immediately preceding the vesting date, ~~and~~ (iii) ~~additional~~ amounts ~~corresponding~~equal to the ~~retirement plan~~ contributions that otherwise would have been made to the 403(b) Plan and the Supplemental Defined Contribution Plan on behalf of the Coach, plus the principal credits that otherwise would have accrued under the Supplemental Pension Plan on behalf of the Coach, for periods following the effective date of the termination of this Agreement pursuant to Addendum ~~section~~paragraphs 13 and 14, as applicable, payable to

the Coach on the dates that they would have been made to the respective plans as prescribed by said Addendum ~~section~~paragraphs 13 and 14, until the expiration of the term of this Agreement (as the term then exists with earned extensions (if any) pursuant to section 2.3 but without further opportunity to earn additional extensions pursuant to section 2.3) ends, or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains ~~lesser~~ employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such ~~lesser~~ employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1 and 3.2.2 (before deductions required by law) by the gross compensation paid to the Coach under the ~~lesser~~ employment, then subtracting from this adjusted gross compensation deductions according to law (a "Severance Reduction"). 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 ~~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 under this Agreement or the Addendum or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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 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.

5.2.4 The parties acknowledge that ~~the Internal Revenue Service has announced in Notice 2007-62 that it will provide guidance under~~ Internal Revenue Code ("Code") section 457(f) ~~(the "IRS Guidance") that may result in~~ ("IRC 457(f)") will require some or all of the payments described in ~~this~~ section 5.2.2 to be taxable to Coach

before ~~the~~their scheduled payment date. ~~To the extent the IRS Guidance so applies and amounts payable hereunder are not grandfathered in the dates. Therefore, unless in the reasonable~~ opinion of the University's counsel Code Section 457(f) does not so apply, the University shall pay the Applicable Portion (as defined below) of amounts due under section 5.2.2 before the scheduled payment date (a "Tax Distribution"). Each subsequent payment shall be reduced by a prorated portion of any Tax Distribution. Any Severance Reduction that occurs after a Tax Distribution shall be applied first to reduce amounts that are taxable when paid and then to amounts that have previously been taxed. If a Severance Reduction applies and the remaining amounts payable hereunder are not sufficient to fully apply such reduction because of a Tax Distribution, then Coach shall pay the University such deficiency in equal installments over the remainder of the payment term. The "Applicable Portion" means the amount the University determines is necessary to satisfy all applicable state and federal income and employment tax withholding on amounts described in section 5.2.2 that are taxable before the scheduled payment date under IRC 457(f). If the University's counsel deems it necessary, the parties shall also work in good faith to amend this Agreement to ~~comply with the IRS Guidance~~minimize the extent to which the payments described in section 5.2.2 are taxable before the scheduled payment dates pursuant to IRC 457(f) in a manner that maintains the economic arrangement of section 5.2.2 to the maximum extent possible and is in the best interests of the University and Coach generally. ~~The "Applicable Portion" means the amount the University determines is necessary to satisfy all applicable state and federal income and employment tax withholding on amounts described in section 5.2.2 that are taxable before the scheduled payment date under Code section 457(f).~~All payments under this section 5.2 will be made in accordance with the requirements of ~~Internal Revenue~~ Code section 409A, and there will be no acceleration or deferral of payments except as permitted under ~~Internal Revenue~~ Code section 409A.

### 5.3 Termination by Coach for Convenience.

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

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after written notice is given to the University. Such termination must occur at a time outside the football playing season (including bowl game season) 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 prior to January 31, ~~2015~~2017 and at any time on or before the earlier of (a) January 31, 20152017, or (b)

the later of (i) the first (1<sup>st</sup>) day of the eleventh (11th) calendar month after the month in which Coach terminated the Agreement pursuant to this paragraph, or (ii) the December 1<sup>st</sup> next following the Coach's termination of the Agreement pursuant to this paragraph, Coach commences, or agrees to commence, Impermissible Employment (as defined in this ~~section~~paragraph 5.3.3), then ~~the~~ Coach, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as head coach of the Team through January 31, ~~2015~~2017, shall be obligated to pay to the University the sum of \$~~650~~750,000; this payment shall be due and payable within ninety (90) days of the effective date of the commencement, or agreement to commence, of Impermissible Employment, and any unpaid amount shall bear simple interest at the rate twelve (12) percent per annum until paid. (By way of example and for the avoidance of doubt, if Coach terminated this Agreement pursuant to this paragraph in December 2013, the foregoing repayment obligation would not apply if Coach accepted employment as head football coach of another FBS football program on December 1, 2014; if, however, Coach terminated the Agreement in March 2013, the repayment obligation would apply if he accepted the position any time before February 1, 2014.) For purposes of this Section 5.3.3, "Impermissible Employment" means employment ~~in football, coaching or any capacity in sports~~as (whether by title of ~~the~~ position or by performing the duties regularly associated with such ~~Impermissible Employment~~), ~~other than employment~~position) (a) ~~as the head football coach of any university or college that maintains a~~ coach in NCAA Division II, NCAA Division III or NAIA/FBS football program, (b) ~~as an assistant coach in Division I (FBS or FCS) football at~~of a college or university outside ~~or college that (i) is a member of~~ the conference in which the University is then a member, or (ii) belongs to a conference which the University then has a binding commitment to join prior to January 31, 2017, or (c) in sports related media ~~the head football coach of a National Football League (NFL) team.~~

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 provision imposing a repayment obligation on Coach, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, that the University will lose the benefit of its investment in the Coach, and that the University may face potentially increased compensation costs if Coach terminates this Agreement for convenience, all of which amounts are extremely difficult to determine with certainty. The parties further agree that the payment of this obligation by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for any and all damages and injury suffered by it because of such termination by Coach. The Coach's repayment obligation is not, and shall not be construed to be, a penalty.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive any form of compensation described ~~in~~ herein and in the attached Addendum that he has not earned or accrued based his service through the effective date of his termination.



#### 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 he is entitled by virtue of employment with the University.

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

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

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

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

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

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

6.5 Severability and Survival. 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. To the extent necessary to enforce a term of this Agreement after the expiration or termination of this Agreement, the relevant and necessary terms shall survive such expiration or termination.

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

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

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

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

the Coach:                         Chris Petersen  
   Last known address on file with  
   University's Human Resource Services

with a copy to:                    Bennett H. Speyer, Esq.  
   Shumaker, Loop & Kendrick, LLP  
   1000 Jackson Street  
   Toledo, Ohio 43604-5573

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 (including the attached Addendum) constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter, except for the matters covered by that certain License Agreement attached to the Addendum as Exhibit B. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

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

UNIVERSITY

COACH

\_\_\_\_\_  
Robert Kustra, President      Date

\_\_\_\_\_  
Chris Petersen      Date

Approved by the Board on the ~~22<sup>nd</sup>~~ \_\_\_\_ day of April, ~~2010~~2012.

**ADDENDUM NO. 1 TO EMPLOYMENT AGREEMENT (2012 – 2017)**

1. This is the first Addendum to the Employment Agreement 2012-2017 between BOISE STATE UNIVERSITY (BSU) and Chris Petersen (COACH) dated and effective the 1st day of February, 2012 (Agreement). Any reference in the Agreement to the "Addendum" shall refer to this 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. "Conference" means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the date of the applicable event.
  - b. "Position" will mean the position described in paragraph 2, above.
  - c. "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.
  - d. "Program" shall mean the Football program.
  - 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 Addendum, the term of the Agreement (as set forth in Section 2.1 of the Agreement) extends through the 31st day of January, 2017; provided, however, that this provision is subject to the terms and conditions of Article 5 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 University maintaining a FBS level Football program. 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:

- ◆ Television, radio and other public appearances as provided in paragraph 3.2.2 of the Agreement
- ◆ The annual BAA Bar-b-que
- ◆ The BAA/Alumni Auction Dinner
- ◆ All Athletic Department staff meetings called by the Director of Athletics
- ◆ Athletic Department Graduation Reception
- ◆ Bronco Golf Series Tournaments

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 Conference rules and regulations at all times.

7. Regular Compensation: COACH will be compensated for his services as Head Football Coach (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, 2012 – January 31, 2013	\$1,331,333
February 1, 2013 – January 31, 2014	\$1,423,000
February 1, 2014 – January 31, 2015	\$1,523,000
February 1, 2015 – January 31, 2016	\$1,723,000
February 1, 2016 – January 31, 2017	\$1,923,000

\* For the February 1, 2012 to January 31, 2013 year only, \$223,000 of Regular Compensation will be paid on January 31, 2013 rather than on regular pay-dates during the year; however, in the event that the Agreement terminates for any reason prior to January 31, 2013 (i.e., in accordance with Section 5.1, 5.2, 5.3, or 5.4 of the Agreement) COACH (or his beneficiary in the event of termination due to COACH's death) will be entitled to a pro-rata portion of said \$250,000 based on the number of months and days that the Agreement remained in effect during the contract year ending January 31, 2013.

COACH's Regular Compensation shall be increased by \$100,000 for each additional year that the term is extended after January 31, 2017 pursuant to Section 2.3 of the Agreement.

The Regular Compensation outlined above will be paid to COACH by the UNIVERSITY in equal amounts in accordance with its standard payroll practices except as otherwise provided above with respect to the year ending January 31, 2013.

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):

- (a) \$80,000 for winning the Conference championship; or,
- (b) \$80,000 for participating in an official Conference championship game (if applicable), but not winning that game; or,
- (c) \$35,000 for a post season bowl appearance without a Conference championship or participation in a Conference championship game; or,
- (d) \$150,000 if the football team participates in any one of the five BCS bowl games; or,
- (e) \$250,000 if the football team participates in the BCS National Championship game.

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. \$40,000 if the annual football team APR rating (for the previous fall and spring semesters) equals 955 or higher.

Any pay earned pursuant to this paragraph 9 shall be paid on October 1<sup>st</sup> 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 as set forth below on each February 15 that COACH remains employed in the Position and is not in material breach of the Agreement:

February 15, 2014 = \$100,000  
February 15, 2015 = \$200,000  
February 15, 2016 = \$200,000

February 15, 2017 = \$200,000

Provided, however, if COACH does not remain in the Position as of the applicable February 15 as a result of the termination of the Agreement in accordance with Section 5.2 or 5.4 of the Agreement, COACH (or his beneficiary in the event of termination due to COACH's death) shall be entitled to a pro-rata portion of said longevity incentive based on the number of months and days that COACH remained in the Position since the immediately preceding February 16<sup>th</sup>.

13. Participation in the Idaho State Board of Education Supplemental Retirement 403(b) Plan:

- a. The University shall make nonforfeitable contributions to COACH's account under the Idaho State Board of Education Supplemental Retirement 403(b) Plan ("403(b) Plan"), established effective June 24, 2011, as provided in this paragraph 13, and subject to and in accordance with the terms of the 403(b) Plan.
- b. The 403(b) Plan is operated on the basis of a calendar year ending December 31 ("Plan Year").
- c. University Contributions.
  - i. The University's contributions to the 403(b) Plan shall (subject to section 415(c) of the Internal Revenue Code, as amended ("Code")) be equal to 10.52 percent of COACH's compensation as defined in the 403(b) Plan and as limited by Code section 401(a)(17)); provided, however, that if COACH is not employed in the Position for the entire Plan Year, the University's contribution for that Plan Year will be pro-rated accordingly for that year to reflect the number of months and days of the Plan Year that he remained in the Position. .
  - ii. Timing of Contributions. The University's contributions to the 403(b) Plan shall be made in accordance with the terms of the written 403(b) Plan document.
  - iii. Terms of Plan Control. The 403(b) Plan is governed by a separate written plan document that reflects the contribution amount and other terms specifically set forth in this paragraph 13, except as otherwise noted, 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.

14. Participation in Other Supplemental Plans:



- a. In addition to other retirement plans sponsored by the University that are available to COACH, Coach will accrue fully vested benefits under the Boise State University Supplemental 401(a) Plan established effective December 1, 2011, including the Boise State University 415(m) Qualified Excess Benefit Arrangement that is a part thereof (“Supplemental Defined Contribution Plan”) and the Boise State University Supplemental Pension Plan established effective February 1, 2012 (“Supplemental Pension Plan”; together with the Supplemental Defined Contribution Plan, referred to as the “Supplemental Plans”), as provided in this paragraph 14, and subject to and in accordance with the terms of the Supplemental Plans.
- b. The Supplemental Plans will be operated on the basis of a fiscal year ending December 31 (“Plan Year”).
- c. University Contributions.
  - i. Supplemental Defined Contribution Plan. COACH’s benefit under the Supplemental Defined Contribution Plan shall be in the form of an account balance attributable to University contributions. The University’s contribution to the Supplemental Defined Contribution Plan shall equal \$250,000 for each Plan Year that COACH remains employed in the Position as of the last day of the Plan Year; provided, however, that if COACH is not employed in the Position for the entire Plan Year, the University’s contribution for that Plan Year will be pro-rated accordingly for that year to reflect the number of months and days of the Plan Year that he remained in the Position.
  - ii. Supplemental Pension Plan. COACH’s benefit under the Supplemental Pension Plan shall be in the form of a hypothetical account equal to the sum of principal credits and interest credits prescribed thereunder. The University shall be responsible for funding COACH’s benefit, provided that the aggregate annual cost of funding (including annuity purchase costs) said benefit shall not exceed \$114,583.32 for the initial eleven (11) month Plan Year (beginning February 1, 2012), or \$125,000 for Plan Years beginning on and after January 1, 2013; provided, however, if COACH is not employed in the Position for the entire Plan Year, then the University’s financial responsibility will be pro-rated accordingly for that year to reflect the number of months and days of the Plan Year that he remained in the Position.
  - iii. Timing of Contributions. The University’s Contributions to the Supplemental Plans shall be made as soon as administratively feasible after the earlier of the (A) end of each Plan Year or (B) if COACH’s employment terminates prior to the end of the Plan Year, the last day of employment.

d. Terms of Plans Control. The Supplemental Plans shall be governed by separate written plan documents that shall reflect the contribution amounts and other terms specifically set forth in this paragraph 14, 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.

15. The University shall have the right to use the COACH's name, likeness, image, and trademarks subject to and in accordance with the terms and conditions of that certain License Agreement effective February 1, 2012 and attached hereto as Exhibit A.

**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 April, 2012.

**ADDENDUM NO. 21 TO EMPLOYMENT AGREEMENT (2010 – 20152012 – 2017)**

1. This is ~~a Second~~the first Addendum to the Employment Agreement ~~2010-20152012-2017~~ between BOISE STATE UNIVERSITY (BSU) and Chris Petersen (COACH) dated and effective the 1st day of February, ~~20102012~~ (Agreement). ~~This Second Addendum supersedes and replaces Addendum No. 1 to the Agreement for periods on and after February 1, 2011, and any~~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:

aa. "Conference" means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the date of the applicable event.

b. "Position" will mean the position described in paragraph 2, above.

bc. "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.

ed. "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~~extends through the 31st day of January, ~~2016 in accordance with the terms of Section 2.3 of the Agreement~~;2017; provided, however, that this provision is subject to the terms and conditions of Article ~~IV~~5 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~~University maintaining a FBS level Football program. 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:

◆ Television, radio and other public appearances as provided in paragraph 3.2.2 of the Agreement

◆ 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~~Conference rules and regulations at all times.

7. Regular Compensation: COACH will be compensated for his services as Head Football Coach (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>
<del>February 1, 2011 – January 31, 2012</del>	<del>\$1,175,000</del>
February 1, 2012 – January 31, 2013	\$1, <del>275,000</del> <u>331,333</u>
February 1, 2013 – January 31, 2014	\$1, <del>375</del> <u>423</u> ,000
February 1, 2014 – January 31, 2015	\$1, <del>475</del> <u>523</u> ,000
February 1, 2015 – January 31, 2016	\$1, <del>575</del> <u>723</u> ,000
February 1, 2016 – January 31, 2017	\$1,923,000

\* For the February 1, 2012 to January 31, 2013 year only, \$223,000 of Regular Compensation will be paid on January 31, 2013 rather than on regular pay-dates during the year; however, in the event that the Agreement terminates for any reason prior to January 31, 2013 (i.e., in accordance with Section 5.1, 5.2, 5.3, or 5.4 of the Agreement) COACH (or his beneficiary in the event of termination due to COACH's death) will be entitled to a pro-rata portion of said \$250,000 based on the number of months and days that the Agreement remained in effect during the contract year ending January 31, 2013.

COACH's Regular Compensation shall be increased by \$100,000 for each additional year that the term is extended after January 31, ~~2016~~2017 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.~~  
The Regular Compensation outlined above will be paid to COACH by the UNIVERSITY in equal amounts in accordance with its standard payroll practices except as otherwise provided above with respect to the year ending January 31, 2013.

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):

- (a) ~~\$100~~80,000 for winning the ~~conference~~Conference championship; or,
- (b) \$80,000 for participating in an official Conference championship game (if applicable), but not winning that game; or,

- ~~(b)~~(c) \_\_\_\_\_ \$35,000 for a post season bowl appearance without a ~~conference~~Conference championship or participation in a Conference championship game; or,
- (d) \$150,000 if the football team participates in any one of the five BCS bowl games; or,
- ~~(e)~~(e) \$250,000 if the football team participates in the BCS National Championship game.

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. ~~\$2040~~,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~~paragraph 9 shall be paid on October 1<sup>st</sup> 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 as set forth below~~ on each February ~~4~~15 that COACH remains employed in the -Position and is not in material breach of the Agreement::

February 15, 2014 = \$100,000

February 15, 2015 = \$200,000

February 15, 2016 = \$200,000

February 15, 2017 = \$200,000

Provided, however, if COACH does not remain in the Position as of the applicable February 15 as a result of the termination of the Agreement in accordance with Section 5.2 or 5.4 of the Agreement, COACH (or his beneficiary in the event of termination due to COACH’s death) shall be entitled to a pro-rata portion of said longevity incentive based on the number of months and days that COACH remained in the Position since the immediately preceding February 16<sup>th</sup>.

13.— Participation in the Idaho State Board of Education Supplemental Retirement 403(b) Plan:

- a. The University shall make nonforfeitable contributions to COACH’s account under the Idaho State Board of Education

Supplemental Retirement 403(b) Plan (“403(b) Plan”), established effective June 24, 2011, as provided in this paragraph 13, and subject to and in accordance with the terms of the 403(b) Plan.

b. The 403(b) Plan is operated on the basis of a calendar year ending December 31 (“Plan Year”).

c. University Contributions.

i. The University’s contributions to the 403(b) Plan shall (subject to section 415(c) of the Internal Revenue Code, as amended (“Code”)) be equal to 10.52 percent of COACH’s compensation as defined in the 403(b) Plan and as limited by Code section 401(a)(17)); provided, however, that if COACH is not employed in the Position for the entire Plan Year, the University’s contribution for that Plan Year will be pro-rated accordingly for that year to reflect the number of months and days of the Plan Year that he remained in the Position. .

ii. Timing of Contributions. The University’s contributions to the 403(b) Plan shall be made in accordance with the terms of the written 403(b) Plan document.

iii. Terms of Plan Control. The 403(b) Plan is governed by a separate written plan document that reflects the contribution amount and other terms specifically set forth in this paragraph 13, except as otherwise noted, 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.

14. Participation in Other Supplemental Plans:

a. In addition to other retirement plans sponsored by the University that are available to COACH, ~~the University shall make~~ Coach will accrue fully vested benefits under the Boise State University Supplemental 401(a) Plan established effective December 1, 2011, including the Boise State University 415(m) Qualified Excess Benefit Arrangement that is a part thereof (“Supplemental Defined Contribution Plan”) and the Boise State University Supplemental Pension Plan established effective February 1, 2012 (“Supplemental Pension Plan”; together with the Supplemental Defined Contribution Plan, referred to as the “Supplemental Plans”), as provided in this paragraph 14, and subject to and in accordance with the terms of the Supplemental Plans.

b. The Supplemental Plans will be operated on the basis of a fiscal year ending December 31 (“Plan Year”).

c. University Contributions.

i. Supplemental Defined Contribution Plan. COACH's benefit under the Supplemental Defined Contribution Plan shall be in the form of an employer account balance attributable to University contributions. The University's contribution to a retirement plan ("Base the Supplemental Defined Contribution Plan") on behalf of COACH shall 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 Plan Year that COACH remains employed in the Position as of the last day of the plan year ("Supplemental Contribution"); Plan Year; provided, however, that if COACH terminates employment prior to is not employed in the end of Position for the plan year entire Plan Year, the Supplemental Contribution University's contribution for that Plan Year will be pro-rated accordingly for that year. COACH shall be 100% vested in his Supplemental Contributions at all times. Any portion to reflect the number of months and days of the Supplemental Contribution that cannot be made to the Base Plan due to Plan Year that he remained in the limits under Code section 415(c) will be allocated to an account on behalf of COACH under a qualified governmental excess Position.

ii. Supplemental Pension Plan. COACH's benefit plan ("Excess Plan") subject to and in accordance with the terms under the Supplemental Pension Plan shall be in the form of a hypothetical account equal to the sum of principal credits and conditions of the Base Plan and the Excess Plan interest credits prescribed thereunder. The University will make shall be responsible for funding COACH's benefit, provided that the Supplemental Contribution to aggregate annual cost of funding (including annuity purchase costs) said benefit shall not exceed \$114,583.32 for the Base Plan initial eleven (11) month Plan Year (beginning February 1, 2012), or \$125,000 for Plan Years beginning on and after January 1, 2013; provided, however, if COACH is not employed in the Position for the entire Plan Year, then the University's financial responsibility will be pro-rated accordingly for that year to reflect the number of months and days of the Excess Plan, as applicable, Year that he remained in the Position.

iii. Timing of Contributions. The University's Contributions to the Supplemental Plans shall be made as soon as administratively feasible after the earlier of the (iA) end of each plan year Plan Year or (iiB) if COACH COACH's employment terminates employment prior to the end of the plan year 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 \_\_\_\_\_~~

d. Terms of Plans Control. The Supplemental Plans shall be governed by separate written plan documents that shall reflect the contribution amounts and other terms specifically set forth in this paragraph ~~4314~~, 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.

15. The University shall have the right to use the COACH's name, likeness, image, and trademarks subject to and in accordance with the terms and conditions of that certain License Agreement effective February 1, 2012 and attached hereto as Exhibit A.

**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~~April, 2012.

**THIS PAGE INTENTIONALLY LEFT BLANK**

**LICENSE AGREEMENT**

This **LICENSE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of the 1<sup>st</sup> day of February, 2012 (the “Effective Date”), by and between **CHRIS PETERSEN ENTERPRISES, LLC**, an Idaho limited liability company (“Licensor”), and **BOISE STATE UNIVERSITY** (“University”), and acknowledged by **CHRIS PETERSEN**, individually (“Petersen”).

**RECITALS:**

**WHEREAS**, pursuant to that certain Employment Agreement by and between the University and Petersen dated effective February 1, 2012 (the “Employment Agreement”), Petersen serves as the head coach of the University’s football program; and

**WHEREAS**, Licensor is the exclusive licensee of any common law and/or statutory rights in Petersen’s name, nicknames, pseudonyms, assumed names, voice, signature, photograph, image, likeness, distinctive appearance, gestures, mannerisms that make him identifiable as the University’s head football coach (“Proprietary Rights”), together with trademarks and service marks (“Marks”) that utilize or incorporate such Proprietary Rights, whether now in existence or created and/or registered after the Effective Date (individually or in the aggregate, the “Property”); and

**WHEREAS**, the University desires the right to use the Property in connection with marketing and promoting its athletic programs, including, without limitation, the football program, University sponsored youth sports camps, as well as in connection with promoting or endorsing the University’s general interests and fundraising efforts (“University Interests”), and to incorporate the Property on products and services that it manufactures, markets, distributes, sells, publishes or otherwise disseminates in furtherance thereof (collectively or individually, the “Licensed Products”); and

**WHEREAS**, Licensor is willing to grant a sublicense to the University pursuant to which it shall have the exclusive right to use the Property, and to manufacture, market, distribute, publish or otherwise disseminate the Licensed Products, in relation to the University’s Interests, subject to and in accordance with the terms hereof.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree that the foregoing recitals are incorporated herein by reference and as follows:

1. **Sublicense Grant**. During the term of this Agreement, Licensor hereby grants to the University the exclusive right and sublicense to use the Property, including the right to manufacture, market, distribute, sell, publish or otherwise disseminate the Licensed Products, as well as on packaging, promotional, and advertising material associated therewith, in connection with and in relation to the University’s Interests (the “Sublicense Rights”); provided, however, that the Sublicense Rights shall be subject to the limitations set forth in the remainder of this

Section 1. Licensor reserves, and otherwise maintains, all rights in the Property which are not in connection with or in relation to the University's Interests. Petersen acknowledges that in connection with the grant of the Sublicense Rights hereunder, he consents to the University's appropriation of his privacy rights, provided that the University's use of the Property does not present Petersen in a false light, cause infliction of emotional distress to Petersen, or otherwise result in a breach of this Agreement.

1.1 **Limitations.** The exercise of the Sublicense Rights shall be subject to the following limitations:

(a) The Sublicense Rights shall be non-transferable and the University shall not grant any sublicense of the Sublicense Rights to any third party without the prior express written consent of the Licensor, which shall not be unreasonably withheld;

(b) The use of the Property in a Licensed Product and any packaging, marketing, advertisement, or promotional material associated therewith shall be subject to approval by Licensor in writing before the University uses, sells, distributes or discloses the same to the public;

(c) The Property, the Licensed Products, and any packaging, marketing, or promotional material associated therewith shall at all times be used, marketed, and promoted in a light positive to Petersen, Licensor and the University;

(d) During the term of this Agreement, the University shall not knowingly, negligently, or recklessly permit, do, or commit any act or thing that would degrade, tarnish, or deprecate Licensor or Petersen's public image in society or standing in the community; and

(e) The University shall be solely responsible for the manufacture, production, distribution, publication, dissemination and sale of the Licensed Products, and shall bear all costs associated therewith.

1.2 **Quality Control and Samples.** The Sublicense Rights shall be subject to the following quality control and sample requirements:

(a) Licensor shall fully and completely comply with all applicable patent, trademark, and copyright laws, rules, and regulations of the State of Idaho and the United States of America;

(b) All Licensed Products and all promotional, packaging, and advertising material associated therewith shall include all appropriate legal notices as required by applicable laws, rules, and regulations;

(c) All Licensed Products shall be of high quality and in conformity with standard samples approved by Licensor;

(d) If the quality of a class of the Licensed Products falls below a quality standard previously approved by Licensor, University shall use its best efforts to restore

such quality. If the University has not taken appropriate steps to restore such quality within thirty (30) days after notification by Licensor, the Licensed Product at issue may not be further manufactured, marketed, distributed, or sold;

(e) Prior to the commencement of manufacture and sale of the Licensed Products, the University shall submit to Licensor, at no cost to Licensor and for approval as to quality, a sample of all Licensed Products which University intends to manufacture and sell and any promotional and advertising material associated therewith. Failure of Licensor to approve such sample within thirty (30) days after receipt thereof shall be deemed approval. If Licensor should disapprove any sample, it shall provide specific reasons for such disapproval. University shall not sell Licensed Products if reasonably disapproved by Licensor. Once such samples have been approved by Licensor, the University shall not materially depart therefrom without Licensor's prior express written consent, which shall not be unreasonably withheld.

1.3 **Property Rights.**

(a) The parties understand and agree that, to the extent Property does not incorporate or derive from University Owned Intellectual Property as defined herein, Licensor shall retain all right, title, and interest in the Property and any modifications or improvements made to the Property by the University.

(b) To the extent Property does not incorporate or derive from University Owned Intellectual Property as defined herein, University acknowledges Licensor's exclusive rights in the Property and that the Property is unique and original and University agrees not to and shall not, at any time during or after the term of this Agreement, dispute or contest, directly or indirectly, any rights in and title to the Property or the validity thereof.

(c) University acknowledges and agrees that the Property has acquired secondary meaning.

(d) University agrees that its use of the Property inures to the benefit of Licensor and that the University shall not acquire any rights in the Property.

(e) Marks. Licensor shall be responsible for registration of Licensor's Marks with federal or other authorities, as applicable, at its sole cost, however, University may assume responsibility for obtaining the same with the written consent of Licensor. To the extent the Marks do not incorporate or derive from University Owned Intellectual Property as defined herein, University acknowledges and agrees that its first use in commerce of any of the Marks shall inure to the benefit of Licensor and vest ownership rights in the same to Licensor.

(f) Works. Notwithstanding anything herein to the contrary, Licensor shall not own or make any claim to copyright in any pictures or photographs of Petersen created or commissioned by the University during the term of this Agreement, provided, however, that the University's use of the same is consistent with the terms of this Agreement.

(g) University Owned Intellectual Property. Notwithstanding anything herein to the contrary, Licensor and Petersen acknowledge that if and to the extent that some or

all of the Marks incorporate, or are derivatives of trademarks, service marks, trade dress, the University's colors, copyrighted material or other intellectual property owned by the University (the "University Owned Intellectual Property"), the University makes no grant or transfer of any kind to Licensor or Petersen of any rights to University Owned Intellectual Property and neither Licensor nor Petersen shall use any such University Owned Intellectual Property except with the prior written consent of the University (which consent may be withheld or, once given, revoked at the discretion of the University upon reasonable notice to Petersen) or in accordance with fair use principles (descriptive or nominative) under applicable trademark laws.

1.4 **Post-Termination Rights.**

(a) As soon as practicable following termination of this Agreement, the University shall provide Licensor with a complete schedule of all inventory of Licensed Products then on-hand (the "Inventory").

(b) Upon the termination of this Agreement, except for reason of a breach of University's duty to comply with the quality control or legal notice marking requirements, the University shall be entitled to continue to sell the Inventory in its possession at the time of termination. Such sales shall be made subject to all of the provisions of this Agreement.

(c) Upon the termination of this Agreement and subject to subparagraph (d) below, all of the rights of the University under this Agreement shall forthwith terminate and immediately revert to Licensor and the University shall immediately discontinue all use of the Property and the like, at no cost whatsoever to Licensor.

(d) Following the termination of this Agreement, nothing herein shall preclude the University from using Petersen's name, image, nickname, signature, voice and photograph for historical and archival purposes in records and publications related to Petersen's performance of his duties as the University's head football coach. Further, Licensor hereby grants University a perpetual, worldwide, royalty-free non-exclusive license to use Petersen's name, image, nickname, signature, voice and photograph for the limited purpose of selling or distributing commemorative items which depict Petersen during his tenure as the head coach of the Team in a historically accurate and positive light, so long as his name, image, nickname, signature, voice and photograph, as the case may be, (i) is displayed on the item together with former Team members and/or coaches, or (ii) is not shown predominantly on the item. Petersen consents to the University's appropriation of his privacy rights in connection with the grant of the license in this section.

1.5 **Goodwill.** To the extent Property does not incorporate or derive from University Owned Intellectual Property as defined herein, University acknowledges that the Property and all rights therein, including, without limitation, the goodwill pertaining thereto, belong exclusively to Licensor.

1.6 **Infringement.**

(a) Licensor shall have the right, in its discretion, to institute and prosecute lawsuits against third persons for infringement of any Property right sublicensed in this Agreement, and to retain any recoveries therefrom.

(b) If Licensor does not institute an infringement suit within ninety (90) days after University's written request that it do so, the University may institute and prosecute such lawsuit. Any lawsuit brought by the University shall be prosecuted solely at the cost and expense of the University and all sums recovered in any such lawsuits, whether by judgment, settlement, or otherwise, in excess of the amount of University's attorneys' fees and other out of pocket expenses of such suit, shall be divided equitably between University and Licensor based on their respective rights under this Agreement.

(c) Upon request of the party bringing a lawsuit for infringement, the other party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The party bringing suit shall reimburse the other party for the expenses incurred as a result of such cooperation.

2. **Term.** The parties intend that this Agreement shall have a term identical to the Employment Agreement and that this Agreement shall be extended or terminated if and when the Employment Agreement is extended or terminated, as applicable. In this respect, this Agreement shall commence on the Effective Date and shall continue thereafter until January 31, 2017, unless terminated earlier as specifically provided in Section 3 hereof. This Agreement shall automatically extend if and when the term of the Employment Agreement is extended and such extension shall be for the same length of time as the Employment Agreement is extended. Provided, always, nothing herein shall preclude the parties from agreeing in writing to extend the term of this Agreement after the termination of the Employment Agreement, and to continue the grant of the Sublicense Rights on the terms and conditions set forth in such extension.

3. **Termination.** This Agreement shall terminate immediately upon the termination of the Employment Agreement for any reason. Upon the termination of this Agreement, Licensor shall be entitled to receive all Royalties (as defined in Section 4 hereof) that have accrued under this Agreement through the termination date. The Royalties shall cease to accrue as of the end of the day on the termination date. Such amounts of accrued, but unpaid, Royalties shall be due and payable to Licensor within sixty (60) days following the termination date.

4. **Royalties.** In consideration of Licensor granting the Sublicense Rights to the University under this Agreement, the University shall pay Licensor a royalty at the monthly rate of \$20,833.33 for each month during the term of this Agreement, payable on the last day of the month ("Royalty"). The parties agree that the payments of said Royalties shall be paid to Licensor without any federal, state, or local wage withholding and that Licensor and/or Petersen shall be solely responsible for the payment of all appropriate income tax and other withholding obligations due upon receipt of the Royalties.

5. **Indemnification.** Subject to the limits of the Idaho Tort Claims Act as set forth in Idaho Code §6-901 et. seq., University irrevocably covenants and agrees from and after the Effective Date hereof to defend, indemnify, and save and hold harmless Licensor and Petersen

from and against any claims, actions, causes of actions, damages, proceedings, liabilities, obligations, losses, costs, or expenses (including, without limitation, attorney fees and court costs) arising out of or resulting from University's use of the Property, including but not limited to claims alleging defects in the Licensed Products, alleging deception in endorsements, or otherwise arising under intellectual property law.

6. **Warranty.** Licensor represents and warrants to University that (a) it has the rights necessary to enter into this Agreement and to perform all obligations and provide all licenses granted herein; and (b) it has not granted licenses thereunder to any other entity that would restrict rights granted hereunder.

6. **Independent Contractor.** Each party shall act at all times herein as an independent contractor of the other party, and nothing contained herein shall be construed to create the relationship of principal and agent, employer and employee, or a partnership or joint venture between Licensor and the University. Further, nothing contained herein shall be construed to provide either party with the right, power, or authority, whether express or implied, to bind or create any duty or obligation on behalf of the other party, unless expressly authorized herein.

7. **Survival.** All of the covenants, agreements, indemnification obligations, and other terms in this Agreement shall survive the expiration or earlier termination of this Agreement in perpetuity.

8. **Miscellaneous Provisions.**

8.1 **Entire Agreement, Amendments, and Waivers.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Agreement may not be amended, modified, or discharged nor may any of its terms be waived except by an instrument in writing signed by the party to be bound thereby.

8.2 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto, and their respective successors and permitted assigns.

8.3 **Captions.** The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the sections, paragraphs, or provisions to which they apply or otherwise affect the interpretation hereof.

8.4 **Construction of Agreement.** Notwithstanding the fact that this Agreement may have been drafted or prepared by one of the parties, all of the parties confirm that they and their respective counsel have reviewed, negotiated, and adopted this Agreement as the joint agreement and understanding of the parties. Accordingly, this Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply.

8.5 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one (1)



Agreement. The signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. Telecopy signatures shall be deemed effective as originals.

8.6 **Governing Law and Venue.** This Agreement shall be deemed to have been entered into and to be performed in the State of Idaho, and shall be governed, construed, and enforced in accordance with the laws of the State of Idaho. **EACH PARTY HERETO AGREES AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE COURTS LOCATED IN BOISE, IDAHO FOR RESOLUTION OF ANY DISPUTES ARISING HEREUNDER.**

8.7 **Severability.** If any provision of this Agreement is or shall be deemed to be illegal, invalid, or unenforceable, the remaining provisions hereof shall remain in full force and effect and interpreted as if such illegal, invalid, or unenforceable provision did not exist herein.

**IN WITNESS WHEREOF**, this License Agreement has been executed and delivered by the parties hereto to be effective as of the day and date set forth herein above.

**BOISE STATE UNIVERSITY:**

**CHRIS PETERSEN ENTERPRISES, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Chris Petersen, Member

Its: \_\_\_\_\_

**ACKNOWLEDGED BY:**

\_\_\_\_\_  
Chris Petersen, Individually

**THIS PAGE INTENTIONALLY LEFT BLANK**

**BOISE STATE UNIVERSITY  
SUPPLEMENTAL PENSION PLAN**

Effective February 1, 2012

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND CONSTRUCTION .....	1
Section 1.01. Definitions.....	1
Section 1.02. Construction and Governing Law .....	4
ARTICLE II PARTICIPATION .....	4
Section 2.01. Participation Standards .....	4
Section 2.02. Separation from Employment .....	4
Section 2.03. Completion of Forms by Participants and Beneficiaries .....	4
ARTICLE III CALCULATION OF BENEFITS .....	4
Section 3.01. Participant Account.....	4
Section 3.02. Principal Credits.....	5
Section 3.03. Earnings Credits.....	5
Section 3.04. Minimum Account Balance .....	5
ARTICLE IV VESTING .....	5
Section 4.01. Vesting at Retirement or Termination of Service .....	5
Section 4.02. Vesting Due to Plan Termination .....	5
ARTICLE V PAYMENT OF BENEFITS .....	6
Section 5.01. General Provisions.....	6
Section 5.02. Separation from Employment On or After Normal Retirement Date.....	6
Section 5.03. Separation from Employment Before Normal Retirement Date.....	6
Section 5.04. Annuity Contract.....	6
Section 5.05. Death of Participant.....	6
Section 5.06. Notification of Retirement Date and Address.....	7
Section 5.07. Payments at Direction of Administrator .....	7
Section 5.08. Persons Under Legal Disability .....	7
Section 5.09. Limitations on Distributions .....	7
Section 5.10. Eligible Rollover Distributions.....	8
ARTICLE VI LIMITATIONS ON BENEFITS .....	9
Section 6.01. Maximum Annual Benefit.....	9
ARTICLE VII FUNDING OF PLAN AND PAYMENT OF COSTS .....	11
Section 7.01. Funds.....	11
Section 7.02. Employer Contributions.....	11
ARTICLE VIII ADMINISTRATION OF THE PLAN .....	11
Section 8.01. Administrator .....	11
Section 8.02. Powers of the Administrator .....	11
Section 8.03. Delegation by Administrator.....	12
Section 8.04. Advice to Administrator .....	12
Section 8.05. Fiduciary Insurance.....	12

Section 8.06. Limitation on Recovery .....12  
 Section 8.07. Benefit Payments .....12  
 Section 8.08. Unclaimed Benefit Payments.....12  
 Section 8.09. Payment of Expenses .....12

ARTICLE IX TERMINATION OF PLAN .....13  
 Section 9.01. Termination of Plan .....13  
 Section 9.02. Allocation of Assets on Termination .....13

ARTICLE X AMENDMENT PROCEDURE.....13  
 Section 10.01. Amendment for Qualification of Plan.....13  
 Section 10.02. Plan Amendments .....13

ARTICLE XI NON-ALIENATION OF BENEFITS AND DOMESTIC RELATIONS ORDERS14  
 Section 11.01. Non-alienation of Benefits.....14  
 Section 11.02. Procedures Regarding Domestic Relations Orders .....15  
 Section 11.03. Surviving Spouse .....16

ARTICLE XII CLAIMS PROCEDURE.....16  
 Section 12.01. Claims .....16  
 Section 12.02. Reliance.....17  
 Section 12.03. Disputes.....17

ARTICLE XIII MISCELLANEOUS .....17  
 Section 13.01. Non-Diversion.....17  
 Section 13.02. Merger, Consolidation of Plans, Transfer of Plan Assets, or Assumption of Plan  
 by Successor Employer .....17  
 Section 13.03. Limitation of Rights and Obligations .....17  
 Section 13.04. Qualified Military Service .....18  
 Section 13.05. Counterparts .....18

APPENDIX A ELIGIBLE EMPLOYEES .....19

## BOISE STATE UNIVERSITY SUPPLEMENTAL PENSION PLAN

Boise State University ("Employer") hereby establishes the Boise State University Pension Plan ("Plan"), effective February 1, 2012, for the benefit of Eligible Employees who become Participants.

### BACKGROUND

The Plan is a defined benefit pension plan intended to provide retirement benefits for Participants to supplement benefits provided through existing retirement plans sponsored by the Employer. The Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended ("Code"), and to constitute a "governmental plan" within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Plan also is intended to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the Job Creation and Worker Assistance Act of 2002 ("JCWAA"), the Pension Protection Act of 2006, Heroes Earnings Assistance and Relief Act of 2008 ("HEART Act"), and the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), as well as the regulatory guidance included in the 2010 Cumulative List under IRS Notice 2010-90 to the extent applicable to the Plan.

### ARTICLE I DEFINITIONS AND CONSTRUCTION

**Section 1.01. Definitions.** When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means, with respect to a Participant, the bookkeeping account established pursuant to Section 3.01 to determine the amount of the Participant's Accrued Retirement Benefit under the Plan. Where the context so permits, "Account" also means the balance credited to the Account.

(b) "Accrued Retirement Benefit" means, with respect to a Participant, the balance credited to his Account as of his Annuity Starting Date, if payable as a lump sum, or an Actuarially Equivalent benefit available under the Plan, if payable other than as a lump sum. If there are any surrender charges applicable under the Contract, a Participant's Accrued Retirement Benefit shall be net of those charges, subject to the provisions of Section 3.04.

(c) "Actuarial Equivalent" or "Actuarially Equivalent" means an alternative form of payment having the same actuarial value, based on the actuarial assumptions under the Contract.

(d) "Administrator" means the Employer.

(e) "Affiliated Employer" means any employer that is treated as a single employer with the Employer pursuant to Code Section 414(b), (c), or (m), provided that an Affiliated Employer shall be treated as such only to the extent required by the Code.

(f) "Annuity Starting Date" means the first day of the first period for which a benefit is payable to or with respect to a Participant as an annuity or any other form of benefit.

(g) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or its designee to make the election or provide the notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator or its designee may prescribe an oral, electronic, or telephonic form in lieu of or in addition to a written form.

(h) "Beneficiary" means the person determined in accordance with Subsection 5.05(b) who is entitled to receive benefits pursuant to the Plan on account of a Participant's death before his Annuity Starting Date.

(i) "Board" means the Board of Trustees of the Employer.

(j) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(k) "Contract" means the contract referred to in Section 3.03.

(l) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 415(d) or 401(a)(17), as applicable for any year.

(m) "Earnings Credit" means a credit to a Participant's Account pursuant to Section 3.03.

(n) "Effective Date" means February 1, 2012, the original effective date of the Plan.

(o) "Eligible Employee" means an Employee specified in Appendix A, but only during the time in which such person holds the position specified in Appendix A.

(p) "Employee" means an employee of the Employer.

(q) "Employer" means Boise State University, or if applicable, any successor employer that may adopt and assume sponsorship of the Plan.

(r) "FMLA" means the "Family and Medical Leave Act of 1993," as amended from time to time.

(s) "Normal Form" means a Single Life Annuity.

(t) "Normal Retirement Date" means the first day of the month coincident with or next following the date on which the Participant reaches age sixty-two (62), the normal retirement age under the Plan.

(u) "Optional Form" means a form of benefit available under the Plan other than the Normal Form, consisting of (i) a lump sum distribution or (ii) another form of distribution

provided under the Contract, provided that such form complies with the requirements of Section 5.09.

(v) "Participant" means a current or former Eligible Employee whose Accrued Retirement Benefit has not been distributed..

(w) "Plan" means the plan embodied herein, as amended from time to time, known as the "Boise State University Supplemental Pension Plan."

(x) "Plan Year" means the period beginning on the Effective Date and ending on December 31, 2012, and each calendar year thereafter.

(y) "Principal Credit" means a credit to a Participant's Account pursuant to Section 3.02.

(z) "Section," when not referring to a section of the Code or ERISA, means a section of the Plan.

(aa) "Separation Date" means the date on which the Participant Separates from Employment.

(bb) "Separation from Employment," "Separates from Employment," or any variation of such term means that a Participant was discharged from, retired, or quit the service of the Employer and all Affiliated Employers; provided, however, such terms shall not include (i) a temporary absence due to an authorized leave of absence, vacation, sickness, or accident; (ii) military service, to the extent required under USERRA and Code Section 414(u)(8)(A); or (iii) a leave that qualifies as a family or medical leave under the FMLA.

(cc) "Single Life Annuity" means, with respect to a Participant, a level monthly annuity beginning as of his Annuity Starting Date and payable for his life that is the Actuarial Equivalent of the Participant's Account.

(dd) "Spouse" means the person to whom the Participant is legally married on the applicable date, as determined under the internal laws of the State of Idaho without regard to conflict of law principles.

(ee) "Trust" means the trust established and maintained to hold the assets of the Plan. If all assets of the Plan are held by an insurance company pursuant to one or more annuity contracts, "Trust" shall refer to such annuity contract or contracts.

(ff) "Trustee" means the original or any successor trustee designated and appointed under the Trust. If all assets of the Plan are held by an insurance company pursuant to one or more annuity contracts, "Trustee" shall refer to such insurance company.

(gg) "Trust Fund" means the assets of the Plan held by the Trustee.

(hh) "USERRA" means "Uniformed Services Employment and Reemployment Rights Act of 1994," as amended from time to time.



(ii) "Vested" means a right of the Participant or his beneficiary that is unconditional, legally enforceable, and non-forfeitable.

**Section 1.02. Construction and Governing Law.** The following rules of construction shall govern any interpretation of the Plan:

(a) The Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code and, when not inconsistent with the Code, the laws of the State of Idaho.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

## ARTICLE II PARTICIPATION

**Section 2.01. Participation Standards.** An Eligible Employee shall become a Participant as of the date specified in Appendix A.

**Section 2.02. Separation from Employment.** If a Participant Separates from Employment or ceases to be an Eligible Employee, he shall cease to be an active Participant for all purposes except for any benefit to which he or his joint annuitant or Beneficiary may be entitled under Article V. A Participant shall cease to be a Participant upon the distribution of his entire interest under the Plan.

**Section 2.03. Completion of Forms by Participants and Beneficiaries.** A Participant and any joint annuitant or Beneficiary eligible to receive, or claiming a right to receive, any benefits under the Plan shall complete such Applicable Forms and furnish such proofs and information as may be required at any time by an insurance company, the Trustee, or the Administrator or its designee. If any fact relating to the Participant or his joint annuitant or Beneficiary has been misstated or is incorrect, the correct fact shall be used to determine the amount of any benefits hereunder. If overpayments or underpayments have been made because of such misstatements or incorrect facts, the amount of any future payments may be appropriately adjusted or the Employer may require repayment of any overpayment.

## ARTICLE III CALCULATION OF BENEFITS

**Section 3.01. Participant Account.** The Administrator shall establish and maintain a bookkeeping account to determine each Participant's benefit under the Plan. It shall make credits

and charges to such Account as provided in this Section. A Participant's Account is solely a bookkeeping entry to determine the amount of the Participant's benefits, and its existence shall not give the Participant the right to any specific asset of the Plan. The Participant's Accrued Retirement Benefit shall be equal to his Account balance as of his Annuity Starting Date.

### **Section 3.02. Principal Credits.**

(a) As of the last day of the Plan Year ending December 31, 2012, the Administrator shall credit a Principal Credit \$114,583.82 to each Participant's Account, provided that the Participant is employed by the Employer as an Eligible Employee on such date.

(b) As of the last day of each Plan Year after 2012, the Administrator shall credit a Principal Credit of \$125,000 to each Participant's Account, provided that the Participant is employed by the Employer as an Eligible Employee on such date.

(c) If the Participant Separates from Employment or ceases to be an Eligible Employee during a Plan Year, the Administrator shall credit to such Participant's Account as of the Separation Date a pro-rata portion of the Principal Credit that would otherwise apply for such year, based on the number of days in such Plan Year during which the Participant was employed by the Employer as an Eligible Employee.

### **Section 3.03. Earnings Credits.**

(a) Each Participant's Account shall be adjusted as of the end of each determination period applicable to the Participant (without regard to whether the Participant remains an Eligible Employee) until the Participant's Annuity Starting Date to reflect the rate of return that would have been earned by the Account had it been deposited under an annuity contract issued on the life of the Participant by an insurance company qualified to do business under the laws of Idaho, as selected by the Administrator. For this purpose, the Administrator shall not select an annuity contract that the Internal Revenue Service has determined to have been structured to provide an interest crediting rate that is in excess of a market rate of return as provided in Treasury Regulation Section 1.411(b)(5)-1(d)(5)(iii).

(b) The expenses of administering the Plan and Trust paid by the Trust shall reduce the Earnings Credits.

**Section 3.04. Minimum Account Balance.** Notwithstanding any provision of the Plan to the contrary, in no event shall a Participant's Account as of his Annuity Starting Date be less than the sum all Principal Credits to such Account.

## **ARTICLE IV VESTING**

**Section 4.01. Vesting at Retirement or Termination of Service.** A Participant shall be Vested in his Accrued Retirement Benefit at all times.

**Section 4.02. Vesting Due to Plan Termination.** In the case of the termination of the Plan by action of the Board or otherwise, the Accrued Retirement Benefit of each Participant

shall be irrevocably Vested, but only to the extent funded. On a termination of the Plan, no unfunded benefit with respect to any Participant or beneficiary shall be due or payable.

## ARTICLE V PAYMENT OF BENEFITS

### **Section 5.01. General Provisions.**

(a) All forms of distribution under the Plan are Actuarially Equivalent. Distributions shall be made in the Normal Form, unless the Participant elects an Optional Form pursuant to Subsection (b).

(b) The Participant may elect for his benefit to be distributed in an Optional Form in accordance with procedures established by the Administrator. The Administrator may prescribe rules, procedures, and forms for electing commencement of benefits and the form of distribution and for the revocation or change of such elections.

### **Section 5.02. Separation from Employment On or After Normal Retirement Date.**

If the Participant Separates from Employment on or after his Normal Retirement Date for a reason other than his death, he may elect for distribution of this Accrued Retirement Benefit to commence, in which case distribution shall be made in accordance with the Participant's election. Distribution of the Participant's benefit must commence not later April 1 of the year following the year in which he Separates from Employment.

**Section 5.03. Separation from Employment Before Normal Retirement Date.** If the Participant Separates from Employment before his Normal Retirement Date, he may elect for distribution of his Accrued Retirement Benefit to commence as of the first day of any month after his Separation Date and on or before his Normal Retirement Date. Unless the Participant elects an earlier Annuity Starting Date, his Annuity Starting Date shall be his Normal Retirement Date. Notwithstanding the preceding sentence, except in the event of a Participant's earlier death, his Annuity Starting Date may not occur before the earlier of (i) the end of the fifth Plan Year after the Plan Year in which he commenced participation under the Plan or (ii) his Normal Retirement Date.

**Section 5.04. Annuity Contract.** Any benefit payable as an annuity may be payable through the medium of an annuity contract (providing a fixed annuity) purchased at the direction of the Administrator from an insurance company qualified to do business in the State of Idaho; provided, however, any such annuity contract shall be subject to the limitations under Section 5.09, shall be endorsed so as to be nontransferable, and shall be purchased at the sole discretion of the Administrator or its designee. The distribution of an annuity contract to the Participant or his beneficiaries, if any, shall be in full satisfaction of any and all obligations of the Plan, the Trust and the Employer, to such Participant and beneficiaries.

### **Section 5.05. Death of Participant.**

(a) In the event of a Participant's death, neither the Participant nor any beneficiary of the Participant shall be entitled to any benefit under the Plan except as follows:

(1) If the Participant dies on or after his Annuity Starting Date, his joint annuitant, if any, shall be entitled to the survivor annuity or benefit under the form of distribution in effect on the date of the Participant's death.

(2) If the Participant dies before his Annuity Starting Date, his Beneficiary shall be paid a single sum amount equal to the Participant's Account balance as soon as administratively feasible after the Participant's death or such other form of benefit provided for under the Contract, provided that such distribution complies with the requirements of Section 5.09.

(b) If the Participant is married on the date of his death, his surviving Spouse shall be his Beneficiary. If the Participant is not married on the date of his death, the person or persons that he has designated as his Beneficiary on an Applicable Form shall be his Beneficiary, provided, however, if the Participant has not designated such a Beneficiary or if all designated Beneficiaries pre-decease him, his Beneficiary shall be his estate.

**Section 5.06. Notification of Retirement Date and Address.** As soon as possible before his Annuity Starting Date, a Participant shall certify his wish to commence distribution and his current mailing address in writing to the Administrator or its designee. Failure of the Participant to provide such certification shall not forfeit his right, if any, to any benefit hereunder, but, if it is administratively justified, it may result in the Administrator or its designee postponing the commencement of benefit payments, and no interest shall be paid on account of such postponement. If the mailing address of any person entitled to receive benefits hereunder is not known by the Administrator or its designee, it shall be the duty of any such person to inform the Administrator or its designee of his/her current mailing address and any subsequent changes thereto. The Participant is responsible for informing the Administrator or its designee of any change in his address. All notices to any person from the Administrator or its designee may be sent to the last address filed by the Participant with the Administrator or its designee. Neither the Administrator nor its designee has any further obligation in the event such notice is not received by such person.

**Section 5.07. Payments at Direction of Administrator.** Benefits payable under the Plan shall be paid at the direction of the Administrator or its designee in accordance with the terms of the Plan. There is no obligation of the Plan, Trust, or Employer to pay any such benefits except out of the assets of the Plan.

**Section 5.08. Persons Under Legal Disability.** If the Administrator is advised in writing that any benefit is payable to a minor or other person under legal disability, the Administrator or its designee may direct that such payments be made to the legal guardian of such person or to such other person or organization as a court of competent jurisdiction may direct in full satisfaction of any payment due under the Plan.

**Section 5.09. Limitations on Distributions.** Notwithstanding any provision in the Plan to the contrary, any distribution under the Plan shall be made in accordance with Code Section 401(a)(9) and regulations sections 1.401(a)(9)-2 through 1.401(a)(9)-9 and the incidental death benefit requirements under Code Section 401(a)(9)(G). The distribution of the entire interest of the Participant under the Plan shall commence at his Normal Retirement Date or Late Retirement

Date, or, if later, by April 1 of the calendar year following the calendar year in which such Participant retires and in accordance with the applicable requirements of Code Section 401(a)(9).

### **Section 5.10. Eligible Rollover Distributions.**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit the election of a Distributee under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator or its designee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) The following definitions shall apply to this Section:

(1) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the designated beneficiary of the Distributee, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); or (iii) that is made upon the hardship of the Participant. A portion of a distribution does not fail to be an eligible rollover distribution merely because it consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified plan described in Code Section 401(a) or 403(a), or to an annuity contract described in Code Section 403(b), provided such plan or contract agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) An "Eligible Retirement Plan" is an individual retirement account described in Code Section 408(a), a Roth individual retirement account described in Code Section 408A, an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Eligible Rollover Distribution of the Distributee. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). With respect to a non-spouse Beneficiary, Eligible Retirement Plan means an individual retirement account, a Roth individual retirement account or an individual retirement annuity established for purposes of receiving a distribution on behalf of the

designated beneficiary as an inherited individual retirement account or individual retirement annuity within the meaning of Code Section 408(d)(3)(C).

(3) A "Distributee" means the Participant when eligible to receive a distribution from the Plan, or the Participant's surviving spouse who is eligible to receive a distribution from the Plan, or the Participant's non-spouse Beneficiary who is eligible to receive a distribution from the Plan.

(4) A "Direct Rollover" is a payment by the Plan to the eligible retirement plan specified by the Distributee.

(c) Not fewer than thirty (30) days nor more than one-hundred-eighty (180) days before a Participant's Annuity Starting Date, the Administrator or its designee shall provide the Participant with the written explanation required by Code Section 402(f), if applicable, including an explanation of the rules: (i) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan; (ii) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan; (iii) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within sixty (60) days after the date the Distributee receives the distribution; and (iv) if applicable, certain special rules regarding taxation of the distribution as described in Code Section 402(d) and (e).

(d) The Distributee may designate only one (1) Eligible Retirement Plan to receive a Direct Rollover of all or a portion of the Eligible Rollover Distribution to be made. The portion of the Eligible Rollover Distribution to be paid in a Direct Rollover must be not less than the lesser of Five Hundred Dollars (\$500) or the entire Eligible Rollover Distribution.

(e) If the Distributee fails to elect affirmatively or decline the Direct Rollover payment option before the Annuity Starting Date, the Administrator or its designee shall instruct the Trustee to make the distribution assuming the Distributee elected not to take a Direct Rollover. A distribution shall not be made pursuant to the default procedure described in the preceding sentence, unless the Participant received proper notice regarding the direct rollover payment option at least thirty (30) days before the date of the distribution.

(f) The Administrator or its designee shall prescribe procedures as allowed by the regulations to implement the provisions of this Section.

**ARTICLE VI  
LIMITATIONS ON BENEFITS**

**Section 6.01. Maximum Annual Benefit.**

(a) The limitations of Code Section 415(b) shall apply to the Plan. For this purpose:

(1) The "applicable mortality table" means the mortality table based on the prevailing standard table specified by the Commissioner (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which the actuarial equivalent amount is being determined (without regard to any

other subparagraph of Code Section 807(d)(5)), as prescribed by the Internal Revenue Service. The applicable mortality table is the table prescribed in Rev. Rul. 2007-67; provided, however, any new mortality table prescribed by the Internal Revenue Service shall become effective under the Plan as of the last day on which the Plan is required to adopt such table, unless an earlier date is adopted hereunder.

(2) The "defined benefit dollar limitation" is Two Hundred Thousand Dollars for 2012, as increased by the Cost of Living Adjustment thereafter, and payable in the form of a straight life annuity. This adjusted limitation shall apply to each Plan Year.

(3) The "maximum permissible benefit" is the defined benefit dollar limitation adjusted where required, as provided in (A) and, if applicable, in (B), (C), or (D) below.

(A) If the Participant has fewer than ten (10) years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is ten (10).

(B) If the benefit of the Participant begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age sixty-two (62) (adjusted under (A) above, if required). To determine the defined benefit dollar limitation for an age prior to age sixty (62), the defined benefit dollar limitation shall be adjusted by using the applicable mortality table and an interest rate not less than the greater of (i) 5% or (ii) the rate specified in the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this (B) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(C) If the benefit of the Participant begins after the Participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age sixty-five (65) (adjusted under (A) above, if required). To determine the defined benefit dollar limitation for an age later than age sixty-five (65), the defined benefit dollar limitation shall be adjusted by using the applicable mortality table and an interest rate not greater than the lesser of (i) 5% or (ii) the rate specified in the Plan. For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.

(D) If the retirement income benefit under the Plan is payable in a form of benefit that would otherwise be subject to 417(e)(3) if the Plan were not a governmental plan, the defined benefit dollar limitation shall be adjusted by using

the applicable mortality table and an interest rate not less than the greatest of (1) the interest rate under the Plan, (2) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in Code Section 417(e)(3)) were the interest rate assumption or (3) five and one-half percent (5½ %) interest.

(b) For purposes of this Section, all defined benefit plans of the Employer, whether or not terminated, are to be treated as a single defined benefit plan, and all defined contribution plans of the Employer are to be treated as a single defined contribution plan.

(c) The Employer and all Affiliated Employers shall be considered as a single employer for purposes of applying the limitations of this Article VI.

(d) For purposes of this Article VI, the limitation year for any qualified plan of the Employer shall be the Plan Year.

## ARTICLE VII FUNDING OF PLAN AND PAYMENT OF COSTS

**Section 7.01. Funds.** All contributions under the Plan shall be paid or transferred to the Trustee to be held, managed, invested and distributed by the Trustee in accordance with the provisions of the Plan and Trust. All benefits under the Plan shall be distributed solely from the Trust Fund and the Employer shall have no liability therefore other than the obligation to make contributions to the Plan as provided in Section 7.02.

**Section 7.02. Employer Contributions.** As of the date on which a Principal Credit is to be made under the Plan or as soon as administratively feasible thereafter, the Administrator shall make a contribution to the Plan equal to the Principal Credit. All expenses incident to the operation and management of this Plan shall be paid by the Trustee out of the Trust Fund. The Employer shall have no further obligation to make any contributions to the Plan on or after the Plan's termination date, as established pursuant to Article IX of the Plan.

## ARTICLE VIII ADMINISTRATION OF THE PLAN

**Section 8.01. Administrator.** The Employer is the Plan Administrator, and shall act through action of the Board, except as the Board's authority to act is delegated as provided in Section 8.03. The Administrator shall have authority to control and manage the operation and administration of the Plan. The Administrator shall have all powers necessary or convenient to enable it to exercise such authority. In connection therewith, the Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

**Section 8.02. Powers of the Administrator.** Except as may be otherwise specifically provided in the Plan, the Administrator shall have the discretionary power to construe and interpret the Plan and to determine all questions of fact or law arising hereunder. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the



Plan in such manner and to such extent as it may deem expedient and, subject to provisions of the Plan regarding claims to benefits, the Administrator should be the sole and final judge of such expediency.

**Section 8.03. Delegation by Administrator.** The Administrator may delegate one or more specified duties or responsibilities under the Plan to one or more other persons in writing, and may revoke such delegated authority at any time without cause or advance notice.

**Section 8.04. Advice to Administrator.** The Administrator may employ or contract with one or more persons to render legal or other advice with regard to its duties, responsibilities and authority under the Plan, the cost of which may be paid pursuant to Section 8.09.

**Section 8.05. Fiduciary Insurance.** The Administrator may purchase fiduciary liability insurance for any employees of the Administrator to cover liability or losses occurring by reason of the act or omission of an employee with respect to the Plan.

**Section 8.06. Limitation on Recovery.** A Participant and any beneficiary may not seek recovery against the Board, Employer, Administrator or Trustee, or any employee, contractor, or agent of the Board, Employer, Administrator or Trustee, for any loss sustained by the Participant or beneficiary due to the nonperformance of their duties, negligence, or any other misconduct of the above named persons.

**Section 8.07. Benefit Payments.** The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and any affected Participant or beneficiary, and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

**Section 8.08. Unclaimed Benefit Payments.** If any payment of a benefit hereunder, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Trustee by the Administrator, or its designee, is returned unclaimed, the Trustee shall notify the Administrator and shall discontinue further payments to such payee until it receives further instructions from the Administrator, subject to any applicable Unclaimed Property Act provisions.

**Section 8.09. Payment of Expenses.** All expenses and costs associated with the administration and investments of the Plan shall be paid from the Trust Fund.

**ARTICLE IX  
TERMINATION OF PLAN**

**Section 9.01. Termination of Plan.** The Employer may terminate the Plan in whole or in part by action of its Board at any time effective as of the Plan's termination date, as determined by the Board in its sole and final discretion. Subject only to Section 4.02, termination of the Plan shall not reduce the Participant's Accrued Retirement Benefit.

**Section 9.02. Allocation of Assets on Termination.** On termination of the Plan, accruals of benefits by the Participant shall cease as of the Plan termination date. The Administrator or its designee, after all expenses of the Plan have been paid or provision has been made therefore, shall distribute a nontransferable annuity or make a lump sum payment or payments for the benefit of the Participant and any beneficiaries with respect to the Accrued Retirement Benefit of the Participant and any beneficiaries, to the extent funded. The distribution of any annuity or lump sum payment or any combination of such distributions and payments of all Trust Fund assets to the Participant or his beneficiaries, if any, shall be in full satisfaction of any and all obligations of the Plan, the Trust and the Employer, to such Participant and beneficiaries.

**ARTICLE X  
AMENDMENT PROCEDURE**

**Section 10.01. Amendment for Qualification of Plan.** It is the intent of the Employer that the Plan shall be and remain qualified for tax purposes under the Code. The Administrator may submit the Plan for approval under the Code and all expenses incident thereto shall be borne by the Employer. The Employer may make any modification, alterations or amendments to the Plan necessary to obtain and retain approval of the Secretary of Treasury or his delegate as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of Employer making any amendment shall be delivered to the Trustee, and the Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Employer, the Participant and his beneficiaries, and all others having any interest under this Plan shall be bound thereby.

**Section 10.02. Plan Amendments.** The Employer reserves the right, in its sole and final discretion, by action of its Board, to approve any amendment or modification of the Plan; provided, however, that no such amendment shall reduce the Participant's Accrued Retirement Benefit, except to the extent consistent with changes to the qualification requirements under Code Section 401(a). By resolution, the Board may delegate its authority to make Plan amendments or modifications to the Administrator. A certified copy of any resolution of the Board or the Administrator, if authorized, making a Plan amendment shall be delivered to the Trustee. The Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Employer, Board, Administrator, Trustee, and the Eligible Employee, Participant, beneficiary, insurance company and any others having or claiming to have any interest under this Plan shall be bound thereby.

**ARTICLE XI**  
**NON-ALIENATION OF BENEFITS AND DOMESTIC RELATIONS ORDERS**

**Section 11.01. Non-alienation of Benefits.**

(a) Except as provided in Subsection (b) or (c), no benefit under the Plan, prior to actual receipt thereof by the Participant or a beneficiary, shall be subject to any debt, liability, contract, engagement, or tort of the Participant or his beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or other voluntary or involuntary alienation or other legal or equitable process, nor transferable by operation of law.

(b) The benefits of the Participant shall be paid to an "Alternate Payee" as defined in Code Section 414(p) pursuant to the applicable requirements of any "Qualified Domestic Relations Order." "Qualified Domestic Relations Order" means a domestic relations order which creates or recognizes the existence of, or assigns to an Alternate Payee, a right to receive all or a portion of the benefits payable to the Participant under the Plan and which satisfies the following:

(1) The domestic relations order must be a court order, judgment or decree, including a property settlement agreement incorporated in such an order, judgment or decree by a court of competent jurisdiction.

(2) The domestic relations order (A) must relate to the provision of child support, alimony payment, or marital property rights to an Alternate Payee, and (B) be made pursuant to a State domestic relations law (including community property laws).

(3) The domestic relations order must clearly specify (A) the name and last known address, if any, of the Participant and the name and mailing address of each Alternate Payee covered by the domestic relations order; (B) the amount or percentage of the Accrued Retirement Benefit of the Participant to be paid by the Plan to each Alternate Payee, or the manner in which such amount or percentage is to be determined; (C) the number of payments or period time to which such domestic relations order applies; and (D) the name of the Plan to which the domestic relations order applies.

(4) The domestic relations order cannot require that the Plan (A) provide any type or form of benefit, or any option, not otherwise provided under the Plan; or (B) provide increased benefits (determined on the basis of actuarial value); or (C) provide for the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another domestic relations order previously determined under the Plan to be a Qualified Domestic Relations Order.

(5) Notwithstanding any other provision of the Plan, the Plan may make a distribution to an Alternate Payee pursuant to a Qualified Domestic Relations Order prior to the date the Participant attains his earliest retirement age, as defined in Code Section 414(p)(4)(B) only if the following conditions are satisfied: (A) the payment of benefits is as if the Participant is to actually retire on the date on which such payments are ordered to begin; and (B) the payment of benefits is in a form in which such benefits may be paid

under the Plan to the Participant (other than in the form of a Joint and Survivor Annuity with respect to the Alternate Payee and spouse).

(6) "Earliest retirement age" means the earlier of (A) the date on which the Participant is entitled to a distribution under the Plan; or (B) the later of age fifty (50) or the earliest date the Participant could begin receiving benefits under the Plan if he terminated employment.

(7) The domestic relations order may require that the former spouse of the Participant be treated as the surviving spouse with respect to any survivor benefits payable under the Plan pursuant to the domestic relations order, if the Participant dies.

(c) The benefits of the Participant may be reduced to satisfy the Participant's liability to the Plan due to (i) the Participant's conviction of a crime involving the Plan, or (ii) a judgment, order, decree, or settlement agreement that expressly provides for offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan.

(d) Notwithstanding any other provision of the Plan, any benefit payable to the Participant or a beneficiary of the Participant shall be reduced by any benefit paid or payable from the benefits of the Participant under the Plan pursuant to Subsection (b) or (c). The Administrator or its designee, in its sole discretion, may direct the Trustee to separately account for any benefit payable pursuant to Subsection (b) or (c).

#### **Section 11.02. Procedures Regarding Domestic Relations Orders.**

(a) If the Plan receives any order which may be a Qualified Domestic Relations Order, the Administrator or its designee shall:

(1) promptly notify the Participant and any prospective Alternate Payee of (i) the receipt of such order, and (ii) the procedures under the Plan for determining whether such order is a Qualified Domestic Relations Order; and

(2) within a reasonable period after receipt of such order, determine whether such order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of such decision.

(b) The Administrator or its designee shall establish reasonable procedures to determine whether any order is a Qualified Domestic Relations Order and to administer the distribution of benefits with respect to such orders. The procedures shall (i) be in writing, (ii) provide prompt notice of such procedures to each person specified in the order as entitled to the payment of benefits, at the address specified in the order, and (iii) permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to Alternate Payees with respect to a Qualified Domestic Relations Order.

(c) During any period of time in which the issue of whether an order is a Qualified Domestic Relations Order is being determined by the Administrator or its designee, a court of competent jurisdiction, or otherwise, the Administrator or its designee shall provide the Trustee

with written direction to separately account under the Trust for the amounts, if any, which would be payable to an Alternate Payee during such period if such order is determined to be a Qualified Domestic Relations Order. If within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the order, the order, or modification thereof, is determined to be a Qualified Domestic Relations Order, the Plan shall pay such separately accounted amounts, plus any interest thereon, to the Alternate Payee or Payees entitled thereto. If within the eighteen (18) month period the order is determined to not be a Qualified Domestic Relations Order, or if such issue has not been resolved, the Administrator or its designee shall direct the Trustee to pay such separately accounted amounts, plus any interest thereon, to the Participant or beneficiary entitled to such amounts as if there had been no order. Any determination that an order is a Qualified Domestic Relations Order after the close of the eighteen (18) month period shall have only prospective application. Notwithstanding the preceding provisions, the Administrator or its designee, in its sole discretion, may delay payment of any amounts payable under the Plan to the Participant (i) to the end of said eighteen (18) month period, if an order is found to be defective within said eighteen (18) month period and the Administrator or its designee has notice that the parties with respect to the order are attempting to rectify any defects in the order, or (ii) for a reasonable period of time, if the Administrator or its designee receives notice that an order which may be a Qualified Domestic Relations Order is being sought with respect to the Participant; provided, however, for these purposes, a court stay to the Administrator or its designee during the time an appeal is pending is notice that the parties with respect to an order are attempting to cure any defects in an order, and the Administrator or its designee shall honor a restraining order prohibiting the disposition of any amounts with respect to the Participant pending resolution of a dispute with respect to an order which may be a Qualified Domestic Relations Order.

**Section 11.03. Surviving Spouse.** To the extent so provided in any Qualified Domestic Relations Order, the former spouse of the Participant shall be treated as the surviving spouse of the Participant under the Plan and the spouse of the Participant shall not be treated as a surviving spouse of the Participant for such purposes.

## ARTICLE XII CLAIMS PROCEDURE

**Section 12.01. Claims.** Any person who believes that he is entitled to any benefits under the Plan shall present such claim in writing to the Administrator. The Administrator shall within ninety (90) days provide adequate notice in writing to any claimant as to the decision on any such claim. If such claim has been denied, in whole or in part, such notice shall set forth (i) the specific reasons for such denial, (ii) the specific reference to any pertinent provisions of the Plan on which denial is based, (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and (iv) an explanation of the review procedure for the Plan. Such notice shall be written in a manner calculated to be reasonably understood by the claimant. Within sixty (60) days after receipt by the claimant of notification of denial, the claimant shall have the right to present a written appeal to the Administrator. If such appeal is not filed within said sixty (60) day period, the decision of the Administrator shall be final and binding. The Administrator shall conduct a full and fair review of such denial. The claimant or his duly authorized representative may review any Plan documents that are pertinent to the claim and may

submit issues and comments to the Administrator in writing. A decision by the Administrator shall be made promptly, and in any event not later than sixty (60) days after its receipt of the appeal.

**Section 12.02. Reliance.** If the Administrator or any other person with respect to the Plan acts in reliance on an election, consent, or revocation made pursuant to this Plan, the election, consent, or revocation shall be treated as valid for purposes of discharging the Plan from liability to the extent of payments made pursuant to such acts.

**Section 12.03. Disputes.** In the event there is a dispute over any terms and conditions of this Plan affecting any individual, such individual shall notify the Administrator in writing of his position. The decision of the Administrator shall be final and binding on all parties, and this appeal shall be the sole and exclusive remedy in any such dispute.

### ARTICLE XIII MISCELLANEOUS

**Section 13.01. Non-Diversion.** The assets of the Plan shall never inure to the benefit of the Employer and shall be held for the exclusive purpose of providing benefits to the Participant and beneficiaries and defraying reasonable expenses of administering the Plan.

(a) In the case of a contribution which is made by the Employer under a mistake of fact, such contribution shall be returned to Employer, upon demand, within one year after the payment of the contribution; and

(b) Contributions by the Employer are conditioned on the initial qualification of the Plan, and if the Plan does not so qualify initially, then such contributions shall be returned to the Employer, upon demand, within one year after the date of denial of qualification of the Plan.

**Section 13.02. Merger, Consolidation of Plans, Transfer of Plan Assets, or Assumption of Plan by Successor Employer.** In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, or the assumption of the Plan by a successor employer, the Participant in the Plan shall be entitled to a benefit (as if the Plan had been terminated) immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (as if the Plan had been terminated).

**Section 13.03. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any annuity contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) As conferring upon the Participant or beneficiary, or any other person any right or claim against the Board, Employer, Administrator or Trustee except to the extent that such right or claim shall be specifically expressed and provided in the Plan.

(b) As an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Eligible Employee to continue or terminate the employment relationship at any time.

(c) As creating any responsibility or liability for any taxes or tax consequences on the accrual or payment of benefits under this Plan.

**Section 13.04. Qualified Military Service.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Further, if the Participant dies while performing qualified military service, his Beneficiary shall be entitled to receive any additional benefit provided under the Plan to which the Participant would have been entitled had he resumed employment with the Employer and then died.

**Section 13.05. Counterparts.** This Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All the counterparts shall constitute but one and the same instrument and shall be sufficiently evidenced by any one counterpart.

**IN WITNESS WHEREOF**, the Employer has caused this Plan to be established as of the date and year first above written.

**BOISE STATE UNIVERSITY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**APPENDIX A  
ELIGIBLE EMPLOYEES**

1. Chris Petersen, Head Men's Football Coach, effective February 1, 2012.



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**SUBJECT**

Compensation Adjustments for Agency Heads of the State Board of Education

**APPLICABLE STATUTES, RULE OR POLICY**

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

**BACKGROUND / DISCUSSION**

The Division of Financial Management (DFM) issued a guidance memo on salary increases dated March 20, 2012. The memo provides that agencies with sufficient personnel costs funds in the current fiscal year, with approval from DFM, may choose to implement the 2% CEC (change in employee compensation) early. Agencies may also provide employees with additional rewards such as lump sum bonuses.

Ann Stephens has served the State Board for Professional-Technical Education in an exemplary fashion as administrator and several other key positions over the past 29 years. Her administration has dealt with a particularly difficult time in which she has maintained direct services through reducing administrative overhead and improving efficiencies. This past year the agency completed and submitted a major Coalition for Transition to Teaching (C3T) grant, funded a pilot bridge ABE program at NIC, identified resources to assist CWI with program relocation, and worked with the State Board office to share technology services. She has invested a significant amount of personal resources into the Division and has dedicated her professional life to student success in professional-technical programs. Since starting as administrator, she has not received a salary adjustment, due to the difficult financial times, in spite of exemplary evaluations.

DFM has approved the Office of the State Board of Education's plan for an early implementation of the 2% CEC and one-time merit increases for its permanent, full-time employees. Pursuant to Board policy I.E.2.e., the Board must approve any salary adjustment for the Executive Director.

DFM has also approved the Division of Vocational Rehabilitation compensation plan for an early implementation of the 2% CEC. Pursuant to Board policy I.E.2.e., the Board must approve any salary adjustment for the Administrator.

**IMPACT**

The Legislature approved a 2% CEC for all classified and nonclassified permanent performing employees for FY 2013. Agencies have the discretion to make compensation adjustments in FY 2012, as funding provides.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**BOARD ACTION**

I move to approve a one-time bonus for Ann Stephens as Administrator of the Division of Professional-Technical Education in the amount of \$1,925, effective FY 2012.

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

I move to approve a one-time bonus for Mike Rush as Executive Director of the Idaho State Board of Education in the amount of \$1,260 effective FY 2012, and early implementation of a 2% increase in annual salary for FY 2013, at an hourly rate of \$53.95 (annual salary of \$112,216) effective March 18, 2012.

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

I move to approve an early implementation of 2% increase in annual salary for Don Alveshire as Administrator of the Division of Vocational Rehabilitation for FY 2013, at an hourly rate of \$46.59 (annual salary of \$96,907) effective April 15, 2012.

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 19, 2012**

---

**UNIVERSITY OF IDAHO**

**SUBJECT**

University of Idaho request for approval of the settlement agreement discussed in executive session

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.W.3. Idaho Code Sections 67-2345(d) and (f).

**BACKGROUND/DISCUSSION**

University of Idaho requests approval of the litigation settlement agreement consistent with the terms discussed in executive session.

**IMPACT**

Approval of the settlement will bring finality to the matter.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

A motion to approve the settlement considered by the Board in executive session and to authorize University of Idaho to sign all necessary settlement documents.

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

**THIS PAGE INTENTIONALLY LEFT BLANK**