

**AUDIT  
AUGUST 16, 2012**

---

<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>BOISE STATE UNIVERSITY AND BRONCO ATHLETIC ASSOCIATION OPERATING AGREEMENT</b>	Motion to approve
<b>2</b>	<b>AMENDMENT TO BOARD POLICY</b> Section V.Y. Compliance Programs – First Reading	Motion to approve

---

**THIS PAGE INTENTIONALLY LEFT BLANK**

**AUDIT**  
**AUGUST 16, 2012**

---

**BOISE UNIVERSITY**

**SUBJECT**

Board approval of Boise State University memorandum of understanding with Bronco Athletic Association, Inc.

**REFERENCE**

July 2012                      Audit Committee reviewed and recommended Board approval of the memorandum of understanding

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Board policy requires a foundation of an institution be brought before the Board to be formally recognized as a nonprofit corporation or affiliated foundation to benefit a public college or university in Idaho. Each foundation shall be brought into substantial conformance with these policies and upon recognition by the Board, the foundation is ratified, validated, and confirmed, and it shall be deemed to have been organized as if its organization had taken place under authority of this policy. The operating agreement must be approved by the Board prior to execution.

Boise State University (BSU) worked with the Bronco Athletic Association Foundation to prepare the memorandum of understanding (MOU). The Audit Committee reviewed and recommended approval of the MOU with edits already incorporated with the MOU as submitted.

**IMPACT**

Approval of the MOU brings the Foundation into compliance with Board policy V.E.

**ATTACHMENTS**

Attachment 1 – BSU/Bronco Athletic Association MOU

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

The MOU addresses the topics outlined in Policy V.E.

Staff recommends approval.

**BOARD ACTION**

I move to approve the memorandum of understanding between the Bronco Athletic Association, Inc. and Boise State University as presented.

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_ No \_\_\_

**THIS PAGE INTENTIONALLY LEFT BLANK**

# Memorandum of Understanding Between the Bronco Athletic Association, Inc. and Boise State University

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between Boise State University (“University”) and the Bronco Athletic Association, Inc., an Idaho nonprofit corporation (“Athletic Association”), individually referred to as Party and collectively referred to as Parties.

## RECITALS

- A. The Athletic Association was organized and incorporated in 1968 for the purpose of promoting and advancing the athletic programs of Boise State University.
- B. The Athletic Association exists independent from the University to advance the athletic programs at the University.
- C. The Athletic Association accomplishes its work by raising financial support for the following, including but not limited to: the annual fund (memberships), scholarship endowment, planned giving, special events (biennial auction, Varsity “B” golf tournament and reunions), sports enhancement gifts and capital campaigns.
- D. The Athletic Association is dedicated to assisting the Athletic Department and University in the long-term athletic priorities of the University.
- E. This MOU is intended to further define the relationship between the University and the Athletic Association and to set forth policies and procedures that will contribute to the coordination of their collaborative activities.
- F. This MOU has been reviewed and approved by the State Board of Education.

## **AGREEMENT**

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

### **I. Acknowledgment of University Governance**

A. The parties acknowledge that the State Board of Education is responsible for the governance of the University to include overseeing the mission, leadership, operations, performance and employment compensation, and evaluation of all employees, including the University President. The University President is the Chief Executive Officer of the University and is authorized to act on behalf of the University by the State Board of Education. The State Board of Education is not responsible for the governance or oversight over the Athletic Association.

B. The parties agree that all actions taken pursuant to this MOU shall be in accordance with all University and State Board of Education policies and procedures governing the University.

### **II. Acknowledgment of Athletic Association Governance**

A. The parties acknowledge that the Athletic Association is a separately incorporated 501(c) (3) nonprofit organization created to promote and advance the athletic programs at Boise State University.

B. The parties acknowledge that the Athletic Association's board of directors is responsible for the operations, control and management of the Athletic Association including assets of the Athletic Association and the prudent management of Association dues, sponsorships, special events, and gifts consistent with donor intent.

C. The parties acknowledge that the Athletic Association is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

D. The parties agree that all actions taken pursuant to this MOU shall be in accordance with the Athletic Association's articles and bylaws. In carrying out its purposes, the Athletic Association shall not engage in activities that conflict with federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations), applicable policies of the State Board of Education, or the role and mission of the University.

E. All Athletic Association organizational documents, including but not limited to the articles of incorporation and bylaws shall be provided to the State Board of Education. Any proposed amendments or changes to such documents shall be provided to the State Board of Education in advance of their presentation for approval by the approving bodies.

### III. The Athletic Association General Relationship to the University

A. The Athletic Association shall continue to develop its own strategic plan in collaboration with University leadership. This plan will serve to shape the focus of the Athletic Association and inform the University and Athletic Association staff working on behalf of the Athletic Association of Athletic Association objectives.

B. The Athletic Association shall maintain its own directors and officers liability insurance.

C. For informational purposes, the Athletic Association shall provide the University President with an annual report regarding the Athletic Association's programs, and other such reasonable information as requested. Since all Athletic Association funds are placed with the Boise State University Foundation ("Foundation"), pursuant to Paragraph IV.F. hereof, the annual audit of the Foundation shall hereafter serve as the annual financial audit report for the Athletic Association. In addition, the Foundation shall maintain and report financial information related to transfers from Athletic Association accounts to University accounts; unrestricted funds received by the Foundation on behalf of the Athletic Association; and unrestricted funds available to the Athletic Association during the current fiscal year.

1. Not less than annually, the Athletic Association shall provide a written report to the University President setting forth the following items:

a) a list of all of the Athletic Associations officers, directors, and employees;

b) an annual report of the Athletic Association major activities;

c) an annual report of (1) any actual litigation involving the Athletic Association during its fiscal year; (2) identification of legal counsel used by the Athletic Association for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Athletic Association.

D. The Athletic Association shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of either the University President or the University Vice President for Finance and Administration and, if required by applicable law or State Board of Education policy, the State Board of Education.

#### IV. The University's General Relationship to the Athletic Association

A. The University President shall be responsible for communicating University priorities and long-term plans to the Athletic Association.

~~B. The University shall include the Athletic Association as an active and prominent participant in the strategic planning for the University.~~

C. The University President shall work closely with the Athletic Association and shall assume a prominent role in Athletic Association programs and activities. The University President shall also attend Athletic Association board meetings by invitation, but shall not serve as an Athletic Association board member and shall not vote at such meetings.

D. The Athletic Association Board of Directors shall have sole responsibility and authority for Athletic Association policy-making, and financial oversight of Athletic Association funds.

1. No University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) shall be permitted to have responsibility or authority for Athletic Association policy-making or financial oversight of Athletic Association funds.

E. No University employee shall receive direct payments, compensation, or other benefits from the Athletic Association.

F. The University shall continue to require all of its affiliated foundations, including the Athletic Association, to direct revenue to the Foundation for management. As such, the Athletic Association shall be required to deposit all revenues with the foundFoundation and the parties acknowledge that it is proper and prudent for the Foundation to manage the funds of the Athletic Association.

G. The University recognizes that the Athletic Association is a private, nonprofit corporation with the authority to keep all records and data confidential consistent with the law. The University shall establish and enforce policies that support the Athletic Association's ability to respect the privacy and preserve the confidentiality of donor records.

H. The University and the Athletic Association acknowledge that the Athletic Association, as an independent entity, carries out functions for the benefit of the University. As such, the University shall, when not otherwise prohibited by other applicable confidentiality requirements, share certain information with regard to donors, alumni and other such information needed by the Athletic Association to carry out its beneficial functions for the University. All such information shall be held by the Athletic Association as confidential and shall only be used in a manner that benefits the University.



I. The University transfers, on a regular basis, duplicate graduate (alumni) records, including all demographic and relationship data, to the Foundation. Since such records may assist the Athletic Association in carrying out its service mission to the University, the Athletic Association shall be allowed access to such data. All such information shall be held by the Athletic Association as confidential and shall only be used in a manner that benefits the University.

## V. Athletic Association Name and Logotype

Consistent with its mission to help to advance the plans and objectives of the University, the University will grant the Athletic Association the limited, non-exclusive use of the name, Boise State University, for use in its support of the University; however, the Athletic Association shall also operate under its own logotype and shall only use the University seal, logo(s) or other identifying marks (collectively "University Marks") with prior approval of the University through the Office of Trademark Licensing, Office of General Counsel.

## VI. Athletic Association Responsibilities

### A. University Support

1. The Athletic Association serves the University by identifying, involving and soliciting interested persons or entities to support the University's athletic programs and opportunities.
2. The Athletic Association communicates with the University; provides opportunities for interested persons or entities to become involved with the University and the Athletic Association; and recognizes interested parties for their value to the University.
3. The Athletic Association maintains a supportive relationship with the University by participating in and influencing its continued development and direction in a meaningful way. To accomplish this, the University and Athletic Association leadership consult regularly regarding the University and Athletic Association strategic objectives, goals, and needs.
4. The University's Associate Athletic Director for Development is also the Executive Director of the Bronco Athletic Association. The Associate Athletic Director for Development is not a key administrative or policy-making employee of the University and is not a vice president or equivalent position at the University. As such, the University shall employ, and, solely from non-appropriated funds, pay the salary and benefits of the position of Associate Athletic Director for Development/Executive Director of the Bronco Athletic Association.

a. the Executive Director of the Bronco Athletic Association shall not be authorized to sign any contracts or obligations of the University as

a University employee. The Executive Director's sole signing authority shall be on the behalf of the Bronco Athletic Association.

5. The Athletic Association is a primary fund-raising arm of the Boise State Athletic Department at Boise State University. The Athletic Association raises financial support through annual memberships, scholarship endowments, sports enhancement funds, special events, capital projects and planned giving and other similar activities.

6. The Athletic Association shall adhere to gift and grant management and acceptance policies established by the Foundation. It shall promptly acknowledge and issue receipts for all gifts and membership on behalf of the Athletic Association and the University and provide appropriate recognition and stewardship of such gifts and memberships. No gifts, memberships or transfers of real or personal property will be accepted by the Athletic Association which does not comply with state law, State Board of Education policy, and University policy.

7. The Athletic Association shall not accept gifts or grants containing a condition committing the University contractually without prior written approval of the University President or VP for Finance and Administration.

8. The Athletic Association shall establish and enforce policies to protect donor confidentiality and rights. The donor database, as well as other data, materials and information of the Athletic Association pertaining to past, current or prospective donors, are proprietary to the Athletic Association and constitute its confidential information and trade secrets. The University shall not access information except in compliance with the Athletic Association's donor confidentiality policies. The Athletic Association and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of the server and software relevant to the database.

9. The Athletic Association's Board of Directors shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The parties understand that the Athletic Association is not a public agency or a governing body as defined in the Idaho Code and the Idaho Open Meeting Law and access to public records statutes. Nothing in this MOU shall be construed as a waiver of the Athletic Association's right to assert exemption from these statutes.

10. The Athletic Association shall maintain and enforce a conflict of interest policy.

## B. Asset Management

1. All Athletic Association operating funds, and endowed scholarships and other monies are placed with the Foundation. Athletic Association shall not maintain accounts or funds outside the Foundation. Athletic Association operating funds are maintained in a Foundation checking account that requires dual signatures. ~~The signatures of at least two Athletic Association designated officers, or the signature of at least one Athletic Association designated officer and the Associate Athletic Director for Development, is required on all checks.~~

2. The Athletic Association shall cause an independent accounting firm annually to conduct an audit of the Athletic Association's financial statements. Since all Athletic Association funds are placed with the Foundation, pursuant to Paragraph IV.F. hereof, the annual audit of the Foundation shall separately identify and report such funds and may hereafter serve as the annual financial audit report for the Athletic Association.

3. As part of the Foundation's fund management, the Athletic Association shall utilize an accounting and database management system that is compatible with the Foundation. The Athletic Association shall have access to such information for purposes of fund and data management and the continued enhancement of the University.

#### C. Athletic Association Flexibility

1. The Athletic Association shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining approval of the State Board of Education. In the event of a proposed purchase of real estate for such purposes by the Athletic Association, the University shall notify the State Board of Education at the earliest possible date of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Athletic Association. Any notification to the State Board of Education required pursuant to this paragraph may be made ~~to~~through the State Board's ~~chief executive officer~~ in executive session pursuant to Idaho law.

2. The Athletic Association shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the University shall be approved by the State Board of Education before acceptance by the University and the Athletic Association. In cases where the real property is to be acquired primarily for use by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Athletic Association shall be responsible for the due diligence obligations for such property

3. The Athletic Association may serve as an instrument for entrepreneurial activities for the University and engage in such activities to further University purposes. Provided, however, that the University must receive the required approval of the State Board of Education in advance of any such action or commitment.

4. Subject to the limits of section III.D. above, the Athletic Association may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt, or engage in other activities to increase Athletic Association revenue. The terms of any agreements related to these purposes shall clearly delineate the Athletic Association's independence from the University.

5. When distributing gift funds to the University, the Athletic Association shall disclose any terms, conditions, or limitations imposed by donors or by law on the gift. The University will abide by such restrictions and provide appropriate documentation of such compliance to the Athletic Association.

#### D. Transfer of Funds

1. Athletic Association funds shall be kept separate from University funds.

2. No University funds, assets, or liabilities may be transferred directly or indirectly to the Athletic Association without the prior approval of the State Board of Education except when:

a) A donor inadvertently directs a contribution to the University that is intended for the Athletic Association; or

b) The University has gift funds that were transferred from and originated in the Athletic Association and the University wishes to return a portion of funds to the Athletic Association for reinvestment consistent with the original intent of the gift.

3. The Athletic Association's disbursements on behalf of the University shall be reasonable business expenses that support the University, are consistent with donor intent, and do not conflict with applicable law or State Board of Education policy.

#### VII. Athletic Association Funding and Administration

A. The Athletic Association shall be responsible for establishing a financial plan to underwrite the cost of Athletic Association programs, operations, and services.

B. The Athletic Association provides a portion of the funds necessary to conduct Athletic Association programs. The Association will engage in various revenue-generating activities for this purpose that may include, but are not limited to, membership dues, sponsorships, affinity relationships and direct fund-raising to accomplish the goals of the Athletic Association.

C. The Athletic Association owns the building where the current Bronco Football Complex is located. The Athletic Association currently leases this space to the University to provide office space for the Bronco Football Program.

D. The University may provide to the Athletic Association equipment, computer and telephone systems, utilities, and office supplies that may be necessary or required to fulfill its responsibilities and obligations pursuant to the terms of a written agreement described in Section IX below.

E. The Athletic Association shall maintain an annual operating budget and will provide a copy of the budget to the University President for informational purposes. Oversight of Athletic Association expenditures rests with the Athletic Association Board of Directors.

F. The Athletic Association will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Athletic Association policies, and guidelines. The University shall, at any time, have access to the financial records of the Athletic Association. The scope of this right of the University shall be construed as broadly as needed to conduct a complete financial statement audit of the Athletic Association as such an audit would be conducted under generally accepted auditing standards if the University should so require. The University need not conduct an actual audit to be afforded such access and shall be given such access at any time.

1. The University's access shall not include donor specific data such that would provide individually identifiable information about donors or their donations made to the Athletic Association.

G. The Athletic Association shall maintain a provision in its corporate documents for dissolution consistent with the State Board of Education Policy and applicable law.

## VIII. University Responsibilities

A. The University shall work with the Athletic Association to ensure that the University and its affiliated organizations comply with all of the terms of MOU.

B. Subject to the availability of funding and the budget process, the University may provide the Athletic Association with annual financial support. This support may consist of services and support as agreed. The Athletic Association budget may include University support and assistance as well as Athletic Association

resources and revenues. The Athletic Association and University will consult during the budget process.

#### IX. Services, Facilities, and Resources Provided by the Athletic Association and the University to One Another

A. The Athletic Association and University agree that in consideration for services, office space, equipment, computer and telephone systems, utilities, and office supplies provided to one another, each party shall provide the other with fair and reasonable consideration to be negotiated annually by June 1 of the preceding fiscal year pursuant to a written agreement that specifies the nature of such services, facilities, and resources and the compensation that will be paid for such services by each of the parties. The rate assessed for the use of either party's services, facilities, and resources shall be at fair market value.

B. The Associate Athletic Director for Development is the Executive Director of the Bronco Athletic Association, Inc. The Executive Director is an employee of the University who is compensated by the University. The University has the sole discretion to direct the Executive Director when acting in his or her capacity as Associate Athletic Director of Development. While it is anticipated that the goals of the University and the Athletic Association will usually coincide with respect to the services to be performed by the Executive Director, there may be times when those goals may diverge. The Executive Director shall notify the Athletic Association in the event a conflict of interest arises.

1. Under no circumstances shall the Associate Athletic Director for Development represent both the University and the Bronco Athletic Association, Inc. in any negotiation, sign for both the University and Athletic Association in a particular transaction, or direct any other University employee under their immediate supervision to sign for the related party in a transaction between the University and the Athletic Association.

C. The Executive Director of the Athletic Association will work directly with other athletic and University staff members to achieve the goals of the Athletic Association, the University, and the terms of this agreement.

D. The Executive Director of the Athletic Association will meet with the University Athletic Director on at least an annual basis to assure appropriate staffing to accomplish the goals of the Athletic Association. The BAA Executive Director/Associate Athletic Director for Development and all BAA staff are employees of the University and are compensated by the University. No payments shall be made directly from the Athletic Association to University employees in connection with resources or services provided to the Athletic Association. Supplemental compensation from the Athletic Association may be made to University employees only with prior State Board of Education approval and shall be paid by the Athletic Association to the University, which in turn will

make payment to the employee in accordance with normal practice. The annual financial statements audit will include a list of University employees for whom the Athletic Association made payments to the University for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment.

#### X. Meetings and Continued Communications Regarding MOU

To ensure effective achievement of the items of this MOU, the University and Athletic Association officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

#### XI. Miscellaneous

A. Indemnification. The University and the Athletic Association each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this MOU. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this MOU shall be construed to extend the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

B. Term and Termination.

1. The term of this MOU shall terminate upon the mutual written agreement of both parties.

2. ~~Either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting part specifying the nature of the default. Should the University choose to terminate this MOU by providing 90 days written notice, or in the event of a default by the University that is not cured within the time frame set forth above, the Athletic Association may require the University, within 180 days of the written notice, to pay all debt, or completely account for all debt guarantees (subject to the approval of the State Board of Education) incurred by the Athletic Association on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives.~~

3. As a prerequisite to any other termination of this MOU by either party, the parties agree to first follow and complete the mandatory process, in sequence, set forth in Section XI.C. (Dispute Resolution). If and only if all the mandatory steps in section XI.C. are followed in sequence, then, either

party may, upon 90 days prior written notice to the other, terminate this MOU, ~~and either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non defaulting part specifying the nature of the default. Should the University choose to terminate this MOU by providing 90 days written notice, or in the event of a default by the University that is not cured within the time frame set forth above, the Athletic Association may require the University, within 180 days of the written notice, to pay all debt, or completely account for all debt guarantees (subject to the approval of the State Board of Education) incurred by the Athletic Association on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives.~~

4. Should the University choose to terminate this MOU by providing 90 days written notice, pursuant to XI.B.3 above, or in the event of a default by the University that is not cured within the time frame set forth in XI.B.2 above, the Athletic Association may require the University, within 180 days of the written notice, to pay all debt, or completely account for all debt guarantees incurred by the Athletic Association on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Noting, however, that the only valid gurantees are those where State Board of Education approval was expressly granted pursuant to this MOU.

~~5.~~ Should the Athletic Association choose to terminate this MOU by providing 90 days written notice, pursuant to XI.B.3, or in the event of a default by the Athletic Association that is not cured within the time frame set forth above, the University may require the Athletic Association to pay any debt, or completely account for any debt guarantees, the University holds on behalf of the Athletic Association ~~in like manner~~.

6. The parties agree that in the event this MOU shall terminate in any manner, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. If a new agreement is not reached in such time and Section XI.C. (Dispute Resolution) has been followed; the parties shall refer the matter to the State Board of Education for resolution as provided for in Section XI.E. (Dissolution of the Athletic Association).

7. Termination of this MOU shall not constitute or cause dissolution of the Athletic Association except as provided for in the final sentence of Section XI.B.~~62~~.



C. Dispute Resolution. The parties agree that in the event of any dispute arising from this MOU, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, then the dispute will be referred to the President of the Athletic Association and the University President. If the Athletic Association President and University President cannot resolve the dispute, then the dispute will be referred to the Athletic Association President and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties.

D. Litigation. As a prerequisite to any litigation filed between the Athletic Association and the University on any matter whatsoever, the parties agree to first follow the process set forth in Section XI.C. (Dispute Resolution). If and only if all the mandatory steps in section XI.C. are followed in sequence and a dispute remains unresolved, then, in such case, either party shall have the right to initiate litigation arising from this MOU. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, reasonable attorney fees, and other reasonable professional expenses.

E. Dissolution of Athletic Association. Consistent with provisions appearing in the Athletic Association's bylaws and its articles of incorporation, should the Athletic Association cease to exist or cease to be an Internal Revenue Code § 501(c) (3) organization, the Athletic Association shall transfer its assets and property to the State Board of Education to be held for the use of the University, to the University, or to a reincorporated successor Athletic Association in accordance with the law and donor intent.

F. Headings. Headings are for reference only and do not affect the interpretation of this MOU.

G. Governing Law. This MOU shall be governed by the laws of the state of Idaho.

H. Legal Representation. The parties acknowledge that they have retained separate legal counsel, or have had the opportunity to do so, to draft and review this MOU on behalf of each party.

I. No Third Party Beneficiaries. This MOU shall not be construed to create any rights, remedies, or benefits upon any third party.

J. Separate Entities. At all times and for all purposes of this Memorandum of Understanding, the University and the Athletic Association shall act in an independent capacity and not as an agent or representative of the other party. The University and Athletic Association are independent entities and neither shall

be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees

K. Non-Assignability. This Agreement is not assignable by either party, in whole or in part.

L. Severability. If any provision, term, or part of this MOU, except for the provisions of this MOU requiring prior appropriation, is held to be invalid, illegal, unenforceable, or in conflict with any law of the State of Idaho, the validity, legality, and enforceability of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular part, term or provision held to be invalid.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers as of the date first above written.

**UNIVERSITY:**

**ATHLETIC ASSOCIATION:**

\_\_\_\_\_  
President  
Boise State University

\_\_\_\_\_  
President  
Bronco Athletic Association, Inc.

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

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

\_\_\_\_\_  
Secretary  
Bronco Athletic Association, Inc.

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

**THIS PAGE INTENTIONALLY LEFT BLANK**

**AUDIT**  
**AUGUST 16, 2012**

---

**SUBJECT**

Board Policy V.Y. – Compliance Programs – first reading

**REFERENCE**

August 2010

Board was briefed on Audit Committee project to make policy recommendation for proper financial oversight and control, including such issues as codes of ethics or conduct, conflict of interest policy, and whistle-blower or other internal or external reporting procedures.

**BACKGROUND / DISCUSSION**

The Audit Committee has been reviewing compliance and reporting processes and procedures by the institutions since 2010. The Committee directed staff and general counsel for the three universities to develop recommendations for a flexible structure to ensure compliance issues flow up to the Committee through a single point of contact or compliance officer. This included guidelines which would provide consistency for the institutions to follow in 1) deciding whether an investigation is warranted, and 2) if an investigation is required, what are the guidelines for performing the investigation.

**IMPACT**

The Audit Committee is proposing a new section of Board Policy, V.Y. Compliance Programs. The new policy will cover:

- Require material compliance issues be reported (in writing) to the Audit Committee on a semi-annual basis. The institutions could stagger their reporting. Materiality is defined in the policy.
- Require material compliance issues in excess of \$200,000 be reported to the Audit Committee immediately.
- *De minimus* compliance issues under \$25,000 are not reported to the Audit Committee.

**ATTACHMENTS**

Attachment 1- Board Policy Section V.Y.

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

This proposed policy has been extensively analyzed and deliberated by Board and institution staff and the Audit Committee. Staff finds that in light of increasing complexity and scrutiny surrounding compliance and corresponding potential for reputational and financial exposure, this policy is necessary and prudent. Staff recommends approval.

**BOARD ACTION**

**AUDIT**  
**AUGUST 16, 2012**

---

I move to approve the first reading of proposed Board Policy Section V.Y. Compliance Programs, as presented in Attachment 1.

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

1. General

The Board is committed to ethical conduct and to fostering a culture of compliance with the laws and regulations which apply to the institutions and agencies under its governance.

2. Compliance Program

Each institution shall designate a chief compliance officer, approved by the Audit Committee (Committee), and shall ensure that the institution establishes a compliance audit program to be approved by the Committee which must address, at a minimum, the following:

- a. A code of ethics which applies to all employees.
- b. A published and widely disseminated list or index of all major compliance areas and responsibilities, and to categorize and prioritize these compliance areas and responsibilities by considering the risks, probability, and negative impact of potential events.
- c. A mechanism for coordinating compliance oversight, monitoring and reporting. This includes a management level group or individual with authority to examine compliance issues and assist the chief compliance officer in investigating, monitoring, and assessing compliance and/or recommending policies or practices designed to enhance compliance.
- d. A means of assuring institutional policies are regularly reviewed for compliance with current federal and state laws and regulations and Board policies.

3. Reporting

- a. The chief compliance officer of each institution will prepare and submit a semi-annual compliance report, on a confidential basis, to Board counsel and the Committee noting all material compliance matters occurring since the date of the last report, and identifying any revisions to the institution's compliance program.

For purposes of this policy, a compliance matter shall be considered material if:

- The perception of risk creates controversy between management and the internal auditor.
- It could have a material impact on the financial statements.
- Is or could be a matter of significant public interest or exposure.
- It may be reported in an external release of financial information.
- It relates to key controls over financial information that are being designed or redesigned, have failed, or otherwise are being addressed by the organization.

**Idaho State Board of Education**  
**GOVERNING POLICIES AND PROCEDURES**  
**SECTION: V. FINANCIAL AFFAIRS**  
**Subsection: Y. Compliance Programs**

---

**October 2012**

- It involves fraud related to management.
  - It involves potential financial liability in excess of \$25,000
- b. Notwithstanding the foregoing, a material compliance matter must be reported to the Committee as soon as reasonably practicable if it could involve potential financial liability in excess of two hundred thousand dollars (\$200,000). A de minimus compliance matter need not be reported to the Committee at any time. A violation will be considered de minimus if it involves potential financial liability of less than twenty-five thousand dollars (\$25,000) and is a matter that has not been recurring or is not otherwise indicative of a pattern of noncompliance.
- c. Compliance concerns at agencies under the governance of the Board shall be reported to the Committee by the Board's Executive Director when, in his/her discretion, the matter presents extraordinary ethical, legal, or fiduciary responsibilities or obligations.