

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 18, 2012**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AMENDMENT to OPTIONAL RETIREMENT PLAN</b>	Motion to approve
<b>2</b>	<b>AMENDMENT TO BOARD POLICY</b> Section II.H. – Coaching Personnel – 1 <sup>st</sup> Reading	Motion to approve
<b>3</b>	<b>COMPENSATION ADJUSTMENTS FOR AGENCY HEADS</b>	Motion to approve
<b>4</b>	<b>BOISE STATE UNIVERSITY</b> Multi-Year Employment Agreement – Vice President of University Advancement	Motion to approve
<b>5</b>	<b>UNIVERSITY of IDAHO</b> Multi-Year Employment Agreement – Track & Field and Cross-Country Coach	Motion to approve
<b>6</b>	<b>UNIVERSITY of IDAHO</b> Multi-Year Employment Agreement – Women’s Soccer Coach	Motion to approve
<b>7</b>	<b>AMENDMENT TO BOARD POLICY</b> Section II.G. – Policies Regarding Faculty – 1 <sup>st</sup> Reading	Motion to approve

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**SUBJECT**

Optional Retirement Plan (ORP)

**REFERENCE**

December 2011                      Amendments to bring the Plan into compliance with federal tax law

**APPLICABLE STATUTES, RULE OR POLICY**

Idaho Code 33-107A, 107B

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

**BACKGROUND / DISCUSSION**

Over the years the ORP vendors and the institutions have frequently requested clarification and guidance with regard to the plan document's cash withdrawal provisions.

Section 7.2 of the ORP plan document provides as follows:

Cash Withdrawals. A Participant who has terminated employment may withdraw Participant Plan Contributions or receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal.

Except, following retirement or termination of employment prior to age 55, if total accumulation is less than or equal to \$15,000, both Participant and Institution Plan Contributions are available in a cash withdrawal subject to any restrictions of the Funding Vehicles of the Fund Sponsor.

Section 7.8 provides:

Direct Rollovers. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

In 2010, the Board's deputy attorney general and staff reviewed the Board's ORP document with regard to the permissibility of direct rollovers vis-à-vis the limitations on cash withdrawal set forth in Section 7.2 of the Plan document. Based on a plain reading of Section 7.8 it was concluded that a distributee may request a rollover distribution to an IRA, the limitations of Section 7.2 notwithstanding.

Nevertheless, the withdrawal rules still cause some confusion with vendors and participants. A survey of the human resources and benefits directors at the

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institutions showed unanimous support for allowing former employees to completely withdraw the employee and employer accumulation regardless of amount or age. Board tax counsel has opined that the plan's current restrictions on withdrawals are not common.

The proposed revisions are as follows:

1. Amend Section 7.1 by replacing the words: "Cash withdrawals (to the extent the Funding Vehicle permits and subject to the limitations in the "cash withdrawals" section of this Article)" with the following: "Cash withdrawals to the extent the Funding Vehicle permits."
2. Delete Section 7.2 "Cash Withdrawals."
3. Delete Section 7.7 "Small Lump Sum Payments."
4. Amend Section 7.6 to read as follows:  
Minimum Distribution Requirements. No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Internal Revenue Service Code section 401(a)(9) (including the incidental death benefit requirements of Code section 401(a)(9)(G). and Treasury Regulations 1.409(a)-1 through 1.401(a)(9)-8), all as applicable to governmental plans. The requirements of this section shall take precedence over any inconsistent provisions of the Plan. All distributions shall begin not later than the April 1 immediately following the calendar year in which the Participant reaches age 70 ½ or in which the Participant subsequently retires from employment with the Institution.
5. Add Section 7.8 to require a mandatory distribution of a Participant's Account which is valued at \$1,000 or less at the time of distribution.
6. Revise and clarify the definition of the term "Compensation" (see Section 1.6). While this definition differs from how the term is defined in the 403(b) and 457(b) plans, the definition of compensation will generally affect only the amount of ORP employee and employer contributions, not the amount of 403(b) or 457(b) plan contributions because the ORP contributions are based on a percentage of compensation. In contrast, an employee whose regular pay exceeds \$16,500 (plus a bit more for those making catch-up contributions) should be able to make the maximum 403(b) and 457(b) contributions regardless of the details of what the definition of compensation includes or excludes.

Finally, the provisions of Amendment 1 to the Plan have been incorporated into the Plan document itself so it is no longer necessary to read both the plan document and the amendment together to determine allowance and requirements.

**IMPACT**

This amendment will simplify ORP distribution rules to: (1) allow terminated employees to elect to take distribution of their ORP accounts without regard to their age, the size of the account or whether the distribution is rolled over to an IRA; and (2) incorporate by reference the minimum distribution rules of the

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Internal Revenue Code. The amendment will also make the document more user friendly.

**ATTACHMENTS**

Attachment 1 – Plan Document - Clean

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Attachment 2 – Plan Document - Redline

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**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has worked with the Board's tax counsel and deputy attorney general in drafting this amendment. Institution human resources and benefits directors, along with ORP vendor representatives, have all had opportunity for prior review and comment of the amendment. Staff recommends approval.

**BOARD ACTION**

I move to approve the amendments to the Optional Retirement Plan document as presented in Attachment 1.

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

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**Idaho State Board of Education  
Optional Retirement Plan**

**A Defined Contribution Retirement Plan**

**Restated November 2001**

**Amendment 1, effective the first day of the first plan year beginning after December 31, 2001**

**Restated December 2003**

**Restated to include amendments through 2008**

**Restated December 2011**

**Restated effective January 2013**

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**Article I: Definitions**

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary (ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means an employee's total annual salary (inclusive of bonuses, overtime pay and overload pay, as applicable) paid in the Plan Year not reduced by a compensation election deduction because of the application of Code Sections 125 , 403(b) or 457(b). Compensation does not include the following items (even if includible in gross income):
- (a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.
  - (b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs and bonuses.
  - (c) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.
  - (d) The value of a reduction in tuition provided by an educational institution to an employee which does not qualify for exclusion from the employee's wages because of the application of Code Section 117.
  - (e) Fringe benefits (cash and noncash).
  - (f) Moving expense reimbursements as defined in section 67-5337, Idaho Code.

Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for

the determination period that begins with or within such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996 through December 31, 2001, the OBRA '93 annual compensation limit is \$150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

- 1.7 ***Date of Employment or Reemployment*** means the effective date of the appointment for a faculty member or professional staff. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.
- 1.8 ***Eligible Employee*** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90 day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, College of Western Idaho, or Eastern Idaho Technical College initially appointed or hired on or after July 1, 1997 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150 day period from July 1, 1997 to November 28, 1997. However, "Eligible Employee" shall exclude:
  - (a) an Employee whose employment is expected to be less than five (5) months; and
  - (b) an Employee whose employment is incidental to his or her status as a student at the Institution; and
  - (c) an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

The term Eligible Employee shall not include any leased employee deemed to be an employee of the Institution as provided in Code Section 414(n).

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

- 1.9 ***Fund Sponsor*** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.
- 1.10 ***Funding Vehicles*** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.
- 1.11 ***Hours of Service means:***
- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
  - (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

- 1.12 ***Institution*** means the Board and employment units under its jurisdiction, namely:  
 The Office of the Idaho State Board of Education  
 Boise State University  
 Idaho State University  
 University of Idaho  
 Lewis-Clark State College  
 Eastern Idaho Technical College  
 College of Southern Idaho  
 North Idaho College  
 College of Western Idaho
- 1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.
- 1.14 ***Limitation Year*** means a calendar year.
- 1.15 ***Normal Retirement Age*** means age 65.
- 1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.
- 1.17 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.18 ***Plan*** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.
- 1.19 ***Plan Contributions*** means the combination of Participant Plan Contributions and Institution Plan Contributions.

- 1.20 **Plan Entry Date** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.
- 1.21 **Plan Year** means January 1 through December 31.
- 1.22 **Year of Service** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.

**Article II: Establishment of Plan**

- 2.1 **Establishment of Plan.** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2).

It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

**Article III: Eligibility for Participation**

- 3.1 **Eligibility.** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at the Institution.
- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- he or she ceases to be an Eligible Employee;
  - the Plan is terminated.

## Article IV: Plan Contributions

- 4.1 ***Plan Contributions.*** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute the percentage indicated below of the Compensation of that Institution's Participants, reduced by the amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation:

NIC, CSI, CWI and EITC: an amount equal to the Public Employee Retirement System of Idaho (PERSI) contributions rates;

UI, BSU, ISU, LCSC and the Office of the State Board of Education: nine and thirty-five one hundredths percent (9.35%); and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and §33-107B and are subject to change as those sections are amended.

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

- 4.2 ***When Contributions Are Made.*** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.
- 4.4 ***Leave of Absence.*** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.
- 4.5 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions

that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.

#### 4.6 ***Rollovers from other Plans.***

(a) Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:

- (i) A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
- (ii) A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
- (iii) An eligible plan under section 457(b) of the Code 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.

(b) Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:

- (i) A qualified plan described in section 401(a) or 403(a) of the Code.
- (ii) A tax sheltered annuity plan described in section 403(b) of the Code.
- (iii) An eligible plan under section 457(b) of the Code 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.

(c) Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.



**4.7 Military Service.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided to the extent required by Code section 414(u).

(a) Effective January 1, 2009, for purposes of applying the limitations of Code section 415 as described in section 4.8 of the Plan, compensation includes differential wage payments. A "differential wage payment" is a payment which (1) is made by the Institution with respect to a period during which an individual is on active military duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the Institution if the individual were performing service for the Institution, all as defined by Code section 3401(h)(2).

(b) Effective January 1, 2007, to the extent required by Code section 401(a)(37), if a Participant dies while performing qualified military service (within the meaning of Code section 414(u)(5)), the Participant shall be treated as having terminated employment with the Institution due to his death for purposes of any additional benefits (other than contributions relating to the period of qualified military service) provided under the Plan.

(c) Effective December 12, 1994, a Participant who returns to employment with the Institution as an Eligible Employee during the period within which reemployment rights are guaranteed by law may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan if the Participant had remained continuously employed by the Institution throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this subsection 4.7(c) shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan at that time. A Participant may make such contributions during a period beginning on the Participant's reemployment with the Institution and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this subsection 4.7(c), the Participant's Accumulation Account will receive Institution contributions that would have been made during the same period.

**4.8 Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- (b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

**Article V: Funding Vehicles**

5.1 ***Funding Vehicles.*** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

- (a) Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)
- (b) Variable Annuity Life Insurance Company (VALIC)

Participants may choose any Funding Vehicle offered by a Fund Sponsor. The Institution's current selection of Fund Sponsors isn't intended to limit future additions or deletions of Fund Sponsors. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 ***Fund Transfers.*** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

**Article VI: Vesting**

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

## Article VII: Benefits

- 7.1 **Retirement Benefits.** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

**Forms of Benefit.** The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

- (a) Single life annuities as provided under the Funding Vehicle contract.
- (b) Joint and survivor annuities as provided under the Funding Vehicle contract.
- (c) Cash withdrawals to the extent the Funding Vehicle permits.
- (d) Fixed period annuities, as permitted by the Funding Vehicle contract.
- (e) Retirement Transition Benefit.
- (f) Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

- 7.2 **Retirement Transition Benefit.** Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one-time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

- 7.3 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary (ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

- 7.4 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary (ies) by the Fund Sponsor.

- 7.5 **Minimum Distribution Requirements.** No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Code section 401(a)(9) (including the incidental death benefit requirements of Code section 401(a)(9)(G). and Treasury Regulations 1.409(a)(9)-1 through 1.401(a)(9)-8), all as applicable to governmental plans. The requirements of this section shall take precedence over any inconsistent provisions of the Plan. All distributions shall begin not later than the April 1 immediately following the calendar year in which the Participant reaches age 70 ½ or in which the

Participant subsequently retires from employment with the Institution ("Required Beginning Date").

- 7.6 **Direct Rollovers.** This section applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, 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.

For this section, the following definitions apply:

- (a) **Eligible rollover distribution:** 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: 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 distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and, for any distributions after 12/31/99, any hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).
- (b) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401 (a) or 403 (a) of the Code, that accepts the distributee's eligible rollover distribution, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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. Effective January 1, 2008, an eligible retirement

plan shall also mean a Roth IRA described in Code section 408A, subject to the adjusted gross income limits of Code section 408A(c)(3)(B), if applicable, and subject to the distribution rules of Code section 408A(d)(3). 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 relation order, as defined in section 414(p) of the Code.

- (c) **Distributee:** A distributee includes an employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

7.7 ***Distribution to IRA of Nonspouse Beneficiary.*** A Participant's nonspouse Beneficiary may elect payment of any portion of the deceased Participant's account in a direct trustee to trustee transfer to an individual retirement account or annuity described in section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this section, a trust maintained for the benefit of one or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's Required Beginning Date as defined in section 7.5, the required minimum distribution in the year of death may not be transferred according to this section. The requirements of section 402(c)(11) of the Code apply to distributions under this section.

7.8 ***Mandatory Distributions.*** The Plan shall make a mandatory distribution of a Participant's Account which is valued at \$1,000 or less at the time of distribution. Participant or Beneficiary consent to a mandatory distribution shall not be required. A mandatory distribution shall be made no earlier than 30 days from the date the Plan provides notice of the right to elect payment in a direct rollover, pursuant to Code section 402(f), and no later than an administratively feasible date following the end of the Plan Year in which the Participant's employment with the Employer terminates. Mandatory distributions shall be paid in a single lump sum cash payment.

**Article VIII: Administration**

- 8.1 ***Plan Administrator.*** The Idaho State Board of Education, located at 650 W. State Street Boise, Idaho 83720, is the administrator of this Plan and has designated the following as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan:

Chief Fiscal Officer  
Office of the Idaho State Board of Education

Vice President for Finance and Administration  
Boise State University

Vice President for Finance and Administration  
Idaho State University

Vice President for Finance and Administration  
University of Idaho

Vice President for Finance and Administration  
Lewis-Clark State College

Vice President for Finance and Administration  
Eastern Idaho Technical College

Financial Vice President  
College of Southern Idaho

Financial Vice President  
North Idaho College

Vice President for Finance and Administration  
College of Western Idaho

- 8.2 ***Authority of the Institution.*** The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its



duties. The Institution, by action of the Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.

- 8.3 **Action of the Institution.** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance section 8.2 "Authority of the Institution," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Institution in accordance with the provisions of section 8.2 "Authority of the Institution." Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.
- 8.4 **Indemnification.** Subject to the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et. seq., The Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to section 8.2 "Authority of the Institution" (other than the Fund Sponsors) arising out of any action (or inaction) relating to this plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.
- 8.5 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.
- 8.6 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons

claiming an interest in or derived from the contribution's payment.

- 8.7 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

**Article IX: Amendment and Termination**

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
  - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

**Article X: Miscellaneous**

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.
- 10.6 ***Governing Law.*** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.

**Article XI: Trust Provisions**

- 11.1 **Establishment of Trust.** The Institution shall establish a Trust, pursuant to applicable law, to hold the assets of the Trust Fund (as defined below). By signing below, the Trustees agree to hold the assets of the Trust Fund, as constituted from time to time, in trust, and to administer the Trust Fund in accordance with the terms and conditions of the Trust provisions in this Article XI. The Trustees shall, at the direction of the Institution as named fiduciary of the Plan, be the owner of the custodial account pursuant to which mutual funds shall be made available under the Plan as investment options. The Trustees shall follow the proper directions of the Institution, as named fiduciary of the Plan, with respect to the investment and withdrawal of assets in the mutual funds provided such directions are made in accordance with the terms of the Plan and are not contrary to ERISA. The shares of such mutual funds in the custodial account shall constitute the "Trust Fund." TIAA-CREF annuity contracts or certificates (and any other annuity contracts that satisfy the requirements of §401(f) of the Code) shall not be part of the Trust Fund. It shall be prohibited at any time for any part of the Trust Fund (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and Beneficiaries except as otherwise permitted under the Code and ERISA.
- 11.2 **Nontransferability or Alienation of Benefits.** No right or interest of a Plan Participant or Beneficiary shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code and ERISA. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) or to a lien or levy on behalf of the Internal Revenue Service.
- 11.3 **Trustees' Authority and Powers over Trust Fund.** Subject to any limitations imposed by § 4975 of the Code and § 406 of ERISA related to prohibited transactions:
- (a) The Trustees shall have the exclusive authority and custody over all Plan assets deposited in the Trust, except to the extent otherwise provided herein.
  - (b) The Trustees shall have the authority and power to make, execute, acknowledge and deliver any instruments that may be necessary or appropriate to carry out their powers.
  - (c) The Trustees shall have the authority to vote by proxy on any mutual fund shares constituting the Trust Fund. In voting such proxies, the Trustees shall follow the instructions of Plan Participants and their Beneficiaries. If no instructions for voting proxies applicable to mutual fund shares are

received, the Trustees shall not exercise the voting rights for such shares and will not be responsible for the failure to vote or instruct the vote of such shares.

- (d) The Trustees shall have full authority and power to do all acts whether or not expressly authorized which may be deemed necessary or proper for the protection of the Trust Fund including the exercise of any conversion privilege and/or mutual fund subscription rights.
- (e) The Trustees shall have full authority and power to sell, dispose, purchase, exchange or transfer any Trust Fund shares pursuant to the instructions of the Institution, including a return of Plan contributions to the Institution that is permitted under ERISA and the Plan. No provision of this Trust shall be construed to prevent the transfer of funds at the direction of Participants or Beneficiaries among the Plan Allocation Accounts.
- (f) The Trustees shall apply for beneficial ownership of the custodial account pursuant to the instructions of the Institution as named fiduciary under the Plan.

**11.4 Standard of Care.** The Trustees shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. No Trustee shall cause the Trust to engage in any prohibited transaction under ERISA.

**11.5 Payment of Benefits.** The Trustees shall take such actions as may be necessary to distribute Plan assets held in the Trust to Participants or Beneficiaries in accordance the instructions of the Institution under the Plan. Except as provided in the following sentence, the Trust shall not retain any part of the Accumulation Account due a Participant or Beneficiary. If the Trustees receive any claim to assets held in the Trust which is adverse to a Participant's interest or the interest of his or her Beneficiary, and the Institution as named fiduciary under the Plan, in its absolute discretion, decides the claim is, or may be, meritorious, the Institution may direct the Trustees, and the Trustees shall agree, to withhold distribution until the claim is resolved or until instructed by a court of competent jurisdiction. As an alternative, the Institution may direct the Trustees and the Trustees shall agree, to deposit all or any portion of the Participant's or Beneficiaries' interest in the Trust into the court. Deposit with the court shall relieve the Trustees of any further obligation with respect to the assets deposited. The Trustees have the right to be reimbursed from the Institution for legal fees and costs incurred.

**11.6 Reliance on Trustees as Owner.** No one dealing with the Trustees shall be bound to see to the application of any money paid or property transferred to or upon the order of the Trustees, or to inquire into the validity or propriety of anything the Trustees may purport to do.

- 11.7 **Reliance on Institution.** The Trustees may consult with the Institution or counsel designated by the Institution with respect to the meaning or construction of any provision of the Plan, a funding instrument which is an asset of the Trust, the Trustees' obligations or duties under this Article XI or with respect to any action or proceeding arising hereunder. To the extent permitted by law, the Trustees shall be fully protected both with respect to any action taken or omitted in good faith pursuant to the advice of the Institution or its counsel and in reliance upon any statement of fact made by the Institution.
- 11.8 **Accounting of the Trustees.** Within a reasonable period of time after the end of each Plan Year, and/or upon termination of the Trust, the Trustees shall submit to the Institution sufficient information requested by the Institution which is necessary for the Institution to carry out its respective duties under ERISA with respect to the Plan.
- 11.9 **Trustees' Records.**
- (a) The Trustees shall keep accurate and detailed accounts of all investments (if any), Plan assets, receipts, disbursements, and other transactions involving the Trust Fund (if any), not otherwise prepared by the custodian/record-keeper of the custodial account. All accounts, books and records relating to such transactions shall be open to inspection at all reasonable times by any person designated by the Institution.
  - (b) The Trustees shall submit copies of any statements or written communications received pertaining to the investment of any Plan assets constituting the Trust Fund to the Institution contemporaneously with their receipt by the Trustees.
- 11.10 **Annual Valuation.** The Trustees shall cause a valuation of the Trust Fund to be made as of the last day of each Plan Year and shall provide the Institution with a written report of such valuation within a reasonable period of time after the valuation is performed. On each valuation date the earnings and losses shall be allocated to the Accumulation Account of each Participant with interest in such asset in the ratio that the Participant's interest bears to the fair market value of the asset and the Institution shall receive written notice of the value of each Participant's account held in such asset. Such report shall be prepared by the custodian/record-keeper of the custodial account.
- 11.11 **Compensation of Trustee.** The Trustees shall receive such reasonable compensation for services as agreed to in writing by the Trustees and the Institution, except that no compensation shall be paid to an employee of the Institution or its subsidiaries for service as a Trustee.
- 11.12 **Expenses.** All expenses incurred in connection with the administration of the Plan, including but not limited to Trustees' fees, fees of appraisers and accountants (if any), and legal fees shall be paid by the Institution. All expenses of the Trust Fund (if any), shall be paid by the Institution.

- 11.13 Removal or Resignation of Trustee.** Any person may be removed as Trustee by the Institution at any time by notice in writing to such Trustee. Any person acting as Trustee hereunder may resign at any time upon 30 days notice in writing to the Institution. A resigning or removed Trustee shall transfer and deliver to the Institution all records of the Trust in his or her possession and shall deliver to their successor Trustees (or the Institution if there are no successor Trustees) all instruments of transfer or assignment, whereupon such Trustee shall have no further duties hereunder; provided, however, that nothing herein shall prevent any Trustee at any time from filing a judicial settlement and accounting with a court of competent jurisdiction. The only parties to such action shall be the Trustees and the Institution. A successor Trustee shall have no duty to examine the accounts, records, investments, or acts of any previous Trustee.
- 11.14 Appointment of Successor and Additional Trustees.** The Institution may at any time and from time to time appoint successor Trustees and/or additional Trustees. The appointment of a successor and/or an additional Trustee shall become effective upon such Trustee's written acceptance of such appointment agreeing to be bound by the provisions of this Article XI. Upon acceptance of the appointment, each successor and/or additional Trustee shall have all the powers and duties of a Trustee. Except to the extent otherwise provided under ERISA, no successor or additional Trustee shall be personally liable for any act or omission which occurred prior to the time he or she became a Trustee.
- 11.15 Actions of Trustees.** Except as otherwise provided herein, when there are two Trustees, both must join in taking an action. When more than two Trustees are serving hereunder, all powers of the Trustees shall be by the act of a majority of such persons. Notwithstanding the foregoing, a Trustee may in a signed writing delegate his power to one or more of the other Trustees. No delegation of power may be irrevocable. Notwithstanding the delegation of a power, any Trustee who releases a power shall be liable as a result of the exercise or non-exercise of said power in the same manner as if the power had not been delegated.
- 11.16 Trustees Liability and Protection.** To the extent permitted by applicable law:
- (a) The Trustees shall not be responsible for the adequacy of the Trust Fund to meet and discharge any and all payments and liabilities under the Plan or Trust. The Trustees shall be fully protected in acting upon any instrument, certificate, or payment believed to be genuine and to be signed or presented by the proper person or persons, and the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. Except as otherwise provided in Section 405 of ERISA, each Trustee shall be liable only for his or her own acts of fraud, negligence or willful misconduct and for losses or diminution in value that results from his or her own acts of fraud, negligence or willful misconduct.
  - (b) The responsibilities of the Trustees shall be limited to those duties specifically imposed upon them under the terms of this Article XI, and the Trustees shall not



be personally liable for the acts or omissions of any other fiduciary of the Plan, except as provided in ERISA.

- (c) Except to the extent otherwise provided in this Article XI, the Trustees shall not be responsible for the investment of any property delivered to, or held in the Trust. The Trustees shall not be liable for any losses sustained by the Trust Fund by reason of the purchase, sale, retention, transfer or exchange of any investment in accordance with the provisions of the instrument or instructions of the Institution, Plan Participants and Beneficiaries under the terms of the Plan.
- (d) To the extent permitted by law, the Trustees shall be fully protected in relying upon the advice of legal counsel or the Institution with respect to their duties under the Trust.
- (e) In addition to whatever rights of indemnification the Trustees may be entitled to under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement, the Institution will satisfy any liability actually and reasonably incurred by any Trustee, including expenses, attorney's fees, judgments, fines, and amounts paid in settlement or in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise of any of the powers, authority, responsibilities, or discretion of the Trustee as provided in this Article XI or which is reasonably believed by the Trustee to be provided hereunder or any action taken by such Trustee in connection with such reasonable belief.

**11.17 Documentation.** Any action by the Institution pursuant to this Article XI may be evidenced by writing over the signature of a person designated by the Institution in writing and the Trustees shall be fully protected in acting in accordance with such writing. Any action of the Trustees may be evidenced by a writing signed by such Trustee, and any party shall be fully protected in acting in accordance with such writing. Except to the extent otherwise provided, any notice to be given under this Article XI will be considered effective when received.

**11.18 Amendment.** The Institution may amend any provisions of this Article XI by submitting a copy of the amendment to each Trustee provided that no such amendment which affects the rights, duties or responsibilities of any Trustee may be made without his or her written consent.

**11.19 Termination.** The Trust shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it is created. If the Plan is terminated by the Institution, the Trust shall remain in existence until such time as all assets held in the Trust Fund have been distributed in accordance with the terms of the Plan.

**11.20 No Bond.** No original, successor or additional Trustee shall be required to furnish any bond except to the extent required by ERISA and other applicable law.

11.21 **Governing Law.** This Trust shall be construed and enforced according to the laws of the State of domicile of the Institution, and all provisions hereof shall be administered according to the laws of such State except to the extent such laws are superseded by ERISA. The determination that any provision of this Trust is not enforceable in accordance with its terms in a particular jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Trust generally or in any other jurisdiction or as to any other parties, but rather such unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Trust, as so modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

*Employer Identification Number: -*  
*Plan Number: 001*

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(Signature of Plan Administrator)



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Idaho State Board of Education  
Optional Retirement Plan

A Defined Contribution Retirement Plan

Restated November 2001

Amendment 1, effective the first day of the first plan year beginning after December 31, 2001

Restated December 2003

Restated to include amendments through 2008

Restated December 2011

Restated effective January 2013

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**Article I: Definitions**

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary (ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means an employee's total annual salary (inclusive of bonuses, overtime pay and overload pay, as applicable) paid in the Plan Year the amount reported as wages on the Participant's Form W-2, excluding compensation not currently included reduced by a compensation election deduction because of the application of Code Sections 125 or 403(b) or 457(b). Compensation does not include the following items (even if includible in gross income):
- (a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.
  - (b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs and bonuses.
  - (c) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.
  - (d) The value of a reduction in tuition provided by an educational institution to an employee which does not qualify for exclusion from the employee's wages because of the application of Code Section 117.
  - (e) Fringe benefits (cash and noncash).
  - (f) Moving expense reimbursements as defined in section 67-5337, Idaho Code.

Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12 month period over which

~~compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. In addition to other applicable limitations stated in the plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1996, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.~~

~~For Plan years beginning on or after January 1, 1996, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision.~~

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996 through December 31, 2001, the OBRA '93 annual compensation limit is \$150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will ~~not~~ be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

- 1.7 ***Date of Employment or Reemployment*** means the effective date of the appointment for a faculty member or professional staff. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.



1.8 **Eligible Employee** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90 day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, College of Western Idaho, or Eastern Idaho Technical College initially appointed or hired on or after July 1, 1997 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150 day period from July 1, 1997 to November 28, 1997. However, "Eligible Employee" shall exclude:

- (a) an Employee whose employment is expected to be less than five (5) months; and
- (b) an Employee whose employment is incidental to his or her status as a student at the Institution; and
- (c) an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

The term Eligible Employee shall not include any leased employee deemed to be an employee of the Institution as ~~provided~~ provided in Code Section 414(n).

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

1.9 **Fund Sponsor** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.

1.10 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the

requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

**1.11 *Hours of Service means:***

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
- (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.
- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

**1.12 *Institution* means the Board and employment units under its jurisdiction, namely:**

The Office of the Idaho State Board of Education  
 Boise State University  
 Idaho State University  
 University of Idaho  
 Lewis-Clark State College

Eastern Idaho Technical College  
College of Southern Idaho  
North Idaho College  
College of Western Idaho

- 1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.
- 1.14 ***Limitation Year*** means a calendar year.
- 1.15 ***Normal Retirement Age*** means age 65.
- 1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.
- 1.17 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.

- 1.18 **Plan** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.
- 1.19 **Plan Contributions** means the combination of Participant Plan Contributions and Institution Plan Contributions.
- 1.20 **Plan Entry Date** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.
- 1.21 **Plan Year** means January 1 through December 31.
- 1.22 **Year of Service** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.

**Article II: Establishment of Plan**

- 2.1 ***Establishment of Plan.*** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2).

It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

**Article III: Eligibility for Participation**

- 3.1 **Eligibility.** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at the Institution.
- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- he or she ceases to be an Eligible Employee;
  - the Plan is terminated.

## Article IV: Plan Contributions

- 4.1 **Plan Contributions.** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute the percentage indicated below of the Compensation of that Institution's Participants, reduced by the amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation:

NIC, CSI, CWI and EITC: ~~seven and eighty-one one hundredths percent (7.81%)~~ an amount equal to the Public Employee Retirement System of Idaho (PERSI) contributions rates;

UI, BSU, ISU, LCSC and the Office of the State Board of Education: nine and thirty-five one hundredths percent (9.35%) ~~effective July 1, 2007; seven and eighty-one one hundredths percent (7.81%) prior to July 1, 2007;~~ and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and §33-107B and are subject to change as ~~that those~~ sections ~~is~~ are amended.

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

- 4.2 **When Contributions Are Made.** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 **Allocation of Contributions.** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.
- 4.4 **Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.

- 4.5 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.

- 4.6 ~~***Acceptance of Rollover Contributions.*** If a Participant is entitled to receive a distribution from another plan qualified under sections 401(a) or 403(a) of the Code that is an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made 1) directly from another plan; or 2) by the Participant within 60 days of the receipt of the distribution.~~

**Rollovers from other Plans.**

(a) Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:

- (i) A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
- (ii) A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
- (iii) An eligible plan under section 457(b) of the Code 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.

(b) Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:

- (i) A qualified plan described in section 401(a) or 403(a) of the Code.
- (ii) A tax sheltered annuity plan described in section 403(b) of the Code.
- (iii) An eligible plan under section 457(b) of the Code 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.

(c) Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.



- 4.7 ***Military Service.*** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided to the extent required by Code section 414(u).

(a) Effective January 1, 2009, for purposes of applying the limitations of Code section 415 as described in section 4.8 of the Plan, compensation includes differential wage payments. A "differential wage payment" is a payment which (1) is made by the Institution with respect to a period during which an individual is on active military duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the Institution if the individual were performing service for the Institution, all as defined by Code section 3401(h)(2).

(b) Effective January 1, 2007, to the extent required by Code section 401(a)(37), if a Participant dies while performing qualified military service (within the meaning of Code section 414(u)(5)), the Participant shall be treated as having terminated employment with the Institution due to his death for purposes of any additional benefits (other than contributions relating to the period of qualified military service) provided under the Plan.

(c) Effective December 12, 1994, a Participant who returns to employment with the Institution as an Eligible Employee during the period within which reemployment rights are guaranteed by law may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan if the Participant had remained continuously employed by the Institution throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this subsection 4.7(c) shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan at that time. A Participant may make such contributions during a period beginning on the Participant's reemployment with the Institution and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this subsection 4.7(c), the Participant's Accumulation Account will receive Institution contributions that would have been made during the same period.

- 4.8 ***Maximum Plan Contributions.*** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

(a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or

(b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

**Article V: Funding Vehicles**

5.1 ***Funding Vehicles.*** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

- (a) Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)
- (b) Variable Annuity Life Insurance Company (VALIC)

Participants may choose any Funding Vehicle offered by a Fund Sponsor. The Institution's current selection of Fund Sponsors isn't intended to limit future additions or deletions of Fund Sponsors. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 ***Fund Transfers.*** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

**Article VI: Vesting**

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

## Article VII: Benefits

- 7.1 **Retirement Benefits.** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

**Forms of Benefit.** The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

- (a) Single life annuities as provided under the Funding Vehicle contract.
- (b) Joint and survivor annuities as provided under the Funding Vehicle contract.
- (c) Cash withdrawals ~~(to the extent the Funding Vehicle permits and subject to the limitations in the "Cash Withdrawal" section of this Article).~~
- (d) Fixed period annuities, as permitted by the Funding Vehicle contract.
- (e) Retirement Transition Benefit.
- (f) Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

~~7.2 **Cash Withdrawals.** A Participant who has terminated employment may withdraw Participant Plan Contributions or receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal.~~

~~Except, following retirement or termination of employment prior to age 55, if total accumulation is less than or equal to \$15,000, both Participant and Institution Plan Contributions are available in a cash withdrawal subject to any restrictions of the Funding Vehicles of the Fund Sponsor.~~

7.32 **Retirement Transition Benefit.** Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one-time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

7.43 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary (ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

7.54 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary (ies) by the Fund Sponsor.

**7.65 Minimum Distribution Requirements.** No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Code section 401(a)(9) (including the incidental death benefit requirements of Code section 401(a)(9)(G). and Treasury Regulations 1.409(a)(9)-1 through 1.401(a)(9)-8), all as applicable to governmental plans. The requirements of this section shall take precedence over any inconsistent provisions of the Plan. All distributions shall begin not later than the April 1 immediately following the calendar year in which the Participant reaches age 70 ½ or in which the Participant subsequently retires from employment with the Institution ("Required Beginning Date").

~~The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder.~~

~~(a) Time and Manner of Distribution.~~

~~(i) Required Beginning Date. The participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.~~

~~(ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:~~

~~(1) If the participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.~~

~~(2) If the participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.~~

~~(3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.~~

~~(4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before~~

~~distributions to the surviving spouse begin, this subsection (a)(ii), other than subsection (a)(ii)(1), will apply as if the surviving spouse were the Participant.~~

~~For purposes of subsections (a)(ii) and (c), unless subsection (a)(ii)(4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (a)(ii)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (a)(ii)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (a)(ii)(1), the date distributions are considered to begin is the date distributions actually commence.~~

~~(iii) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions shall be made in accordance with subsections (b) and (c) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.~~

~~(b) **Required Minimum Distributions During Participant's Lifetime.**~~

~~(i) **Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:~~

~~(1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or~~

~~(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.~~

~~(ii) **Lifetime Required Minimum Distribution Through Year of Participant's Death.** Required minimum distributions will be determined under this subsection (b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.~~

~~(c) **Required Minimum Distributions After Participant's Death**~~

~~(i) — Death On or After Date Distributions Begin.~~

~~(1) — Participant Survived by Designated Beneficiary.~~ If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

- ~~(a) — The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.~~
- ~~(b) — If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.~~
- ~~(c) — If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.~~

~~(2) — No Designated Beneficiary.~~ If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

~~(ii) — Death Before Date Distributions Begin~~

~~(1) — Participant Survived by Designated Beneficiary.~~ If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection (c)(i).

~~(2) — No Designated Beneficiary.~~ If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire



~~interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.~~

- ~~(3) — **Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (a)(ii)(1), this subsection (c)(ii) shall apply as if the surviving spouse were the Participant.~~
- ~~(d) — **Definitions**~~
- ~~(i) — **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.~~
- ~~(ii) — **Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (a)(ii). The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.~~
- ~~(iii) — **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.~~
- ~~(iv) — **Participant's Account Balance.** The Participant's account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant's account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.~~
- ~~(v) — **Required Beginning Date.** The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.~~

~~(e) Election to Allow Participants, Former Participants or Beneficiaries to Elect 5-Year Rule.~~

~~Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsections (a)(ii) and (c)(ii) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Subsection (a)(ii), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with subsection (a)(ii) and (c)(ii).~~

~~(f) Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.~~

~~A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.~~

~~7.7 **Small Sum Payments.** A participant's accumulations may be received in a single sum if certain conditions are met. If a Participant in this Plan terminates employment with the Institution and requests that the Fund Sponsor pay his or her Group Retirement Annuity accumulation in a single sum, the Institution will approve such request if, at the time of the request, the following conditions apply:~~

~~— (a) The total Accumulation Account is \$2,000 or less.~~

~~(a) The total accumulation Account attributable to Plan Contributions is not more than \$4,000.~~

~~— Upon request for the small sum payment, the total Accumulation Account will be payable by the Fund Sponsor to the Participant in a lump sum and will be in full satisfaction of the Participant's rights and his or her spouse's rights to retirement or survivor benefits.~~

~~7.86~~ **Direct Rollovers.** This section applies to distributions made on or after ~~January 1, 1993~~December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A

portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, 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.

For this section, the following definitions apply:

- (a) Eligible rollover distribution: 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: 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 distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities)-; and, for any distributions after 12/31/99, any hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).
- (b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401 (a) or 403 (a) of the Code, that accepts the distributee's eligible rollover distribution, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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. ~~However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~ Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Code section 408A, subject to the adjusted gross income limits of Code section 408A(c)(3)(B), if applicable, and subject to the distribution rules of Code section 408A(d)(3). 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 relation order, as defined in section 414(p) of the Code.

- (c) Distributee: A distributee includes an employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

**7.97 *Distribution to IRA of Nonspouse Beneficiary.*** A Participant's nonspouse Beneficiary may elect payment of any portion of the deceased Participant's account in a direct trustee to trustee transfer to an individual retirement account or annuity described in section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this section, a trust maintained for the benefit of one or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's ~~Required beginning~~ **beginning Beginning date-Date** as defined in section 7.65, the required minimum distribution in the year of death may not be transferred according to this section. The requirements of section 402(c)(11) of the Code apply to distributions under this section.

**7.8 *Mandatory Distributions.*** The Plan shall make a mandatory distribution of a Participant's Account which is valued at \$1,000 or less at the time of distribution. Participant or Beneficiary consent to a mandatory distribution shall not be required. A mandatory distribution shall be made no earlier than 30 days from the date the Plan provides notice of the right to elect payment in a direct rollover, pursuant to Code section 402(f), and no later than an administratively feasible date following the end of the Plan Year in which the Participant's employment with the Employer terminates. Mandatory distributions shall be paid in a single lump sum cash payment.

**Article VIII: Administration**

- 8.1 ***Plan Administrator.*** The Idaho State Board of Education, located at 650 W. State Street Boise, Idaho 83720, is the administrator of this Plan and has designated the following as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan:

Chief Fiscal Officer  
Office of the Idaho State Board of Education

Vice President for Finance and Administration  
Boise State University

Vice President for Finance and Administration  
Idaho State University

Vice President for Finance and Administration  
University of Idaho

Vice President for Finance and Administration  
Lewis-Clark State College

Vice President for Finance and Administration  
Eastern Idaho Technical College

Financial Vice President  
College of Southern Idaho

Financial Vice President  
North Idaho College

Vice President for Finance and Administration  
College of Western Idaho

- 8.2 ***Authority of the Institution.*** The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its

duties. The Institution, by action of the Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.

- 8.3 **Action of the Institution.** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance section 8.2 "Authority of the Institution," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Institution in accordance with the provisions of section 8.2 "Authority of the Institution." Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.
- 8.4 **Indemnification.** Subject to the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et. seq., The Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to section 8.2 "Authority of the Institution" (other than the Fund Sponsors) arising out of any action (or inaction) relating to this plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.
- 8.5 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.
- 8.6 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons

claiming an interest in or derived from the contribution's payment.

- 8.7 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

**Article IX: Amendment and Termination**

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
  - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.



**Article X: Miscellaneous**

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.
- 10.6 ***Governing Law.*** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.

**Article XI: Trust Provisions**

- 11.1 Establishment of Trust.** The Institution shall establish a Trust, pursuant to applicable law, to hold the assets of the Trust Fund (as defined below). By signing below, the Trustees agree to hold the assets of the Trust Fund, as constituted from time to time, in trust, and to administer the Trust Fund in accordance with the terms and conditions of the Trust provisions in this Article XI. The Trustees shall, at the direction of the Institution as named fiduciary of the Plan, be the owner of the custodial account pursuant to which mutual funds shall be made available under the Plan as investment options. The Trustees shall follow the proper directions of the Institution, as named fiduciary of the Plan, with respect to the investment and withdrawal of assets in the mutual funds provided such directions are made in accordance with the terms of the Plan and are not contrary to ERISA. The shares of such mutual funds in the custodial account shall constitute the "Trust Fund." TIAA-CREF annuity contracts or certificates (and any other annuity contracts that satisfy the requirements of §401(f) of the Code) shall not be part of the Trust Fund. It shall be prohibited at any time for any part of the Trust Fund (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and Beneficiaries except as otherwise permitted under the Code and ERISA.
- 11.2 Nontransferability or Alienation of Benefits.** No right or interest of a Plan Participant or Beneficiary shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code and ERISA. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) or to a lien or levy on behalf of the Internal Revenue Service.
- 11.3 Trustees' Authority and Powers over Trust Fund.** Subject to any limitations imposed by § 4975 of the Code and § 406 of ERISA related to prohibited transactions:
- (a) The Trustees shall have the exclusive authority and custody over all Plan assets deposited in the Trust, except to the extent otherwise provided herein.
  - (b) The Trustees shall have the authority and power to make, execute, acknowledge and deliver any instruments that may be necessary or appropriate to carry out their powers.
  - (c) The Trustees shall have the authority to vote by proxy on any mutual fund shares constituting the Trust Fund. In voting such proxies, the Trustees shall follow the instructions of Plan Participants and their Beneficiaries. If no instructions for voting proxies applicable to mutual fund shares are

received, the Trustees shall not exercise the voting rights for such shares and will not be responsible for the failure to vote or instruct the vote of such shares.

- (d) The Trustees shall have full authority and power to do all acts whether or not expressly authorized which may be deemed necessary or proper for the protection of the Trust Fund including the exercise of any conversion privilege and/or mutual fund subscription rights.
- (e) The Trustees shall have full authority and power to sell, dispose, purchase, exchange or transfer any Trust Fund shares pursuant to the instructions of the Institution, including a return of Plan contributions to the Institution that is permitted under ERISA and the Plan. No provision of this Trust shall be construed to prevent the transfer of funds at the direction of Participants or Beneficiaries among the Plan Allocation Accounts.
- (f) The Trustees shall apply for beneficial ownership of the custodial account pursuant to the instructions of the Institution as named fiduciary under the Plan.

**11.4 Standard of Care.** The Trustees shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. No Trustee shall cause the Trust to engage in any prohibited transaction under ERISA.

**11.5 Payment of Benefits.** The Trustees shall take such actions as may be necessary to distribute Plan assets held in the Trust to Participants or Beneficiaries in accordance the instructions of the Institution under the Plan. Except as provided in the following sentence, the Trust shall not retain any part of the Accumulation Account due a Participant or Beneficiary. If the Trustees receive any claim to assets held in the Trust which is adverse to a Participant's interest or the interest of his or her Beneficiary, and the Institution as named fiduciary under the Plan, in its absolute discretion, decides the claim is, or may be, meritorious, the Institution may direct the Trustees, and the Trustees shall agree, to withhold distribution until the claim is resolved or until instructed by a court of competent jurisdiction. As an alternative, the Institution may direct the Trustees and the Trustees shall agree, to deposit all or any portion of the Participant's or Beneficiaries' interest in the Trust into the court. Deposit with the court shall relieve the Trustees of any further obligation with respect to the assets deposited. The Trustees have the right to be reimbursed from the Institution for legal fees and costs incurred.

**11.6 Reliance on Trustees as Owner.** No one dealing with the Trustees shall be bound to see to the application of any money paid or property transferred to or upon the order of the Trustees, or to inquire into the validity or propriety of anything the Trustees may purport to do.

- 11.7 **Reliance on Institution.** The Trustees may consult with the Institution or counsel designated by the Institution with respect to the meaning or construction of any provision of the Plan, a funding instrument which is an asset of the Trust, the Trustees' obligations or duties under this Article XI or with respect to any action or proceeding arising hereunder. To the extent permitted by law, the Trustees shall be fully protected both with respect to any action taken or omitted in good faith pursuant to the advice of the Institution or its counsel and in reliance upon any statement of fact made by the Institution.
- 11.8 **Accounting of the Trustees.** Within a reasonable period of time after the end of each Plan Year, and/or upon termination of the Trust, the Trustees shall submit to the Institution sufficient information requested by the Institution which is necessary for the Institution to carry out its respective duties under ERISA with respect to the Plan.
- 11.9 **Trustees' Records.**
- (a) The Trustees shall keep accurate and detailed accounts of all investments (if any), Plan assets, receipts, disbursements, and other transactions involving the Trust Fund (if any), not otherwise prepared by the custodian/record-keeper of the custodial account. All accounts, books and records relating to such transactions shall be open to inspection at all reasonable times by any person designated by the Institution.
  - (b) The Trustees shall submit copies of any statements or written communications received pertaining to the investment of any Plan assets constituting the Trust Fund to the Institution contemporaneously with their receipt by the Trustees.
- 11.10 **Annual Valuation.** The Trustees shall cause a valuation of the Trust Fund to be made as of the last day of each Plan Year and shall provide the Institution with a written report of such valuation within a reasonable period of time after the valuation is performed. On each valuation date the earnings and losses shall be allocated to the Accumulation Account of each Participant with interest in such asset in the ratio that the Participant's interest bears to the fair market value of the asset and the Institution shall receive written notice of the value of each Participant's account held in such asset. Such report shall be prepared by the custodian/record-keeper of the custodial account.
- 11.11 **Compensation of Trustee.** The Trustees shall receive such reasonable compensation for services as agreed to in writing by the Trustees and the Institution, except that no compensation shall be paid to an employee of the Institution or its subsidiaries for service as a Trustee.
- 11.12 **Expenses.** All expenses incurred in connection with the administration of the Plan, including but not limited to Trustees' fees, fees of appraisers and accountants (if any), and legal fees shall be paid by the Institution. All expenses of the Trust Fund (if any), shall be paid by the Institution.

- 11.13 Removal or Resignation of Trustee.** Any person may be removed as Trustee by the Institution at any time by notice in writing to such Trustee. Any person acting as Trustee hereunder may resign at any time upon 30 days notice in writing to the Institution. A resigning or removed Trustee shall transfer and deliver to the Institution all records of the Trust in his or her possession and shall deliver to their successor Trustees (or the Institution if there are no successor Trustees) all instruments of transfer or assignment, whereupon such Trustee shall have no further duties hereunder; provided, however, that nothing herein shall prevent any Trustee at any time from filing a judicial settlement and accounting with a court of competent jurisdiction. The only parties to such action shall be the Trustees and the Institution. A successor Trustee shall have no duty to examine the accounts, records, investments, or acts of any previous Trustee.
- 11.14 Appointment of Successor and Additional Trustees.** The Institution may at any time and from time to time appoint successor Trustees and/or additional Trustees. The appointment of a successor and/or an additional Trustee shall become effective upon such Trustee's written acceptance of such appointment agreeing to be bound by the provisions of this Article XI. Upon acceptance of the appointment, each successor and/or additional Trustee shall have all the powers and duties of a Trustee. Except to the extent otherwise provided under ERISA, no successor or additional Trustee shall be personally liable for any act or omission which occurred prior to the time he or she became a Trustee.
- 11.15 Actions of Trustees.** Except as otherwise provided herein, when there are two Trustees, both must join in taking an action. When more than two Trustees are serving hereunder, all powers of the Trustees shall be by the act of a majority of such persons. Notwithstanding the foregoing, a Trustee may in a signed writing delegate his power to one or more of the other Trustees. No delegation of power may be irrevocable. Notwithstanding the delegation of a power, any Trustee who releases a power shall be liable as a result of the exercise or non-exercise of said power in the same manner as if the power had not been delegated.
- 11.16 Trustees Liability and Protection.** To the extent permitted by applicable law:
- (a) The Trustees shall not be responsible for the adequacy of the Trust Fund to meet and discharge any and all payments and liabilities under the Plan or Trust. The Trustees shall be fully protected in acting upon any instrument, certificate, or payment believed to be genuine and to be signed or presented by the proper person or persons, and the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. Except as otherwise provided in Section 405 of ERISA, each Trustee shall be liable only for his or her own acts of fraud, negligence or willful misconduct and for losses or diminution in value that results from his or her own acts of fraud, negligence or willful misconduct.
  - (b) The responsibilities of the Trustees shall be limited to those duties specifically imposed upon them under the terms of this Article XI, and the Trustees shall not

be personally liable for the acts or omissions of any other fiduciary of the Plan, except as provided in ERISA.

- (c) Except to the extent otherwise provided in this Article XI, the Trustees shall not be responsible for the investment of any property delivered to, or held in the Trust. The Trustees shall not be liable for any losses sustained by the Trust Fund by reason of the purchase, sale, retention, transfer or exchange of any investment in accordance with the provisions of the instrument or instructions of the Institution, Plan Participants and Beneficiaries under the terms of the Plan.
- (d) To the extent permitted by law, the Trustees shall be fully protected in relying upon the advice of legal counsel or the Institution with respect to their duties under the Trust.
- (e) In addition to whatever rights of indemnification the Trustees may be entitled to under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement, the Institution will satisfy any liability actually and reasonably incurred by any Trustee, including expenses, attorney's fees, judgments, fines, and amounts paid in settlement or in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise of any of the powers, authority, responsibilities, or discretion of the Trustee as provided in this Article XI or which is reasonably believed by the Trustee to be provided hereunder or any action taken by such Trustee in connection with such reasonable belief.

**11.17 Documentation.** Any action by the Institution pursuant to this Article XI may be evidenced by writing over the signature of a person designated by the Institution in writing and the Trustees shall be fully protected in acting in accordance with such writing. Any action of the Trustees may be evidenced by a writing signed by such Trustee, and any party shall be fully protected in acting in accordance with such writing. Except to the extent otherwise provided, any notice to be given under this Article XI will be considered effective when received.

**11.18 Amendment.** The Institution may amend any provisions of this Article XI by submitting a copy of the amendment to each Trustee provided that no such amendment which affects the rights, duties or responsibilities of any Trustee may be made without his or her written consent.

**11.19 Termination.** The Trust shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it is created. If the Plan is terminated by the Institution, the Trust shall remain in existence until such time as all assets held in the Trust Fund have been distributed in accordance with the terms of the Plan.

**11.20 No Bond.** No original, successor or additional Trustee shall be required to furnish any bond except to the extent required by ERISA and other applicable law.

11.21 **Governing Law.** This Trust shall be construed and enforced according to the laws of the State of domicile of the Institution, and all provisions hereof shall be administered according to the laws of such State except to the extent such laws are superseded by ERISA. The determination that any provision of this Trust is not enforceable in accordance with its terms in a particular jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Trust generally or in any other jurisdiction or as to any other parties, but rather such unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Trust, as so modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

*Employer Identification Number: -*  
*Plan Number: 001*

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(Signature of Plan Administrator)

**Amendment 1****AMENDMENT OF THE Idaho State Board of Education Optional Retirement Plan for EGTRRA**

~~IN WITNESS WHEREOF, Idaho State Board of Education and Board of Regents of the University of Idaho herein amends the Idaho State Board of Education Optional Retirement Plan, as follows:~~

**A. ~~PREAMBLE~~**

~~1. Adoption and effective date of amendment. This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.~~

~~2. Supersession of inconsistent provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.~~

**B. ~~LIMITATIONS ON CONTRIBUTIONS~~**

~~Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:~~

~~(a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or~~

~~(b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.~~

~~The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.~~

**C. ~~INCREASE IN COMPENSATION LIMIT~~**

~~1. Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar~~



~~year applies to annual compensation for the determination period that begins with or within such calendar year.~~

~~2. Plan Definition of Compensation. To the extent the Plan's definition of Compensation includes compensation not currently includable because of the application of Code Section 125 or 403(b), this definition is amended to include compensation not currently includable because of the application of Code §§ 132(f)(4) and 457.~~

~~3. Special Rule for Governmental Plans. Notwithstanding the above, employees of governmental employers who became Participants in the Plan before the first day of the plan year beginning after December 31, 1995, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.~~

#### ~~D. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS~~

~~1. Effective date. This section shall apply to distributions made after December 31, 2001.~~

~~2. Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Article VII of the Plan, an eligible retirement plan shall mean a qualified retirement plan described in section 401(a) or section 403(a), of the Code, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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 relation order, as defined in section 414(p) of the Code.~~

~~3. Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions in Article VII of the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.~~

~~3. Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in Article VII of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, 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.~~

#### ~~E. ROLLOVERS FROM OTHER PLANS~~

1. ~~Direct Rollovers.~~ The Plan will accept a direct rollover of an eligible rollover distribution from:
  - a. ~~A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.~~
  - b. ~~A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.~~
  - c. ~~An eligible plan under section 457(b) of the Code 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.~~
2. ~~Participant Rollover Contributions from Other Plans.~~ The Plan will accept a Participant contribution of an eligible rollover distribution from:
  - a. ~~A qualified plan described in section 401(a) or 403(a) of the Code.~~
  - b. ~~A tax sheltered annuity plan described in section 403(b) of the Code.~~
  - c. ~~An eligible plan under section 457(b) of the Code 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.~~
3. ~~Participant Rollover Contributions from IRAs.~~ The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 18, 2012**

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**SUBJECT**

Idaho State Board of Education Policy II.H. – first reading

**REFERENCE**

December 2010	Board approved 2 <sup>nd</sup> reading of amendments to Board policy II.H. and changes to the model coaches contract incorporated therein.
October 2011	Board approved 1 <sup>st</sup> reading removing annual reporting requirement of performance relative to academic incentive.
December 2011	Board approved 2 <sup>nd</sup> reading removing annual reporting requirement of performance relative to academic incentive.

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Idaho State Board of Education Policy II.H. provides that “The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board ....”

At the October 2011 Board meeting, the chair of the Athletic Committee indicated the 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. The chair reiterated that future contracts need to contain these criteria to be considered and follow the model contract in Board policy. Staff subsequently decided to not revise the policy to require that contracts not exceed three (3) years because if there was later a need to approve a contract in excess of that amount the policy would have to be waived. Since that time, however, the Board has expressed its intent to limit coach contracts to three years.

**IMPACT**

This policy revision would limit multi-year coach contracts to not more than three years, absent extraordinary circumstances. All such employment contracts would require prior Board approval.

**ATTACHMENTS**

Attachment 1 – Policy II.H. – first reading

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**BOARD ACTION**

I move to approve the first reading of proposed amendments to Board Policy Section II.H., Policies Regarding Coaching Personnel and Athletic Directors with all revisions as presented.

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

**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors December 2014<sup>2</sup>

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1. Agreements Longer Than One Year

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than ~~five-three~~ (53) years, subject to approval by the Board as to the terms, conditions, and compensation there under, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. A contract in excess of three (3) years or a rolling three (3) year contract may be considered by the Board upon the documented showing of extraordinary circumstances. All contracts must be submitted for Board approval prior to the contract effective date. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The December 9, 2010 Board revised and approved multiyear model contract is adopted by reference into this policy. The model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.

2. Agreements For One Year Or Less

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

3. Academic Incentives

Each contract for a head coach shall include incentives, separate from any other incentives, based upon the academic performance of the student athletes whom the coach supervises. The chief executive officer of the institution shall determine such incentives.

4. Part-time Coaches Excepted

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

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors** December 2014<sup>2</sup>

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**5. Assistant Coaches**

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**SUBJECT**

Compensation Adjustments for Agency Heads of the State Board of Education

**REFERENCE**

May 2012  
June 2012

Board approved IPTV General Manager Salary  
Board approved SBOE Executive Director Salary

**APPLICABLE STATUTES, RULES OR POLICY**

Section 33-102A, Idaho Code  
Idaho State Board of Education Governing Policies & Procedures, Section I.E.

**BACKGROUND / DISCUSSION**

At the Board's May Retreat, it approved an equity salary increase for Peter Morrill as General Manager of Idaho Public Television for FY 2013, at \$50.50/hr or \$105,040 annually effective June 24, 2012, which reflected a 13.46% base salary increase.

At the Board's June meeting the Board approved a salary increase for Dr. Mike Rush as Executive Director of the Idaho State Board of Education at \$58.76/hr or \$122,220.80 annually, which reflected an 8.9% base salary increase.

After the Board took these respective actions, the Governor's Office and the Division of Financial Management contacted the Board President and Executive Director and expressed a desire for relative consistency in all State agency head salary increases. Negotiations commenced and the parties reached an agreement on Mr. Morrill and Dr. Rush at a 5% and 8% increase, respectively. It has been determined it is now necessary and appropriate for the Board to approve these respective salaries as modified by the Governor's Office.

Salary increases for Mr. Morrill and Dr. Rush, as agreed to with the Governor's Office, have already been budgeted and implemented.

**IMPACT**

Board policy I.E. states the Board sets the salaries for chief executive officers. Approval will bring negotiated salaries into alignment with policy.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**BOARD ACTION**

I move to amend the salary for Mike Rush as Executive Director of the Idaho State Board of Education, and to set an hourly rate of \$58.27/hr or \$121,201.60 annually, effective June 24, 2012.

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

I move to amend the salary for Peter Morrill as General Manager of Idaho Public Television, and to set at an hourly rate of \$46.74/hr or \$97,219.20 annually, effective June 10, 2012.

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



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Vice President for University Advancement – Multi-Year Contract

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II. B.3.a. and II.F.

**BACKGROUND/DISCUSSION**

Boise State University requests Board approval to offer a multi-year contract to Laura Simic as Vice President for University Advancement. The proposed term is two years and eight months, November 1, 2012 - June 30, 2015.

The Vice President for University Advancement works to build relationships and support for the university's mission of academic excellence. In partnership with the Alumni Association, Bronco Athletic Association and the Boise State University Foundation, University Advancement seeks to develop and nurture donor-centered relationships and help ensure the stewardship of gifts made in support of the University.

Laura is a career professional in the field of advancement with an impressive record of experience, accomplishments, and service for both private and public institutions. Most recently, she served four years at Creighton University in Omaha, Nebraska, as the interim vice president for university relations and senior associate vice president of development and campaign director. She led the final years of Creighton's fundraising campaign which exceeded its fundraising goal by 34 percent with a total of \$471 million. She reshaped the advancement program to create an integrated approach among its operations and support services.

Laura also worked as the associate vice chancellor for development at University of North Carolina Charlotte from 2000-2008 where she provided strategic leadership in the university's private fundraising efforts that resulted in a 332% increase in gift income over a five-year period. Prior to this, she spent 10 years at the University of Tennessee where her role evolved from the director of development for the university libraries to the assistant vice president for planned giving. Her advancement career began at the University of Oregon as a development officer.

Laura earned her Bachelor of Arts degree from the University of Oregon in journalism and public relations and her Master of Science degree from the University of Tennessee in education/leadership studies. She became a Certified Fund Raising Executive in 1996 and has been recertified five times.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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Notwithstanding the multi-year term, the employment contract establishes appropriate procedures regarding dismissal for cause.

**IMPACT**

The salary is \$220,000 annually, and salary increases as may be determined appropriate by the President as consistent with the raises granted to other employees of the University.

**ATTACHMENTS**

Attachment 1 – Proposed Contract

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

Board policy II.F. provides policies regarding non-classified employees. The policy requires employment contracts with non-classified employees to contain certain standard terms and conditions. Staff has verified that the proposed contract contains the requisite terms and conditions.

The Policy also provides that “salaries for new appointments to ... vice president ... may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA-HR), or its equivalent, without prior Board approval.” BSU matched this job to the CUPA benchmark for a “Chief Development Officer” and used an average of the median salaries of the Doctorate and Master’s Institutions survey data to arrive at an average median rate of \$197,500. The 2010 edition of the Carnegie Classifications lists BSU under “Master’s/L: Master’s Colleges and Universities (larger programs).” The median salary for this position among Master’s institutions is \$160,000. The requested salary for this position would 138% of the Master’s median (or 111% of the “average median” rate used by BSU). The salary of the previous incumbent, who left 6/26/2011, was \$192,816. Since then, there has been an individual in an acting appointment who makes \$186,868.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a multi-year contract with Laura Simic as Vice President for University Advancement of the University, for a term commencing on November 1, 2012 with an annual salary of \$220,000, in substantial conformance to the form submitted to the Board, and to authorize the President of Boise State University to execute the contract.

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

## EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into by and between Boise State University (“University”) and Laura Simic (“Employee”).

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Employee as “Vice President for University Advancement” (the “Position”). Employee represents and warrants that Employee is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Employee shall report and be responsible to the University President.

1.3. Duties. Employee shall perform such duties in the University as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Employee to duties at the University other than as set forth herein, provided that Employee’s compensation and benefits shall not be affected by any such reassignment.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years and eight (8) months, commencing on November 1, 2012 and terminating, without further notice to Employee, on June 30, 2015 (the “Term”) unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Employee, 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.

### ARTICLE 3

#### 3.1. Regular Compensation.

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

- (a) An annual salary of \$220,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President as consistent with the raises granted to other employees of the University annually;

- (b) The opportunity to receive such employee benefits calculated on the above salary as the University provides generally to non-faculty exempt employees.

3.2. General Conditions of University Based Compensation. All compensation provided by the University to Employee is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Employee participates.

#### ARTICLE 4

4.1. Outside Activities. Employee shall not undertake any business, professional or personal activities, or pursuits that would prevent Employee from fulfilling Employee's performance duties under this Agreement, or that, in the opinion of the University, would reflect adversely upon the University. Employee may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the President.

#### ARTICLE 5

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

5.1.1. In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Employee, 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.

5.2. Termination of Employee 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 Employee.

5.2.2. In the event the University terminates this Agreement for convenience, Employee's salary will continue as set forth in Section 3.1.1 until the end of the Term.

5.3. Termination Due to Disability or Death of Employee.

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

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

5.3.3. If this Agreement is terminated because the Employee 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, all salary and other benefits shall terminate, except that the Employee 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.

5.4. No Liability. The University shall not be liable to Employee 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 Employee, regardless of the circumstances.

## ARTICLE 6

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

6.2. Governing Policies and Procedures. The terms of employment set forth in this Agreement are subject to the governing policies and procedures of the State Board of Education and the policies and procedures of Boise State University, and as such, may be amended from time to time and without notice during the Term of this Agreement.

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

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

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

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

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

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

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

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

the University:                      Boise State University  
    Office of the President  
    1910 University Drive  
    Boise, Idaho 83725-1000

the Employee:                      Laura Simic  
    [Employee's last known address on file with  
    Human Resource Services]

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

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

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

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

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

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

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

UNIVERSITY

EMPLOYEE

\_\_\_\_\_  
Robert W. Kustra, President

\_\_\_\_\_  
Laura Simic

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

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Employment contract extension for Director of Track and Field and Cross Country, Wayne Phipps

**REFERENCE**

October 17, 2005	Board approval of original multi-year agreement
August 9-10, 2007	Board approval of coaching contract extension

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

The University of Idaho (UI) wishes to extend the contract to its Director of Track and Field and Cross Country, Wayne Phipps for a period of five years ending August 12, 2017. The primary terms of the agreement are set forth below, and the entire contract and matrix comparison to the Board model contract are attached.

The University seeks a 5 year contract based on the following factors:

- 17 seasons coaching track & field/cross country at the University of Idaho
- Last three seasons as Director of Track & Field/Cross Country
- Nine times named conference coach of the year
- Athletes regularly honored by U.S. Track & Field and Cross Country Coaches Association Division I All-Academic Teams in both men's and women's cross country and track and field.
- Five Idaho athletes named as WAC top male or female athlete since 2005.
- Other factors, as well as additional detail for the factors set out above can be found in the attached biography.

**IMPACT**

The annual base salary from appropriated funds is \$63,252.80, with eligibility to receive University-wide changes in employee compensation approved by the Director of Athletics and the President.

There is an annual media payment of \$8,000 and the following incentive/supplemental compensation provisions:

- Conference champions or co-champion = \$1,000 per team for each conference championship or co-championship team (total of 6 possible<sup>1</sup>)

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<sup>1</sup> Four teams for track and field (indoor and outdoor for both men and women) and 2 teams for cross country (men and women).

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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- Top 20 national ranking at season end = \$1,000 per team for each conference championship or co-championship team (total of 6 possible)
- Conference Coach of the Year = \$1,000 per team (total of 6 possible)
- Individual National Champion in intercollegiate track and field and cross country \$500 per champion (estimate one per team per year) = \$3,000
- Academic achievement and behavior of team (categorized using APR) =:
  - National score within sport
  - 975 – 979 = \$250 per team
  - 980 – 985 = \$300 per team
  - 986 – 990 = \$400 per team
  - 990 and above = \$450 per team (total 6 possible)

Total potential annual compensation (base salary, media payment and incentive is \$88,952.80 (using an estimated maximum individual national champions of one per team in any given year).

Liquidated damages for the Coach terminating the contract early for his own convenience are \$15,000 for approximately the first 22 months, then \$10,000 for the next 12 months, \$5,000 for the 12 months thereafter, and \$5,000 for the final 12 months.

**ATTACHMENTS**

Attachment 1 – Employment Contract	Page 5
Attachment 2 – Comparison to Board Model Contract	Page 19
Attachment 3 – Coach Phipps' biography	Page 35

**STAFF COMMENTS AND RECOMMENDATIONS**

At the October 2011 Board meeting, the chair of the Athletic Committee indicated the 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. The chair reiterated that future contracts need to contain these criteria to be considered and follow the model contract in Board policy.

UI brings a contract for its Director of Track and Field and Cross Country. The term of this five year employment agreement was effective August 13, 2012. The Board may wish to inquire about timelines and contract length. The academic incentives are adequate – with the highest amount almost equivalent to incentive pay for individual national champions. The contract also contains adequate liquidated damages in favor of the University.

The employment agreement follows the Board-approved model contract.

Staff recommends the institution provide justification to the Board for seeking retroactive approval of a five year contract.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**BOARD ACTION**

I move to approve the request by the University of Idaho to extend the University's employment contract with Wayne Phipps, as Director of Track and Field and Cross Country, for a term commencing retroactively on August 13, 2012 and expiring on August 12, 2017 with an annual base salary of \$63,252.80 and such contingent base salary increases, annual media payments, and incentive/supplemental compensation provisions as set forth in the materials presented to the Board, in substantial conformance with the terms of contract set forth in Attachment 1 to the Board materials.

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

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## EMPLOYMENT AGREEMENT

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

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the Director of its intercollegiate track and field and cross country teams (Teams). 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 Teams and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Teams, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.7 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on August 13, 2012, and terminating, without further notice to Coach, on August 12, 2017, unless sooner terminated in accordance with other provisions of this Agreement.

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

### ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$63,252.80 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

**3.2 Supplemental Compensation**

3.2.1. Each year one of the Teams is the conference champion or co-champion and if Coach continues to be employed as University's co-head coach of its intercollegiate track and field and cross country teams as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000 during the fiscal year in which the championship is achieved. If more than one Team is the conference champion or co-champion, the amount of supplemental compensation will be \$1,000 for each conference champion or co-champion. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year one of the teams finishes in the top 20 in the NCAA championships and if Coach continues to be employed as University's co-head coach of its intercollegiate track and field and cross country teams as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000. If more than one Team places in the Top 20 at the NCAA championships, the Coach will earn supplemental compensation of \$1,000 for each Top 20 finish. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. For each individual National Champion in intercollegiate track and field and cross country and if Coach continues to be employed as University's head of its intercollegiate track and field and cross country teams as of the ensuing July 1<sup>st</sup>, the University shall pay to Coach supplemental compensation of \$500 for each individual champion.

3.2.4 Each year Coach shall be eligible to receive supplemental compensation based on the academic achievement and behavior of Team members if the single year team Academic Progress Rate (“APR”) for the Team meets the following levels in the National Ranking as follows:

National score within sport

975 – 979 = \$250 per team

980 – 985 = \$300 per team

986 – 990 = \$400 per team

990 and above = \$450 per team

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

3.2.5 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University’s head of its track and field and cross country teams as of the ensuing July 1st, Coach shall receive supplemental compensation of \$1,000. If the Coach is named Conference Coach of the Year or Conference Co-Coach of the year for both the men’s and women’s track and field and cross country teams, Coach will receive \$1,000 for each award. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 The Coach shall receive the sum of \$8,000 from the University or the University’s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Each year, one-half of this sum shall be paid prior to the first indoor track meet, and one-half shall be paid no later than two weeks after the last outdoor track and field meet. Coach’s right to receive the second half of such payment shall vest on the date of the Team’s last regular season or post-season competition, whichever occurs later, provided Coach has fully participated in media programs and public appearances through that date. Coach’s right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) Coach’s compliance with University’s financial stewardship policies as set forth in University’s Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be

successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any 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 that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.7 Coach agrees that the University has the exclusive right to operate track and field and cross country 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 track and field camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties.

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

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



provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

**ARTICLE 4**

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

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

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

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

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

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

connection with any such arrangements without the prior written approval of the Director and the President.

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

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

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

4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the 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 Regents.

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

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

## ARTICLE 5

5.1 Termination of Coach for Cause. The University may, in its discretion,

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or 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 of the violation and could have prevented it by ordinary supervision.

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

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

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

## 5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law.. In addition, Coach will be entitled to continue his health insurance plan and group life

insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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

### 5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June 1, 2014, the sum

of \$15,000; (b) if the Agreement is terminated between June 2, 2014 and June 1, 2015 inclusive, the sum of \$10,000; (c) if the Agreement is terminated between June 2, 2015 and June 1, 2016 inclusive, the sum of \$5,000; (d) if the Agreement is terminated between June 2, 2016, and June 1, 2017 inclusive, the sum of \$5,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

#### 5.4 Termination due to Disability or Death of Coach.

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

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

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

any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

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

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

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

## ARTICLE 6

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

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

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

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

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

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

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

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

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

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

the University:	Director of Athletics
	University of Idaho
	P.O. Box 442302
	Moscow, Idaho 83844-2302



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

the Coach: Wayne Phipps  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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

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

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

UNIVERSITY

COACH

\_\_\_\_\_  
Duane Nellis, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Wayne Phipps,

\_\_\_\_\_  
Date

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

~~(MODEL ATHLETICS CONTRACT)~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between \_\_\_\_\_~~(the~~ University ~~(College)~~of Idaho ~~(University)~~, and \_\_\_\_\_~~Wayne Phipps~~ (Coach).

## ARTICLE 1

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

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

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

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~\_\_\_\_\_~~ five (5) years, commencing on ~~\_\_\_\_\_~~ August 13, 2012, and terminating, without further notice to Coach, on ~~\_\_\_\_\_~~ August 12, 2017, unless sooner terminated in accordance with other provisions of this Agreement.

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

*Model Contract version: 12/9/2010*

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$~~\_\_\_\_\_~~ 63,252.80 per year, payable in biweekly installments in accordance with normal University ~~(College) procedures, and such salary increases as may be determined appropriate~~ procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President ~~and approved by the University (College)'s Board of (Regents or Trustees) \_\_\_\_\_~~;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University ~~(College)~~'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

3.2.1. Each year one of the Team Teams is the conference champion or co-champion and ~~also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs), and~~ if Coach continues to be employed as University ~~(College)~~'s co-head ~~(Sport) coach of its intercollegiate track and field and cross country teams~~ as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation ~~in an amount equal to (amount or computation) of Coach's Annual Salary of \$1,000~~ during the fiscal year in which the championship ~~and (bowl or other post season) eligibility are achieved. The University (College) is achieved. If more than one Team is the conference champion or co-champion, the amount of supplemental compensation will be \$1,000 for each conference champion or co-champion. The University~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

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

*Model Contract version: 12/9/2010*

~~football teams)~~ teams finishes in the top 20 in the NCAA championships and if Coach continues to be employed as University ~~(College)~~'s ~~co-head~~ ~~(Sport)~~ coach of its intercollegiate track and field and cross country teams as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation ~~in an amount equal to (amount or computation)~~ of Coach's Annual Salary in effect on the date of the final poll. The University (College) of \$1,000. If more than one Team places in the Top 20 at the NCAA championships, the Coach will earn supplemental compensation of \$1,000 for each Top 20 finish. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. For each individual National Champion in intercollegiate track and field and cross country and if Coach continues to be employed as University's head of its intercollegiate track and field and cross country teams as of the ensuing July 1<sup>st</sup>, the University shall pay to Coach supplemental compensation of \$500 for each individual champion.

~~3.2.3~~ 3.2.4 Each year Coach shall be eligible to receive supplemental compensation ~~in an amount up to (amount or computation)~~ based on the academic achievement and behavior of Team members. ~~The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the University (College)'s Board of (Regents or Trustees).~~ The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking as follows:

National score within sport

975 – 979 = \$250 per team

980 – 985 = \$300 per team

986 – 990 = \$400 per team

990 and above = \$450 per team

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

~~3.2.4 Each year~~ 3.2.5 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University's head of its track and field and cross country teams as of the ensuing July 1st,

*Model Contract version: 12/9/2010*

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

~~3.2.5~~ 3.2.6 The Coach shall receive the sum of ~~—(amount or~~  
~~computation)—\$8,000~~ from the University ~~(College)~~ or the University ~~(College)~~'s  
 designated media outlet(s) or a combination thereof each year during the term of this  
 Agreement in compensation for participation in media programs and public appearances  
 (Programs). ~~Coach~~ Each year, one-half of this sum shall be paid prior to the first indoor  
track meet, and one-half shall be paid no later than two weeks after the last outdoor track  
and field meet. Coach's right to receive the second half of such a payment shall vest on  
 the date of the Team's last regular season or post-season competition, whichever occurs  
 later. ~~This sum shall be paid (terms or conditions of payment)~~. provided Coach  
has fully participated in media programs and public appearances through that date.  
Coach's right to receive any such media payment under this Paragraph is expressly  
contingent upon the following: (1) academic achievement and behavior of Team  
members; (2) appropriate behavior by, and supervision of, all assistant coaches, as  
determined by the Director; and (3) Coach's compliance with University's financial  
stewardship policies as set forth in University's Administrative Procedures Manual  
Chapter 25. Agreements requiring the Coach to participate in Programs related to his  
 duties as an employee of University ~~(College)~~ are the property of the University  
~~(College)~~. The University ~~(College)~~ shall have the exclusive right to negotiate and  
 contract with all producers of media productions and all parties desiring public  
 appearances by the Coach. Coach agrees to cooperate with the University ~~(College)~~ in  
 order for the Programs to be successful and agrees to provide his services to and perform  
 on the Programs and to cooperate in their production, broadcasting, and telecasting. It is  
 understood that neither Coach nor any assistant coaches shall appear without the prior  
 written approval of the Director on any competing radio or television program (including  
 but not limited to a coach's show, call-in show, or interview show) or a regularly  
 scheduled news segment, except that this prohibition shall not apply to routine news  
 media interviews for which no compensation is received. Without the prior written  
 approval of the Director, Coach shall not appear in any commercial endorsements  
~~which that~~ are broadcast on radio or television that conflict with those broadcast on the  
 University ~~(College)~~'s designated media outlets.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY~~  
~~(COLLEGE))~~ 3.2.7 Coach agrees that the University ~~(College)~~ has the exclusive right to

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

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

- ~~a) The summer youth camp operation reflects positively on the University (College) and the Department;~~
- ~~b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University (College) personnel, equipment, or facilities without the prior written approval of the Director;~~
- ~~c) Assistant coaches at the University (College) are given priority when the Coach or the private enterprise selects coaches to participate;~~
- ~~d) The Coach complies with all NCAA (NAIA), Conference, and University (College) rules and regulations related, directly or indirectly, to the operation of summer youth camps;~~
- ~~e) The Coach or the private enterprise enters into a contract with University (College) and \_\_\_\_\_ (campus concessionaire) for all campus goods and services required by the camp.~~
- ~~f) The Coach or private enterprise pays for use of University (College) facilities including the \_\_\_\_\_.~~
- ~~g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within~~

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~~ninety days of the last day of the summer youth camp(s); Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.~~

- ~~h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff \$1 million; (2) catastrophic coverage: camper and staff \$1 million maximum coverage with \$100 deductible;~~
- ~~i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- ~~j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

~~3.2.7~~ 3.2.8 Coach agrees that the University ~~(College)~~ has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University ~~(College)~~. Coach recognizes that the University ~~(College)~~ is negotiating or has entered into an agreement with ~~—(Company Name)—Nike~~ to supply the University ~~(College)~~ with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University ~~(College)~~'s reasonable request, Coach will consult with appropriate parties concerning ~~an —(Company Name)—Nike~~ product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~—(Company Name)—Nike~~, or give a lecture at an event sponsored in whole or in part by ~~—(Company Name)—Nike~~, or make other educationally-related appearances as may be reasonably requested by the University ~~(College)~~. Notwithstanding the

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

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

#### ARTICLE 4

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

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

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

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

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

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

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

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

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

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

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

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

~~4.7~~4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

## ARTICLE 5

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

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

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

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- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University ~~(College)~~'s judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University ~~(College)~~'s governing board, the conference, or the NCAA ~~(NAIA)~~;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University ~~(College)~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University ~~(College)~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

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

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

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

5.2.3 ~~The parties have both~~University has been represented by legal counsel, ~~and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel.~~ in the contract negotiations and 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

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

### 5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June 1, 2014, the sum of ~~\$30,000.00~~ 15,000; (b) if the Agreement is terminated between June 2, 2014 and June 1, 2015 inclusive, the sum of ~~\$20,000.00~~ 10,000; (c) if the Agreement is terminated between June 2, 2015 and June 1, 2016 inclusive, the sum of ~~\$10,000.00~~ 5,000; (d) if the Agreement is terminated between June 2, 2016, and June 1, 2017 inclusive, the sum of \$5,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 ~~The parties have both~~ University has been represented by legal counsel, ~~and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel,~~ in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University ~~(College)~~ will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by

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University~~-(College)~~ shall constitute adequate and reasonable compensation to University~~-(College)~~ for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University~~-(College)~~.

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

#### 5.4 Termination due to Disability or Death of Coach.

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

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

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

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

~~5.7~~5.6 No Liability. The University~~-(College)~~ shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

~~5.8~~5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University~~-(College)~~ employees, if the

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

## ARTICLE 6

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

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

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

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

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

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

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

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

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

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

the University ~~(College)~~:

Director of Athletics  
 \_\_\_\_\_ [University of Idaho](#)  
 \_\_\_\_\_ [P.O. Box 442302](#)  
[Moscow, Idaho 83844-2302](#)

with a copy to:

President  
 \_\_\_\_\_ [University of Idaho](#)  
 \_\_\_\_\_ [P.O. Box 443151](#)  
[Moscow, ID 83844-3151](#)

the Coach:

\_\_\_\_\_ [Wayne Phipps](#)  
 Last known address on file with  
 University ~~(College)~~'s Human Resource Services

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

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

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

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

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

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

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

UNIVERSITY ~~(COLLEGE)~~

COACH

Duane Nellis , President Date

Wayne Phipps,

Date

~~Date~~

Approved by the Board of ~~-(Regents or Trustees)-~~ on the \_\_\_\_ day of \_\_\_\_\_, ~~2010~~ August, 2012.

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## Wayne Phipps

<b>Position:</b>	Director of Track & Field
<b>Alma Mater:</b>	British Columbia
<b>Graduating Year:</b>	1991
<b>Phone:</b>	(208) 885-0210
<b>Email:</b>	vandaltrack@hotmail.com

The 2012-13 season marks Wayne Phipps' third season as Idaho's Director of Track & Field/Cross Country and his 17th overall year with the program. He served as co-head coach from 2000-09 and was an assistant before that from 1995-99. In his time at Idaho, he has been honored nine times as a conference coach of the year and has led the Vandals to a record 11 total conference titles.

Since 2000, Phipps has overseen an Idaho track and field/cross country program that has produced four individual cross country champions, 46 indoor track and field champions and 103 outdoor champions. Vandals have claimed 18 conference athlete of the year awards, broken 15 conference records and qualified for the NCAA Championships 79 times. Since 2000, Vandal athletes have broken 30 indoor school records and 23 outdoor records, and at least one school record has fallen every year at Idaho during his tenure.

Additionally, Idaho has a very strong academic reputation as regular honorees among the U.S. Track & Field and Cross Country Coaches Association Division I All-Academic Teams in both men's and women's cross country and track and field. Since 2005, five Idaho track and field athletes have earned the Western Athletic Conference's prestigious Stan Bates Award as the top male or female student-athlete in the conference, and the team's athletes have been recognized with a combined 442 WAC All-Academic honors.

The 2011-12 season for Idaho featured a laundry list of team and individual accomplishments. Phipps' Vandals claimed the 2011 women's cross country crown - the team's second in a row and fourth in seven tries - and sophomore Hannah Kiser became the team's first individual NCAA Cross Country Championships qualifier since 2004. The Vandal men claimed Idaho's first men's WAC title in any sport with a dramatic win at the 2012 WAC Indoor Championships, then made it a sweep three months later on their home track at the WAC Outdoor Championships. In the 2012 track and field seasons alone, Vandals combined for three All-America honors, four school records, three WAC records, 21 individual WAC titles and three WAC relay titles, 88 men's All-WAC honors, 43 women's All-WAC accolades, 23 WAC Athlete of the Week awards and 97 WAC All-Academic honors.

Success is a staple under Phipps, and it began with his very first year at the position, when, in 2000, the Vandal men won the Big West title and Phipps was honored as 2000 Big West Men's Track and Field Coach of the Year. In 2001, both the men and women won Big West titles and Phipps was chosen Big West Men's Track and Field Coach of the Year once again. In each of his first three years at Idaho, the men's team finished in the top 30 in the nation both indoors and outdoors to make Idaho one of only nine schools in the nation to do so. Phipps' success wasn't limited to track and field, as he also led the Vandal women to a 2002 Big West Cross Country title and earned Big West Cross Country Coach of the Year honors. In 2003, the women's track and field team took home the Big West title.

Phipps led the Vandals to uncharted territory in 2004 when the women's cross country team qualified

for the NCAA Championships for the first time in the program's history and finished 25th overall. The 2005 cross country season saw even more success, as the women's team took home the University of Idaho's first Western Athletic Conference title. Four Vandal runners finished in the top five and Dee Olson earned the individual title, as well as WAC Athlete of the Year and Phipps earned his fourth career Coach of the Year honor. In 2006, the second straight Phipps-coached athlete won the WAC as freshman Rhea Richter took home the women's cross country individual title.

In 2007, Phipps led the women to their second cross country title in three years as four runners finished in the top 10. In 2008, he coached yet another WAC Champion, as Allix Lee-Painter won the women's cross country title and the women finished second as a team. In 2010, Idaho claimed its third WAC title in five years, as the team put five runners in the top 15 to claim the crown. Making that title especially sweet was the fact that it was held in Moscow, and was Idaho's first time hosting a WAC Championship event.

He currently coaches two-time Olympian and volunteer assistant coach Angela Whyte and has coached two-time Olympian and World Championship finalist Tawanda Chiwira, NCAA All-American and world-ranked hurdler Arend Watkins, and Olympian Sherwin James.

Phipps began his coaching career in his hometown of Prince George, British Columbia, with the Prince George Track and Field Club. During that time, he coached several provincial and national medalists and champions. As an athlete, Phipps was a three-year letterwinner in basketball and a four-year letterwinner in track and cross country at D.P. Todd Secondary. He also competed for the Prince George Track and Field Club, where he was coached by his father, Ron, and was a provincial champion and medalist in events ranging from the 100m to the 1500m and cross country. He also competed in both the cross country and track and field national championships in Canada.

Phipps competed for the University of Montana and the University of British Columbia, where he graduated with a degree in exercise science in 1991. Phipps earned his master's of science from the University of Oregon in exercise and movement science, with a sports medicine major and minors in biomechanics and exercise physiology.

#### **Team Conference Titles**

- 2000 Big West Men's Outdoor Track & Field
- 2001 Big West Men's Outdoor Track & Field
- 2001 Big West Women's Outdoor Track & Field
- 2002 Big West Women's Cross Country
- 2003 Big West Women's Outdoor Track & Field
- 2005 WAC Women's Cross Country
- 2007 WAC Women's Cross Country
- 2010 WAC Women's Cross Country
- 2011 WAC Women's Cross Country
- 2012 WAC Men's Indoor Track & Field
- 2012 WAC Men's Outdoor Track & Field

#### **Individual Coaching Honors**

- 2000 Big West Men's Track & Field Coach of the Year
- 2001 Big West Men's Track & Field Coach of the Year
- 2002 Big West Women's Cross Country Coach of the Year
- 2005 WAC Women's Cross Country Coach of the Year
- 2007 WAC Women's Cross Country Coach of the Year
- 2010 WAC Women's Cross Country Coach of the Year
- 2011 WAC Women's Cross Country Coach of the Year
- 2012 WAC Men's Indoor Track & Field Coach of the Year
- 2012 WAC Men's Outdoor Track & Field co-Coach of the Year

Show Menu



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Employment contract for extension for Women's Soccer Coach, Peter Showler

**REFERENCE**

August 20-22, 2008

Board approval of coaching contract

April 21-22, 2010

Board approval of coaching contract extension

June 23, 2011

Board approval of coaching contract extension

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

The University of Idaho wishes to enter into a new contract with its Women's Soccer Coach, Peter Showler for a period of two years ending December 31, 2015. The primary terms of the agreement are set forth below, and the entire contract and redline comparison to the Board model contract are attached.

**IMPACT**

The annual base salary from appropriated funds is \$38,438.40; with eligibility to receive University-wide changes in employee compensation approved by the Director of Athletics and the President.

There is an annual media payment of \$12,300 and the following incentive/supplemental compensation provisions:

- Conference champions or co-champion = \$1,000
- Top 20 national ranking at season end = \$1,000
- Conference Coach or Co-Coach of the Year = \$1,000
- Team qualifies for conference tournament = \$2,000
- Team achieves a winning record at regular season end = \$500
- Team achieves 12 regular season wins = \$500
- Academic achievement and behavior of team (categorized by APR national rank):

National rank within sport

50th - 60th % = \$250

60th - 70th % = \$300

70th – 80th % = \$400

80th % or above = \$450

Coach may participate in University operated youth soccer camps and will be compensated with the net income from the camp less \$500 and all camp expenses – or if the University elects not to operate a camp, Coach may elect to do so.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 18, 2012**

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Total potential annual compensation (base salary, media payment and incentive is \$57,188.40.

**ATTACHMENTS**

Attachment 1 – Employment Contract

Page 3

Attachment 2 – Comparison to Board Model Contract

Page 19

**STAFF COMMENTS AND RECOMMENDATIONS**

This is a request to extend the employment contract for UI's women's soccer coach for two more years. The annual base salary amount provided in this agreement is funded entirely with state appropriated General Funds.

The highest academic incentives are approximately equivalent to incentive pay for a winning team record. The contract contains adequate liquidated damages in favor of the University. The Board's model contract was used.

Staff recommends approval.

**BOARD ACTION**

I move to approve the request by the University of Idaho to enter a new employment contract with Peter Showler, as Women's Soccer Coach, for a term commencing January 1, 2013 and expiring on December 31, 2015 with an annual base salary of \$38,438.40 and such contingent base salary increases, annual media payments, and incentive/supplemental compensation provisions as set forth in the materials presented to the Board, in substantial conformance with the terms of the contract set forth in Attachment 1 to the Board materials.

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

## EMPLOYMENT AGREEMENT

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

### ARTICLE 1

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

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

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

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years commencing on January 1, 2013, and terminating, without further notice to Coach, on December 31, 2015, unless sooner terminated in accordance with other provisions of this Agreement.

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

**ARTICLE 3**

**3.1 Regular Compensation.**

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

- a) An annual salary of \$38,438.40 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

**3.2 Supplemental Compensation**

3.2.1. Each year the Team is the conference champion or co-champion and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000 during the fiscal year immediately following the year in which the championship is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University's head women's soccer coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$1,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. Each year the Team finishes in the top 20 in the NCAA championships and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4. Each year the Team qualifies for play in the conference tournament, and if Coach continues to be employed as University's head coach of its



intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$2,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5. Each year the Team achieves a winning record at the end of the regular season (excluding any exhibition and conference tournament games), and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$500. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6. Each year the Team achieves twelve (12) wins in regular season games (excluding exhibition games), and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$500. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7. Each year Coach shall be eligible to receive supplemental compensation based on the academic achievement and behavior of Team members if the Team's cumulative APR ranks nationally within intercollegiate women's soccer at the 50th percentile or higher as follows:

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

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

3.2.8 The Coach shall receive the sum of \$12,300 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Each year, one-half of this sum shall be paid prior to the first contest, and one-half shall be paid no later than two weeks after the last contest. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) Coach's compliance with University's financial stewardship policies as

set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any 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 that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.9 Coach agrees that the University has the exclusive right to operate youth soccer 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 youth soccer 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 youth soccer camps, the University shall pay Coach the remaining income from the youth soccer camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth soccer camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth soccer camps on the University's campus and using its facilities under the following terms and conditions:

:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;

- d) The Coach complies with all NCAA, Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities; such rate to be set at the rate charged as if the camp were conducted by the University of Idaho.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible.
- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s).
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws.

In the event of termination of this Agreement, suspension, or reassignment, University of Idaho shall not be under any obligation to permit a summer youth

camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University of Idaho shall be released from all obligations relating thereto.

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

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

#### ARTICLE 4

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

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

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

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

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

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

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall provide a written detailed account of 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. Sources of such income include, but are not limited to, the following:

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits, including preferential housing arrangements;
- (d) Country club memberships;

- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

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

4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the 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 Regents.

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

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

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;

- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or 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 of the violation and could have prevented it by ordinary supervision.

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

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

5.1.4 If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations. This section applies to violations occurring at the University 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 pay to Coach the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends, provided however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.



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

### 5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University the following sums: (a) if the Agreement is terminated on or before December 31, 2013, the sum of \$10,000; (b) if the Agreement is terminated between January 1, 2014 and December 31, 2014 inclusive, the sum of \$5,000; (c) if the Agreement is terminated between January 1, 2015 and December 31, 2015 inclusive, there will be no buyout payment. Sums shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 University has been represented by legal counsel, and Coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience that are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are

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

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

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

**ARTICLE 6**

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

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

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

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

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

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

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

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

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

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

the University:                      Director of Athletics  
University of Idaho  
P.O. Box 442302  
Moscow, Idaho 83844-2302

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

the Coach:                              Peter Showler  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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

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

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

UNIVERSITY

COACH

\_\_\_\_\_  
M. Duane Nellis                      Date  
President

\_\_\_\_\_  
Peter Showler,                      Date

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

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~~(MODEL ATHLETICS CONTRACT)~~ EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between  
~~\_\_\_\_\_ (the University (College) of Idaho (University), and~~  
~~\_\_\_\_\_ Peter Showler (Coach).~~

## ARTICLE 1

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

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

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

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~\_\_\_\_\_~~ three (~~—~~ 3) years, commencing on ~~\_\_\_\_\_~~ January 1, 2013, and terminating, without further notice to Coach, on ~~\_\_\_\_\_~~ December 31, 2015, unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$~~\_\_\_\_\_~~38,438.40 per year, payable in biweekly installments in accordance with normal University ~~(College) procedures, and such salary increases as may be determined appropriate~~procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President ~~and approved by the University (College)'s Board of (Regents or Trustees)\_\_\_\_\_~~;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University ~~(College)~~'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion and ~~also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs)~~ if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000 during the fiscal year immediately following the year in which the championship is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University ~~(College)~~'s head ~~\_\_\_\_\_ (Sport) women's soccer~~ coach as of the ensuing July 1st, ~~the University (College) Coach shall pay to Coach~~receive supplemental compensation ~~in an amount equal to \_\_\_\_\_ (amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post season) eligibility are achieved of \$1,000.~~ The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~Model Contract version: 12/9/2010~~Employment Agreement Showler

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3.2.3. ~~3.2.2~~ Each year the Team ~~is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams) — finishes in the top 20 in the NCAA championships~~ and if Coach continues to be employed as University ~~(College)~~'s head ~~—(Sport)—~~ coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation ~~in an amount equal to (amount or computation) — of Coach's Annual Salary in effect on the date of the final poll. of \$1,000.~~ The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4. Each year the Team qualifies for play in the conference tournament, and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$2,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5. Each year the Team achieves a winning record at the end of the regular season (excluding any exhibition and conference tournament games), and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$500. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6. Each year the Team achieves twelve (12) wins in regular season games (excluding exhibition games), and if Coach continues to be employed as University's head coach of its intercollegiate women's soccer team as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$500. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7. Each year Coach shall be eligible to receive supplemental compensation based on the academic achievement and behavior of Team members if the Team's cumulative APR ranks nationally within intercollegiate women's soccer at the 50th percentile or higher as follows:

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

~~3.2.3~~ Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) — based on the academic achievement and behavior of Team members. The determination of whether

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

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

~~3.2.5~~ 3.2.8 The Coach shall receive the sum of ~~(amount or computation)~~ \$12,300 from the University ~~(College)~~ or the University ~~(College)~~'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). ~~Coach~~ Each year, one-half of this sum shall be paid prior to the first contest, and one-half shall be paid no later than two weeks after the last contest. Coach's right to receive the second half of such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment) provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University ~~(College)~~ are the property of the University ~~(College)~~. The University ~~(College)~~ shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University ~~(College)~~ in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant

coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received.

Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements ~~which~~that are broadcast on radio or television that conflict with those broadcast on the University ~~(College)~~'s designated media outlets.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~3.2.9 Coach agrees that the University ~~(College)~~ has the exclusive right to operate youth ~~(Sport) — soccer~~ camps on its campus using University ~~(College)~~ facilities. The University ~~(College)~~ shall allow Coach the opportunity to earn supplemental compensation by assisting with the University ~~(College)~~'s camps in Coach's capacity as a University ~~(College)~~ employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University ~~(College)~~'s football's youth soccer camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University ~~(College)~~'s summer football's youth soccer camps, the University ~~(College)~~ shall pay Coach ~~—(amount)— per year as supplemental compensation during each year of his employment as head (Sport) coach at the University (College). This amount shall be paid —(terms of payment) —~~the remaining income from the youth soccer camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

~~(SUMMER CAMP OPERATED BY COACH) — Coach may~~Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth soccer camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate a ~~summer~~youth ~~—(Sport) — camp at~~soccer camps on the University ~~(College)~~'s campus and using its facilities under the following terms and conditions:

1.

- a) The summer youth camp operation reflects positively on the University ~~(College)~~of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University ~~(College)~~of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University ~~(College)~~of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA ~~(NAIA)~~, Conference, and University ~~(College)~~of Idaho rules and

regulations related, directly or indirectly, to the operation of summer youth camps;

- e) The Coach or the private enterprise enters into a contract with University ~~(College)~~ and ~~(campus-concessionaire)~~ of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University ~~(College)~~ facilities including the ~~\_\_\_\_\_~~ of Idaho facilities; such rate to be set at the rate charged as if the camp were conducted by the University of Idaho.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible.
- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University ~~(College)~~ of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s).
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University ~~(College)~~ of Idaho while engaged in camp activities. The Coach and all other University ~~(College)~~ of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws.

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

~~3.2.7~~3.2.10 Coach agrees that the University ~~(College)~~ has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University ~~(College)~~. Coach recognizes that the University ~~(College)~~ is negotiating or has entered into an agreement with ~~—(Company Name)—~~ Nike to supply the University ~~(College)~~ with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University ~~(College)~~'s reasonable request, Coach will consult with appropriate parties concerning ~~an —~~ ~~(Company Name) — product's~~ Nike products' design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~—(Company Name)—~~ Nike, or give a lecture at an event sponsored in whole or in part by ~~—(Company Name)—~~ Nike, or make other educationally-related appearances as may be reasonably requested by the University ~~(College)~~. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head ~~—(Sport)—~~ women's soccer coach. In order to avoid entering into an agreement with a competitor of ~~—(Company Name)—~~ Nike, Coach shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. Coach shall also report such outside income to the University ~~(College)~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including ~~—(Company Name)—~~ Nike, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

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

#### ARTICLE 4

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

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

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

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

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

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

**4.3** NCAA ~~(or NAIA)~~ Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the University ~~(College)~~'s President for all athletically related income and benefits from sources outside the University ~~(College)~~ and shall ~~report~~ provide a written detailed account of the source and amount of all such



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

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

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

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

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

~~4.7~~4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not be unreasonably ~~be~~ withheld.

## ARTICLE 5

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

5.1.1 In addition to the definitions contained in applicable rules and

regulations, University ~~(College)~~ and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

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



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

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

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

5.1.4 If found in violation of NCAA ~~(NAIA)~~ regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA ~~(NAIA)~~ enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations. This section applies to violations occurring at the University ~~(College)~~ or at previous institutions at which the Coach was employed.

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

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

5.2.2 In the event that University ~~(College)~~ terminates this Agreement for its own convenience, University ~~(College)~~ shall ~~be obligated~~ pay to ~~pay~~ Coach, ~~as liquidated damages and not a penalty~~, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University ~~(College)~~ until the term of this Agreement ends; ~~provided~~, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation ~~the~~ University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation ~~deduction~~ deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he

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

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

### 5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University ~~(College), as liquidated damages and not a penalty, for the breach of this-~~

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~~Agreement~~ the following ~~sums~~sums: (a) if the Agreement is terminated on or before ~~December 31, 2013~~, the sum of ~~\$30,000.00~~10,000; (b) if the Agreement is terminated between ~~\_\_\_\_\_~~ and ~~January 1, 2014 and December 31, 2014~~ inclusive, the sum of ~~\$20,000.00~~5,000; (c) if the Agreement is terminated between ~~\_\_\_\_\_~~ and ~~\_\_\_\_\_~~ inclusive, the sum of ~~\$10,000.00~~. ~~The liquidated damages~~January 1, 2015 and December 31, 2015 inclusive, there will be no buyout payment. Sums shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

#### 5.4 Termination due to Disability or Death of Coach.

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

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

5.4.3 If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University ~~(College)~~'s disability insurance carrier, or becomes unable to perform the essential functions of the position of head

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coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University ~~(College)~~.

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

~~5.7~~5.6 No Liability. The University ~~(College)~~ shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

~~5.8~~5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University ~~(College)~~ employees, if the University ~~(College)~~ suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University ~~(College)~~ from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University ~~(College)~~ Faculty-Staff Handbook.

## ARTICLE 6

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

6.2 University ~~(College)~~ Property. All personal property (excluding vehicle(s) provided through the ~~=====~~ Vandal Wheels program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University ~~(College)~~ or developed by Coach on behalf of the University ~~(College)~~ or at the University ~~(College)~~'s direction or for the University ~~(College)~~'s use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University ~~(College)~~.

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Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

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

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

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

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

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

the University ~~(College)~~:

Director of Athletics

University of Idaho  
P.O. Box 442302  
Moscow, Idaho 83844-2302

with a copy to:

President

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

the Coach:

Peter Showler

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

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

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

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

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

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

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

6.16 Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney and has either consulted with legal counsel or chosen not to. Accordingly, in all cases, the

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

UNIVERSITY ~~(COLLEGE)~~

COACH

M. Duane Nellis

Date

\_\_\_\_\_, President

~~Date~~

Peter Showler,

Date

~~Date~~

Approved by the Board of ~~(Regents or Trustees)~~ on the \_\_\_\_ day of \_\_\_\_\_, ~~2010~~ 2012.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 18, 2012**

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**SUBJECT**

II.G. Policies Regarding Faculty (institutional Faculty Only) – First Reading

**REFERENCE**

February 2012                      Board approved second reading for II.G. Policies Regarding Faculty (Institutional Faculty Only)

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.G. Policies Regarding Faculty (institutional Faculty Only)

**BACKGROUND/DISCUSSION**

Board Policy II.G.6 is intended to provide coverage for the acquisition and evaluation of tenure for institutional faculty. Specifically, Board Policy II.G.6 (e), provides that in granting tenure, the chief executive officer will consider the evaluations of each candidate by a committee appointed for the purpose of annual evaluations and tenure status.

Consistent with this policy section, the committee must consist of tenured and non-tenured faculty, student representation, and one or more representatives from outside the department. Institutions have expressed interest in amending language to this policy section that will provide flexibility for the composition of the committee and provide for student and non-tenured faculty participation to be optional and not a requirement.

**IMPACT**

The amendments to Board Policy II.G.6 (e) will allow institutions to begin reorganizing their tenure evaluation committees.

**ATTACHMENTS**

Attachment 1 – II.G Policies Regarding Faculty, 1<sup>st</sup> reading

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**STAFF COMMENTS AND RECOMMENDATIONS**

Currently, Board Policy II.G.6 (e) requires the composition of the committee to include student representation and non-tenured faculty. Institutions would like to amend the policy to make those optional. In May 2012, the Council on Academic Affairs and Programs considered the proposed policy amendments and recommended approval.

Staff recommends approval as presented.

**BOARD ACTION**

I move to approve the first reading of amendments to Board Policy II.G. Policies Regarding Faculty (Institutional Faculty Only) as presented.

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

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**GOVERNING POLICIES AND PROCEDURES****SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) February-December 2012****1. Letters of Employment**

- a. All faculty employees serve pursuant to employment contracts. The employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-tenured faculty employees have no continued expectation of employment beyond their current contract of employment. Each faculty employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the faculty employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution. Each contract of employment must include a statement to the following effect and intent: "The terms of employment set forth in this letter (contract) of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of the University of Idaho), and the policies and procedures of (the institution)."
- b. Term of Appointment - All non-tenure faculty employees have fixed terms of employment. Except as provided herein, no contract of employment with such an employee may exceed one (1) year. The institutions may implement policies allowing for multi-year contracts for certain classifications of non-tenure track faculty members. Such policies must include, at a minimum, the following requirements: (1) no contract of appointment may exceed three (3) years without prior Board approval; (2) all multi-year employment contracts shall be approved in writing by the institution's Chief Executive Officer or designee; and (3) all multi-year contracts must be reported to the Board at the next regular meeting. Employment is subject to satisfactory annual performance review with informal review at the end of each semester.

A multi-year contract shall also state that it may be terminated at any time for adequate cause, as defined in Section II.L. of Board policy, or when the Board declares a state of financial exigency, as defined in Section II.N. of Board policy. The contract shall also state that it may be non-renewed pursuant to Section II.G.5. of Board policy.

Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.

**GOVERNING POLICIES AND PROCEDURES****SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~February-December~~ 2012**

- c. Non-tenured faculty and tenured faculty, who serve pursuant to contracts of employment or notices (letters) of appointment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).
- d. Faculty Rank and Promotion
  - i. There are four (4) primary faculty ranks at each institution: (a) professor, (b) associate professor, (c) assistant professor, and (d) instructor. Each institution may establish additional faculty ranks, specify the title of each rank, and delineate the requirements for each faculty rank so established. Recommendations for additional faculty ranks must be submitted by the chief executive officer to the Board for approval.
  - ii. Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank at an institution, is located in a department or equivalent unit.
  - iii. Each institution must establish criteria for initial appointment to faculty rank and for promotion in rank at the institution. Such criteria must be submitted to the Board for approval, and upon approval must be published and made available to the faculty.
  - iv. Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established institutional criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with institutional procedures and the appointment is recommended by the chief executive officer and approved by the Board.
  - v. A non-classified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established by the institution. A non-classified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if such employee meets the criteria for rank as established by the institution and approved by the Board.

**GOVERNING POLICIES AND PROCEDURES****SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) February-December 2012****2. Compensation****a. Salary**

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

**b. Salaries, Increases and other Compensation related items**

- i. For purposes of categorizing faculty employees for salary and reporting purposes, the following definition applies: Faculty includes all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold the following academic rank or titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any of these academic ranks. Report in this category deans, directors, or the equivalents, as well as associate deans, assistant deans, and executive officers of academic departments (chairpersons, heads, or the equivalent) if their principal activity is instructional. Do not include student teaching or research assistants or medical interns or residents. (For reporting purposes, deans, associate deans, and assistant deans are included in the executive/administrative category.)
- ii. Credited State Service/Full Time Status - A faculty member employed for an academic year and paid over a twelve-month period will be credited with twelve (12) months of state service. For all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching; research and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution.
- iii. Pay Periods - All faculty employees, including those on academic year appointments, are paid in accordance with a schedule established by the state controller.

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~February-December~~ 2012**

- iv. Automobile Exclusion - Unless expressly authorized by Board policy, no faculty employee will receive an automobile or automobile allowance as part of his/her compensation.

**3. Annual Leave**

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

**c. Sabbatical Leave**

**i. Eligibility**

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

**ii. Term**

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

**iii. Condition**

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

**iv. Report on Sabbatical Leave**

**GOVERNING POLICIES AND PROCEDURES****SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~February-December~~ 2012**

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

v. Report to the Board

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

4. Performance Evaluation

- a. Annual Evaluation - Each year the chair of a department must submit to the dean of the chair's college an evaluation of each faculty member in the department. This evaluation, together with the input of higher administrators, will be used as (1) basis for the final recommendation relative to reappointment, non-reappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated.
- b. Evaluation Criteria - Evaluation of faculty should be made in terms of the individual's effectiveness. Each institution shall publish its criteria for annual evaluation and ensure that all members of the faculty have access to the criteria.
- c. Any written recommendations that result from evaluation of a faculty employee will be given to the employee and a copy will be placed in the employee's file.
- d. Each institution must develop policies, procedures, and measurement instruments to be used in the evaluation by students of faculty teaching effectiveness.

5. Non-renewal of Non-tenured Faculty Members

- a. Notice of non-renewal must be given in writing and in accordance with the following standards:
  - i. First Year Of Service - Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination.
  - ii. Second Year of Service - Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of the academic year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination.

**GOVERNING POLICIES AND PROCEDURES****SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES****Subsection: G. Policies Regarding Faculty (Institutional Faculty Only) ~~February-December~~ 2012**

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

**b. Request For Review**

- i. Non-renewal is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of non-renewal. The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of non-renewal.
  - ii. Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the chief executive officer of the institution that the non-reappointment was the result of discrimination prohibited by applicable law, the non-tenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits etc. as set forth for the grievance of non-renewal by non-classified employees shall be used (see subsection F).
- c. Non-tenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are not entitled to a statement of reasons upon which the decision for such action is based. No hearing to review such a decision will be held.

**6. Tenure**

- a. Tenure Defined - Tenure is a condition of presumed continuous employment following the expiration of a probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's



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

**b. Acquisition of Tenure**

- i. Professional-Technical Faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:
  - 1) be afforded the right to pursue promotion; and
  - 2) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and
  - 3) be afforded on opportunity to serve on institutional committees.
- ii. Academic faculty members, after meeting certain requirements, established by the employing institution, may acquire tenure. Each institution shall develop policies for the acquisition of tenure that are consistent with this general philosophy and policy statement of the Board. Acquisition of tenure is not automatic, by default or defacto, but requires an explicit judgment, decision, and approval. A faculty member is eligible to be evaluated for the acquisition of tenure after having completed four (4) full years of academic employment at the institution, although tenure may be awarded prior to completion of this initial eligibility period in certain exceptional cases as provided in Board Policy II.G.6.d.iv.1). In addition, an academic faculty member must be evaluated for the acquisition of tenure not later than the faculty member's sixth (6th) full academic year of employment at the institution. In certain exceptional cases a faculty member may petition for extension of the timeline for tenure due to extenuating circumstances as provided in Board Policy II.g.6.d.iv.2).

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- c. Notification - An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 after the academic year during which the decision is made. In case of denial of tenure, the faculty member must be given a written notice that tenure was denied.
- d. Standards of Eligibility for Tenure
  - i. Annual Appointments - Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Prior to the award of tenure, employment beyond the annual term of appointment may not be legally presumed.
  - ii. Service in Professional Rank - All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.
  - iii. Service in Instructor Rank - A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the institution even though they teach in fields that have established professorial ranks.
  - iv. Exceptional Cases
    - 1) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.
    - 2) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.
- e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must ~~consist of~~include tenured faculty. It may also and include non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the

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committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.

- f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given
- g. Periodic Performance Review of Tenured Faculty Members - It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department.
  - i. Procedures for periodic review - Each institution must establish procedures for the performance review of tenured faculty members at the institution. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.
  - ii. Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

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

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review statement that the performance review has been conducted and that a full and complete review is not required.

- iii. Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.
- iv. Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.
- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.
- i. Tenure for Academic Administrators
  - i. "Academic administrators," for purposes of this topic, means the chief executive officer/presidents, chief academic officers/provosts, vice provosts or equivalent of the institutions, the deans, associate/assistant deans, and department chairs of the academic units of the institutions, and the vice presidents for research of the institutions, and shall not include persons occupying other administrative positions.
  - ii. An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit
  - iii. An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the institution's president.
  - iv. Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.

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- v. An individual hired for a non-academic administrator position from outside the institution will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and president, if the individual will teach and otherwise contribute to that department.
- vi. Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in accordance to policies established at each institution for the evaluation of an academic administrator.
- j. Terminal Contract of Employment - If a faculty member is not awarded tenure, the chief executive officer must notify the faculty member of the decision not to recommend tenure and may, at his or her discretion, either issue to the faculty member a contract for a terminal year of employment, or, at the sole discretion of the chief executive officer, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.
- k. When authorized by the chief executive officer, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.
- l. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.
  - i. A non-tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
  - ii. Before a non-tenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with

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the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.

- iii. No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.
- iv. When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.