

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
FEBRUARY 27, 2013**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AMENDMENT TO BOARD POLICY</b> Section II.H. – Coaching Personnel – First Reading	Motion to approve
<b>2</b>	<b>SUPPLEMENTAL RETIREMENT 403(b) PLAN</b> Current Plan	Motion to approve
<b>3</b>	<b>SUPPLEMENTAL RETIREMENT 403(b) PLAN</b> Closed Plan	Motion to approve
<b>4</b>	<b>BOISE STATE UNIVERSITY</b> Multi-Year Employment Agreement - Head Football Coach	Motion to approve
<b>5</b>	<b>BOISE STATE UNIVERSITY</b> Contract with Bryan Harsin Enterprises, LLC	Motion to approve

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**SUBJECT**

Board policy II.H. – Coaching Personnel and Athletic Directors

**REFERENCE**

October 2013	Motion to approve first reading failed on a tie vote with two Board members absent
December 2013	Athletics Committee discussed coach annual leave issue and directed staff to bring revised policy changes to Board for first reading at February 2014 meeting

**APPLICABLE STATUTES, RULE OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.F. and II.H.  
Idaho Code §59-1606

**BACKGROUND / DISCUSSION**

The Athletic Directors (ADs) at the three universities approached staff about revising annual leave accrual for coaches. The ADs identified two areas they would like to address. First, there is a concern that coaches are accruing high annual leave balances (capped by law at 240 hours) and then when they leave the University's employment (either voluntarily or involuntarily) the University has a financial liability (sometime significant) to payout the coach's annual leave. Second, staff was told that coaches are unique in that they put in significant hours during the season but then their off-season schedule slows down, and they may not have accrued enough leave to take advantage of their time. There was a recent specific case in which a new head coach was hired in late fall and worked significant hours, but he didn't have enough time accrued to travel out-of-state to visit family during the Christmas break, so he had to take unpaid leave.

At the December 2013 Athletics Committee meeting, Board staff noted that Boise State University and Idaho State University have recently started including in new coach contracts a clause which requires a coach to use all accumulated annual leave prior to the end of the contract period in the event of non-renewal or termination of a coach's employment. This eliminates the need to pay out annual leave or vacation if a coach terminates employment. Board staff also discussed conversations with the State Controller's Office (SCO) regarding the ability to treat coaches similar to elected officials. Elected officials do not accrue vacation or sick leave because they are considered on the job every day, and their salary is paid a constant amount over the annual number of pay periods. Should the Board go in this direction, it was suggested that Athletic Directors should be required to approve a coach's leave. There would be a one-time immaterial programming cost by the SCO. The revised policy incorporates this approach.

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Idaho Code §59-1606(c) provides that “The state board of education shall determine the vacation leave policies for all officers and employees of the state board of education who are not subject to ... [laws governing classified employees]. To the extent possible, the state board of education shall adopt policies which are compatible with the state’s accounting system.” As such, the Board has statutory authority to set its own leave policies.

Any new leave policy determined by the Board must be communicated to the State Controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy.

**IMPACT**

The proposed policy change would authorize the institutions to use a new leave code similar to elected officials whereby coaches would not accrue vacation or sick leave. Athletic Directors would be required to approve a coach’s leave.

**ATTACHMENTS**

Attachment 1 – Section II.H. – first reading

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**STAFF COMMENTS AND RECOMMENDATIONS**

Lewis-Clark State College (LCSC) has requested authority to continue to operate under current state employee policy with regard to annual leave accrual for its coaches. LCSC has no objection, however, to the universities being given the flexibility to move to a new procedure which may make sense under their circumstances.

When the issue of coach leave accrual was discussed in a Financial Vice Presidents meeting last year, some finance staff opined that leave accrual is a management responsibility and should be handled accordingly (i.e. a policy change is not necessary).

The ADs’ assert that coaches work significant hours during the program and recruitment seasons, but under the current policy a new coach may not have earned enough leave to take vacation during holidays or when their schedule allows. Staff does not find that argument particularly compelling or persuasive because the same could be true of almost any new senior-level management position at an institution. Nevertheless, staff brings a proposed policy change forward to the Board for its consideration in the interest of helping the ADs best manage their coaches and programs.

This policy change, if approved, would be effective prospectively for new hires and contract renewals. All existing contracts and accrued leave held by coaches at the institutions on the effective date of this policy revision would be grandfathered for purposes of accruing annual leave until the coach’s contract renewal.

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If this policy moves to second reading, staff recommends the Board revise the model contract to reflect this leave policy.

**BOARD ACTION**

I move to approve the first reading of proposed amendments to Board policy section II.H. Coaches and Athletic Directors, with all revisions as presented.

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

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**GOVERNING POLICIES AND PROCEDURES**

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 three (3) 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. All such contracts must contain a liquidated damages clause provision in favor of the institution, applicable in the event that the coach or athletic director terminates the contract for convenience, in an amount which is a reasonable approximation of damages which might be sustained if the contract is terminated. 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 April 2013 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 and an annual salary of \$150,000 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

**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coachings Personnel and Athletic Directors

April 2013<sup>4</sup>

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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.

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.

6. Annual Leave

- a. All existing contracts and accrued leave held by coaches at the institutions on the effective date of this policy shall be grandfathered under policy II.F. for purposes of accruing annual leave until the coach's contract renewal.
- b. Following the effective date of this policy, the institutions shall have the authority to negotiate annual leave for all coach contract renewals and new hires using one of the two options below:
  - i. Annual leave may be earned and accrued consistent with non-classified employees as set forth in policy II.F.; or
  - ii. Coaches do not accrue leave, but may take leave with prior written approval from the athletic director.



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 27, 2014**

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**SUBJECT**

Supplemental Retirement 403(b) Plan

**REFERENCE**

June 2011	Board approved Supplemental Retirement 403(b) Plan document
August 2013	Board approved technical amendments to plan document

**APPLICABLE STATUTES, RULE OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.K.2. Sections 33-107C and 59-513 Idaho Code

**BACKGROUND / DISCUSSION**

Under the current Supplemental 403(b) plan (not to be confused with the closed 403(b) plan) eligible participants in the Plan are determined by the Board and listed by name in Appendix A to the Plan. Several of the named participants are no longer employees, but their successors could be participants (at the request of the respective institutions and subject to Board approval), so the Appendix needs to be amended. The question then becomes what is the appropriate contribution rate? The contribution rates currently listed in the Appendix A were backed into in an attempt to replicate as closely as possible the benefit participants would have received under the closed plan. These rates are cumbersome to calculate, however, and the methodology is not applicable to new employees. Board tax counsel suggests using a flat percentage for all participants; say for example, an employer contribution rate of 3.5% and an employee contribution rate of 2.5%. These rates are very close to current rates for most participants. The rates are ultimately a business decision for the institutions in terms of how much the institutions want to confer in the form of this benefit.

**IMPACT**

The effective date for the new rates would be calendar year 2015 and each calendar year thereafter. For the current calendar year, Chuck Stabben would be at the same rates as his predecessor, and Bryan Harsin would be at the same rates as Leon Rice.

Boise State University has also requested approval to add Mark Coyle to the plan. For the current calendar year, he would be the same rates as Bob Kustra.

**ATTACHMENTS**

Attachment 1 – Supplemental Retirement 403(b) Plan document                      Page 3

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**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends flat percentage contribution rates for all Plan participants to simplify plan administration and minimize the necessity for future plan amendments.

**BOARD ACTION**

I move to approve the amendments to Appendix A of the Supplemental Retirement 403(b) Plan document set forth in Attachment 1, to declare said amendments effective March 16, 2014, and to authorize the Board's Chief Fiscal Officer to execute the Plan document on behalf of the Board.

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

Idaho State Board of Education  
Supplemental Retirement 403(b) Plan

A Defined Contribution Retirement Plan

Effective June 23, 2011  
Restated August 15, 2013  
Restated Effective March 16, 2014

Idaho State Board of Education  
Supplemental Retirement 403(b) Plan

**Section 1**  
**Definition of Terms Used**

The following words and terms, when used in the Plan, have the meaning set forth below.

1.1 "**Account**": The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

1.2 "**Account Balance**": The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Mandatory Contributions, Employer Contributions, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

1.3 "**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

1.4 "**Annuity Contract**": A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in Idaho and that includes payment in the form of an annuity.

1.5 "**Beneficiary**": The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

1.6 "**Custodial Account**": The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

1.7 "**Code**": The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.8 "**Disabled**": The definition of disability provided in the applicable Individual Agreement.

1.9 "**Eligible Employee**": Each individual listed in Appendix A, who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the employee's compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

1.10 "**Employer**": Employer means the Board and employment units under its jurisdiction, namely:

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

1.11 "**Employer Contributions**": The Employer contributions made to the Plan by the Participant's Employer that do not reduce the Participant's cash compensation.

1.12 "**Funding Vehicles**": The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by Employer for use under the Plan.

1.13 "**Includible Compensation**": An Employee's contract base salary (exclusive of taxable fringe benefits), but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code. The amount of Includible Compensation is determined without regard to any community property laws.

1.14 "**Individual Agreement**": The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

1.15 "**Mandatory Contributions**": The Employer contributions required to be made to the Plan by the Participant in lieu of receiving cash compensation.

1.16 "**Participant**": An individual for whom contributions are currently being made, or for whom contributions have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

1.17 "**Plan**": Idaho State Board of Education Supplemental Retirement 403(b) Plan.

1.18 "**Plan year**": The calendar year, which is also the limitation year for purposes of Code section 415.

1.19 "**Related Employer**": The Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

1.20 "**Severance from Employment**": For purpose of the Plan, Severance from Employment means Severance from Employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

1.21 "**Vendor**": The provider of an Annuity Contract or Custodial Account.

1.22 "**Valuation Date**": Each business day.

## Section 2 Participation and Contributions

2.1 **Notification.** The Employer will notify an Eligible Employee when he or she becomes an Eligible Employee listed in Appendix A. An Eligible Employee who complies with the requirements of this Plan to become 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 Vehicles to which Plan contributions for the Participant have been applied.

2.2 **Enrollment in Plan – One Time Irrevocable Election.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Employer. An employee who has been notified that he or she is an Eligible Employee listed in Appendix A but who fails to return the enrollment forms within 30 days of receipt of the enrollment forms will be deemed to have waived all of his or her rights under the Plan. This procedure is designed to give an Eligible Employee a one time irrevocable option to participate in the Plan. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Plan contributions are to be made and a designation of Beneficiary. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

2.3 **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

2.4 **Change in Beneficiary or Investment.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time change his or her investment direction and his or her designated Beneficiary. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

2.5 **Contribution Amounts.** Employer Contributions and Mandatory Contributions shall equal the percentage of the Participant's Includible Compensation indicated for the Participant on Appendix A.

2.6 **Contributions Made Promptly.** Mandatory Contributions under the Plan shall be transferred to the applicable Funding Vehicle as part of the Employer's biweekly payroll processing and within 15 business days following the end of the pay date in which the amount would otherwise have been paid to the Participant. Employer Contributions shall be credited to the applicable Funding Vehicle as part of the Employer's biweekly payroll processing and within 15 business days following the end of the pay date.



2.7 **Leave of Absence.** If an Employee is absent from work by leave of absence, Mandatory Contributions and Employer Contributions under the Plan shall continue to the extent that Includible Compensation continues.

2.8 **Revenue Sharing Account.** The Plan shall record in an unallocated Plan account any amounts paid to the Plan by Vendors, and shall invest such unallocated account as directed by the Board or its delegate. As of the last day of each Plan Year, all assets remaining in the unallocated Plan account shall be allocated among the Accounts of Participants who have Accounts on the last day of the Plan Year. The allocation shall be made in proportion to the value of each Participant's Account invested in Funding Vehicles that generate revenue sharing, determined according to the Vendors' records as of the last day of the Plan Year.

### **Section 3 Limitations on Contributions**

3.1 **Annual Limitation.** This Plan incorporates by reference the final Treasury Regulations under Code section 415 and applies the definition of compensation under Treasury Regulation section 1.415(c)-2(d)(3) for purposes of the Code section 415 limits. If a Participant's annual addition under this Plan and all other plans that must be aggregated with this Plan in accordance with the final Treasury Regulations under Code section 415 exceed the limit under such Regulations for a limitation year, the excess shall be attributed to this Plan, except that in the case of a Participant who also participates in the Boise State University Section 403(b) Base Plan (the "Base Plan") the excess annual additions that would otherwise be made to the Participant's Base Plan account shall be attributed to the Base Plan.

3.2 **Protection of Persons Who Serve in a Uniformed Service.** In the case of a Participant whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code this Plan will comply with all applicable requirements of Code section 414(u) and the Heroes Earnings Assistance and Relief Act of 2008 (the "HEART Act").

### **Section 4 Benefit Distributions**

4.1 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as permitted under Section 4.5 (relating to withdrawals of amounts rolled over into the Plan), or Section 7.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participation has a Severance from Employment, dies, becomes Disabled, or attains age 59 ½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

4.2 **Small Account Balances.** The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent

of the Participant or Beneficiary unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions under Section 6.1) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

**4.3 Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of § 1.408-8 of the Income Tax Regulations, except as provided in § 1.403(b)-6(e) of the Income Tax Regulations.

**4.4 In-Service Distributions From Rollover Account.** If a Participant has a separate account attributable to rollover contributions to the plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

**4.5 Rollover Distributions.**

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

**Section 5  
Rollovers to the Plan and Transfers**

**5.1 Eligible Rollover Contributions to the Plan.**

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible

rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, in no event does the Plan accept a rollover contribution from a Roth IRA described in section 408A of the Code.

(b) **Eligible Rollover Distribution.** For purposes of Section 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

## **5.2 Contract and Custodial Account Exchanges.**

(a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive contributions under Section 3 (referred to below as an exchange) is not permitted unless the conditions in paragraphs (b) through (d) of this Section 5.2 are satisfied.

(b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both section 403(b) contracts or custodial accounts immediately before the exchange).

(c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

(d) The Employer enters into an agreement with the receiving Vendor for the other contract or custodial account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy section 403(b) of the Code, including the following:

(i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 4.1);

(ii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits; and

(2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements.

(e) If any Vendor ceases to be eligible to receive contributions under the Plan, the Employer will enter into an information sharing agreement as described in Section 5.2(d) to the extent the Employer's contract with the Vendor does not provide for the exchange of information described in Section 5.2(d)(1) and (2).

## **Section 6 Investment of Contributions**

6.1 **Manner of Investment.** All amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

6.2 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.

**6.3 Current and Former Vendors.** The Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (TIAA-CREF) and the Variable Annuity Life Insurance Company (VALIC) shall be the exclusive Vendors under the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive contributions under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive contributions under the Plan and a Vendor holding assets under the Plan in accordance with Section 5.2), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

## **Section 7 Amendment and Plan Termination**

**7.1 Termination of Contributions.** The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

**7.2 Amendment and Termination.** The Employer reserves the authority to amend or terminate this Plan at any time.

**7.3 Distribution upon Termination of the Plan.** The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

## **Section 8 Miscellaneous**

**8.1 Non-Assignability.** Except as provided in Section 8.2 and 8.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

**8.2 Domestic Relation Orders.** Notwithstanding Section 8.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to

the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

**8.3 IRS Levy.** Notwithstanding Section 8.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**8.4 Tax Withholding.** Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

**8.5 Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**8.6 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**8.7 Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on Idaho State Board of Education's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

**8.8 Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.

**8.9 Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the State in which the Employer has its principal place of business.

**8.10 Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

**8.11 Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

**APPENDIX A**  
**ELIGIBLE EMPLOYEES**

The contribution percentages listed in this Appendix A are set by a formula established by the Employer. Each Eligible Employee has not exercised any control, direct or indirect, over the contribution percentages listed in this Appendix A.

1. For Calendar Years 2011 and 2012 the Contributions Amounts (as referenced in Section 2.5) shall be as follows:

<u>Employee</u>	<u>Employer Contribution</u>	<u>Mandatory Employee Contribution</u>
Robert Kustra	3.46%	2.60%
Arthur Vailas	2.98%	2.24%
Chris Petersen	10.52%	6.97%
Leon Rice	3.59%	2.70%

2. For Calendar Year 2011 the Contributions Amounts (as referenced in Section 2.5) shall be as follows:

<u>Employee</u>	<u>Employer Contribution</u>	<u>Mandatory Employee Contribution</u>
M. Duane Nellis	6.90%	5.19%

3. For Calendar Year 2012 the Contributions Amounts (as referenced in Section 2.5) shall be as follows:

<u>Employee</u>	<u>Employer Contribution</u>	<u>Mandatory Employee Contribution</u>
M. Duane Nellis	3.41%	2.56%

4. For Calendar Years 2013 and 2014 the Contributions Amounts (as referenced in Section 2.5) shall be as follows:

<u>Employee</u>	<u>Employer Contribution</u>	<u>Mandatory Employee Contribution</u>
Robert Kustra	3.56%	2.70%
Arthur Vailas	3.08%	2.34%
<del>M. Duane Nellis</del>	<del>3.51%</del>	<del>2.66%</del>
<del>Chuck Stabben</del>	<del>3.51%</del>	<del>2.66%</del>



Chris Petersen	10.52%	6.97%
Mark Coyle	3.56%	2.70%
Bryan Harsin	3.69%	2.80%
Leon Rice	3.69%	2.80%

- 5.** For calendar year 2015 and each calendar year thereafter, the Contributions Amounts (as referenced in Section 2.5) for each Eligible Employee listed below shall be as follows:

<u>Employee</u>	<u>Employer Contribution</u>	<u>Mandatory Employee Contribution</u>
<u>Robert Kustra</u>	<u>3.50%</u>	<u>2.50%</u>
<u>Arthur Vailas</u>	<u>3.50%</u>	<u>2.50%</u>
<u>Chuck Stabben</u>	<u>3.50%</u>	<u>2.50%</u>
<u>Mark Coyle</u>	<u>3.50%</u>	<u>2.50%</u>
<u>Bryan Harsin</u>	<u>3.50%</u>	<u>2.50%</u>
<u>Leon Rice</u>	<u>3.50%</u>	<u>2.50%</u>

IN WITNESS WHEREOF, the Employer has caused this instrument to be executed by its duly authorized representative effective on this ~~15<sup>th</sup>~~ day of ~~August~~ March 20134.

**Idaho State Board of Education**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 27, 2014**

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**SUBJECT**

Supplemental Retirement 403(b) Plan (closed)

**REFERENCE**

February 2011 Board approved motion to freeze contributions into and transfers or rollovers from the Supplemental Retirement Benefit Plan

**APPLICABLE STATUTES, RULE OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section II.K.2. Sections 33-107C and 59-513 Idaho Code

**BACKGROUND / DISCUSSION**

In 2004 the Board adopted a 403(b) supplemental retirement plan ("Plan 1") for certain designated highly compensated employees. Plan 1 was designed to receive employer and employee contributions that would have been made to the Optional Retirement Program, except that such contributions exceeded annual compensation limitations mandated by the Internal Revenue Code section 401(a)(17). In the 2009-2010 timeframe Board tax counsel advised Board staff that Internal Revenue Code ("Code") provisions for governmental employers permit the design of a better and more appropriate deferred income plan for highly compensated employees than Plan 1. As such, in February 2011, the Board voted to close Plan 1 and suspend further employer and employee contributions effective January 1, 2011 "pending review of tax requirements applicable to the Plan." Board staff subsequently worked with tax counsel to craft the new Supplemental 403(b) Retirement Plan ("Plan 2") now in effect. Eligible participants in Plan 2 are determined by the Board and listed by name in Appendix A to the plan document. Plan 2 attempted to replicate Plan 1 to the extent possible in terms of employer and mandatory employee contribution rates.

Staff recently contacted Board tax counsel to inquire whether any further formal action is needed to close Plan 1. Counsel opined that Plan 1 does require a corrective amendment, and recommends the following approach: amend section 4.1 of the Plan 1 document to recharacterize the past contributions as a percentage of each Participant's compensation up to (not in excess of) the annual compensation limits of Code section 401(a)(17).

**IMPACT**

Failure to make this amendment jeopardizes the tax qualified status of Plan 1.

**ATTACHMENTS**

Attachment 1 – Supplemental Retirement 403(b) Plan document Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff made the following changes: (1) two corrections to Article 2 (Definitions) and added "Includible Compensation" as a defined term; (2) revised section 4.1

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 27, 2014**

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consistent with the explanation set forth in "Background/Discussion" above; (3) clarified the plan is closed contributions; and (4) added a new Appendix A.

The affected institutions have reviewed and concur with the rates set forth in Appendix A.

Staff recommends approval.

**BOARD ACTION**

I move to approve amendments to the Closed Supplemental Retirement 403(b) Plan document set forth in Attachment 1.

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

THE IDAHO STATE BOARD OF EDUCATION  
SUPPLEMENTAL RETIREMENT BENEFIT PLAN

Effective December 2004  
Restatement February 2011 (Plan closed)  
Restatement February 2014

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**ARTICLE 1  
INTRODUCTION**

1.1 The Board hereby establishes pursuant to this document the Idaho State Board of Education Supplemental Retirement Benefit Plan. This Plan has been established and shall be maintained in such manner as to meet the requirements of Sections 403(b) and other applicable sections of the Internal Revenue Code of 1986, as amended.

1.2 The purpose of this Plan is to provide the benefits of a tax-sheltered annuity plan for the exclusive benefit of the Participants, former Participants and their Beneficiaries; and this Plan shall be administered and interpreted in accordance with such purpose.

1.3 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 2  
DEFINITIONS**

Certain terms of this Plan have defined meanings which are set forth in this Article and which shall govern unless the context in which they are used clearly indicates that some other meaning is intended.

2.1 **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.

2.2 **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 Sections 415(1)(2) and 419A(d)(2) of the Code, if any.

2.3 **Beneficiary** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at the Participant's death.

2.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code Section 33-101.

2.5 **Code** means the Internal Revenue Code of 1986, as amended.

2.6 **Compensation** means the amount reported as wages on the Participant's Form W-2, excluding compensation not currently included because of the application of Code Sections 125 or 403(b).

2.7 **Distribution** means distribution of any benefit from a Finding Vehicle to or for the benefit of a Participant, Beneficiary or other person entitled to benefits as provided in this Plan.

2.8 **Effective Date** shall mean December 2, 2004.

2.9 **Eligible Employee** means any participant in the ORP or PERSI that has Compensation in excess of the annual compensation limit imposed by Code Section 401(a)(17) and who is subject to the limitations imposed by Code Section 401(a)(17).

2.10 **Entry Date** means the later of the Effective Date of the Plan or the Eligible Employee's Date of employment or reemployment.

2.11 **ERISA** means Public Law No. 93-406, the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

2.12 **Funding Vehicles** means the annuity contracts or custodial accounts issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

2.13 **Fund Sponsor(s)** means Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) and Variable Annuity Life Insurance Company (VALIC).

2.14 **Includible Compensation** means an Eligible Employee's contract base salary (exclusive of taxable fringe benefits), but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code. The amount of Includible Compensation is determined without regard to any community property laws.

2.142.15 **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; and  
North Idaho College.

2.152.16 **Institution Plan Contributions** means contributions made by the Institution under this Plan.

2.162.17 **Normal Retirement Date** means the date a Participant attains age sixty-five (65).

2.172.18 **ORP** means the Optional Retirement plan as established by the Board effective July 1, 1990.

2.182.19 **Participant** means an Eligible Employee of the Institution who participates in the Plan as provided in Article 3 and Article 4.

2.192.20 **Permanent Disability** means a disability that renders the Participant unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. The term "Permanent Disability" shall be interpreted in accordance with Code Section 72(m)(7) and the Treasury Regulations thereunder.

2.202.21 **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.

2.212.22 **PERSI** means the Public Employee Retirement System of Idaho.

2.222.23 **Plan** means this instrument together with any subsequent amendments hereto.

2.232.24 **Plan Contributions** means the combination of Participant Plan Contributions and Institution Plan Contributions.

~~2.242.25~~ **Plan Year** shall be the calendar year. ~~However, the first Plan Year shall be the period beginning \_\_\_\_\_ and ending December 31, 200x.~~

~~2.252.26~~ **Retirement** means the Termination of Employment of a Participant on or after his Normal Retirement Date.

~~2.262.27~~ **Termination of Employment** means that an Employee has ceased to be employed by the Institution for any of the following reasons:

- (i) Voluntary resignation from service of the Institution; or
- (ii) Discharge from the service of the Institution by the Institution; or
- (iii) Retirement; or
- (iv) Death; or
- (v) Permanent Disability;

Provided, however, that an Eligible Employee who ceases Employment by reason of an Authorized Leave of Absence shall not be considered as having incurred a Termination of Employment.

~~2.272.28~~ **Treasury Regulation** means regulations pertaining to certain sections of the Code as issued by the Secretary of the Treasury.

~~2.282.29~~ **Defined Terms.** A defined term, such as "Retirement," will normally govern the definitions of derivatives therefrom, such as "Retire," even though such derivatives are not specifically defined and even if they are or are not initially capitalized. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. Singular and plural nouns and pronouns shall be interchangeable as the factual context may allow or require. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and not to any particular provision or Section.

**ARTICLE 3  
PARTICIPATION**

**3.1 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.

**3.2 Enrollment in Plan - One Time Irrevocable Election.** 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 within thirty (30) days of receipt of the enrollment form(s) will be deemed to have waived all of his or her rights under the Plan. That is, an Eligible Employee is given a one time option to participate in the Plan. Once an Eligible Employee has elected to participate in the Plan, the Eligible Employee, as a condition of continued employment, may not withdraw from participation in the Plan.

**3.3 Reemployment.** A former employee who was an Eligible Employee before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.

**3.4 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.

Furthermore, if a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible and no further Institution Plan Contributions will be made on his or her behalf.

## ARTICLE 4 CONTRIBUTIONS

**4.1 Contributions.** Plan Contributions will be made for Eligible Employees as follows:

~~Each Institution shall contribute an amount equal to seven and eighty-one hundredths percent (7.81%), reduced by any amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%), of the portion of each Participant's Compensation that exceeds the annual compensation limits of Code Section 401(a)(17); and~~

~~Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of the portion of the Participant's Compensation that exceeds the annual compensation limits of Code Section 401(a)(17).~~

Institution Plan Contributions and Participant Plan Contributions shall equal the percentage of the Participant's Includible Compensation indicated for the Participant on Appendix A.

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.

No ~~further~~ Plan Contributions shall be made to the Plan or accepted by the Plan effective January 1, 2011, ~~pending review of tax requirements applicable to the Plan.~~

**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 3. 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. For the period beginning on the Effective Date and ending upon completion of the Plan Year, Participant Plan Contributions shall be prorated over such period. No further Plan Contributions shall be made to the Plan or accepted by the Plan effective January 1, 2011, pending review of tax requirements applicable to the Plan.

**4.3 Allocation of Contributions.** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100%. 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 Institution and Employee contributions and the earnings thereon and accompanied by instructions showing the respective amount attributable to Institution and Employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable. No transfers or rollovers shall be made to the Plan or accepted by the Plan effective January 1, 2011, pending review of tax requirements applicable to the Plan.

**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. No transfers or rollovers shall be made to the Plan or accepted by the Plan effective January 1, 2011, pending review of tax requirements applicable to the Plan.

**4.7 Uniformed Services.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.

**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.

For the purpose of calculating the limits of Code Section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Institution and excluding the following: (a) Institution contributions to a plan of deferred compensation that are not includable in the Participant's gross income for the taxable year in which contributed, or Institution contributions under a simplified employee pension plan to the extent such contributions are deductible by the Participant, or any distributions from a plan of deferred compensation; and (b) other amount that received special tax benefits, or contributions made by the Institution (whether or not under a salary reduction agreement towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the Participant). For years beginning after December 31, 1997, compensation shall include any elective deferral (as defined in Code § 401(g)(3)) and any amount which is contributed or deferred by the Institution at the election of the Participant and which is not includable in the gross income of the Participant by reason of Code § 125 or 457. For purposes of applying the limitations described in this section of the Plan, compensation shall include elective amounts that are not includable in the gross income of the Participant by reason of Code § 132(f)(4).

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists,

the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

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 purposes, 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.



**ARTICLE 5  
VESTING AND DISTRIBUTIONS**

**5.1 Vesting.** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

**5.2 Commencement of Benefits.** A Participant shall be entitled to receive distributions in accordance with the terms of the Funding Vehicles. However, the Participant's Funding Vehicles shall provide the following:

(a) In no event shall any benefit be distributed to a Participant prior to the Participant's Termination of Employment, attainment of age 59½ or financial hardship.

(b) No benefit shall be distributed prior to the Participant's Normal Retirement Date or death without the Participant's consent. Notwithstanding the preceding sentence, benefits shall be distributed without the Participant's consent if a distribution is required under Section 6.7.

(c) No portion of Funding Vehicle shall be distributable on account of financial hardship unless the hardship distribution provisions of such Funding Vehicle comply with the requirements of the Code and ERISA.

(d) Participants cannot direct the Fund Sponsors to distribute or otherwise dispose of Funding Vehicles. Only the Institution may direct the Fund Sponsors with respect to the commencement of benefits or other disposition of Funding Vehicles.

**5.3 Application for Benefits.** The Institution may require a Participant or Beneficiary to complete and file with the Institution certain forms as a condition precedent to the payment of benefits. The Institution may rely upon all such information given to it, including the Participant's current mailing address. It is the responsibility of all Participants to keep the Institution informed of their current mailing addresses.

**5.4 Distributions Pursuant to Qualified Domestic Relations Orders.** Notwithstanding anything to the contrary in this Plan, a "qualified domestic relations order," as defined in Code Section 414(p), may provide that any amount to be distributed to an alternate payee may be distributed immediately even though the Participant is not yet entitled to a distribution under the Plan. The intent of this Section 5.4 is to provide for the distribution of benefits to an alternate payee as permitted by Treasury Regulation 1.401(a)-13(g)(3).

**5.5 Distribution of Funding Vehicles.** All benefits payable under this Plan will be paid or provided solely from the applicable Funding Vehicles. After the Institution directs the Plan Sponsors to distribute such Funding Vehicles in accordance with the terms of the Plan, the Institution shall be free from all liability, individual, joint or several, with respect to payment of benefits attributable to such Funding Vehicles.

**ARTICLE 6  
FORM OF PAYMENT**

**6.1 Funding Vehicles Will Comply With Article 6.** Each Funding Vehicle will provide for distributions in accordance with the provisions of this Article 6.

**6.2 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:

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

**6.3 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. However, only an employee who has terminated employment and has attained age 55 may withdraw Institution 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 \$10,000, both Participant and Institution Plan Contributions are available in a cash withdrawal subject to any restrictions of the Funding Vehicles of the Fund Sponsor.

**6.4 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 ten percent (10%) of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one such payment from each TIAA contract and/or CREF account(s) doesn't exceed ten percent (10%) of the respective Accumulation Account(s) being converted to retirement income.

**6.5 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).

**6.6 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.

**6.7 Minimum Distribution Requirements.** The requirements of this Section shall apply to any distribution of a Participant's Account 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 Article 6. 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 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:

**(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 (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 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 Participant, 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 subsections (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.

**6.8 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.

(b) 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.

**6.9 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.

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 (10) 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. 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.

(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.

## ARTICLE 7 ADMINISTRATION

**7.1 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 chief financial officers of each of the Institutions 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.

**7.2 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.

**7.3 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 with Section 7.2 "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 7.2 "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.

**7.4 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 7.2 "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 bylaws of the Institution, under any provision of law, or under any other agreement.

**7.5 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.



**7.6 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.

**7.7 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 8  
AMENDMENT AND TERMINATION**

**8.1 Right to Amend.** The Institution intends for the Plan to be permanent so long as it exists; however, it reserves the right to modify, alter, or amend this Plan from time to time, to any extent that it may deem advisable, including, but not limited to any amendment deemed necessary to insure the continued compliance under Section 403(b) of the Code or to insure compliance with the Act; provided, however, that the Institution shall not have the authority to amend this Agreement in any manner which will:

(a) Permit any part of a Funding Vehicle (other than such part as is required to pay taxes and administrative expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries;

(b) Cause or permit any portion of a Funding Vehicle to revert to or become the property of the Institution.

**8.2 Termination and Discontinuance of Contributions.** The Institution shall have the right at any time to terminate this Plan (hereinafter referred to as "Plan Termination") Upon Plan Termination, the administrator shall direct the Fund Sponsor(s) with reference to the disposition of Funding Vehicles. The Fund Sponsor(s) shall, when directed by the administrator, distribute all Funding Vehicles held by it to the Participants and others entitled to such Funding Vehicles. In the event that this Plan is partially terminated, then the provisions of this Section 8.2 shall apply, but solely with respect to the Participants affected by the partial termination.

**ARTICLE 9  
MISCELLANEOUS**

**9.1 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.

**9.2 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.

**9.3 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.

**9.4 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.

**9.5 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.

Employer Identification Number: \_\_\_\_\_  
Plan Number: \_\_\_\_\_

\_\_\_\_\_  
(signature of Plan Administrator)

Amendment 1

**AMENDMENT OF THE IDAHO STATE BOARD OF EDUCATION  
SUPPLEMENTAL RETIREMENT PLAN FOR EGTRRA**

IN WITNESS WHEREOF, the Idaho State Board of Education herein amends the Idaho State Board of Education Supplemental 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 Institutions 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 6 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 6 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.
4. Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in Article 6 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 includable 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) 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.

APPENDIX AELIGIBLE EMPLOYEES

The contribution percentages listed in this Appendix A are set by a formula established by the Employer. Each Eligible Employee has not exercised any control, direct or indirect, over the contribution percentages listed in this Appendix A.

1. For Calendar Year 2004 the Contributions (as referenced in Section 4.1) shall be as follows:

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Hawkins, Dan</u>	<u>2.03%</u>	<u>3.47%</u>

2. For Calendar Year 2005 the Contributions (as referenced in Section 4.1) shall be as follows:

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Hawkins, Dan</u>	<u>7.01%</u>	<u>6.33%</u>
<u>Graham, D. Gregory</u>	<u>0.86%</u>	<u>0.78%</u>
<u>Kustra, Robert</u>	<u>1.06%</u>	<u>0.96%</u>

University of Idaho

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>White, Timothy</u>	<u>2.54%</u>	<u>2.29%</u>

3. For Calendar Year 2006 the Contributions (as referenced in Section 4.1) shall be as follows:

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Graham, D. Gregory</u>	<u>0.70%</u>	<u>0.63%</u>
<u>Kustra, Robert</u>	<u>0.71%</u>	<u>0.64%</u>
<u>Petersen, Christopher</u>	<u>1.08%</u>	<u>0.97%</u>

University of Idaho

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>White, Timothy</u>	<u>2.42%</u>	<u>2.18%</u>

**4. For Calendar Year 2007 the Contributions (as referenced in Section 4.1) shall be as follows:**

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Graham, D. Gregory</u>	<u>2.67%</u>	<u>2.01%</u>
<u>Kustra, Robert</u>	<u>1.93%</u>	<u>1.45%</u>
<u>Petersen, Christopher</u>	<u>7.72%</u>	<u>6.97%</u>

Idaho State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Vailas, Arthur</u>	<u>2.16%</u>	<u>1.63%</u>

University of Idaho

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Elshabini, Aicha</u>	<u>0.54%</u>	<u>0.41%</u>
<u>White, Timothy</u>	<u>2.96%</u>	<u>2.23%</u>

**5. For Calendar Year 2008 the Contributions (as referenced in Section 4.1) shall be as follows:**

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Graham, D. Gregory</u>	<u>5.20%</u>	<u>3.92%</u>
<u>Kustra, Robert</u>	<u>2.45%</u>	<u>1.85%</u>
<u>Petersen, Christopher</u>	<u>9.26%</u>	<u>6.97%</u>



Idaho State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Vailas, Arthur</u>	<u>2.22%</u>	<u>1.67%</u>

University of Idaho

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Elshabini, Aicha</u>	<u>0.71%</u>	<u>0.54%</u>

6. For Calendar Year 2009 the Contributions (as referenced in Section 4.1) shall be as follows:

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Graham, D. Gregory</u>	<u>4.88%</u>	<u>3.68%</u>
<u>Kustra, Robert</u>	<u>2.84%</u>	<u>2.14%</u>
<u>Petersen, Christopher</u>	<u>9.26%</u>	<u>6.97%</u>

Idaho State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Vailas, Arthur</u>	<u>3.09%</u>	<u>2.33%</u>

7. For Calendar Year 2010 the Contributions (as referenced in Section 4.1) shall be as follows:

Boise State University

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Graham, D. Gregory</u>	<u>4.25%</u>	<u>3.20%</u>
<u>Kustra, Robert</u>	<u>4.03%</u>	<u>3.97%</u>
<u>Petersen, Christopher</u>	<u>9.27%</u>	<u>6.97%</u>

Idaho State University

**ATTACHMENT 1**

<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Vailas, Arthur</u>	<u>3.85%</u>	<u>2.89%</u>

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<u>University of Idaho</u>		
<u>Eligible Employee</u>	<u>Institution Plan Contribution</u>	<u>Participant Plan Contribution</u>
<u>Nellis, M Duane</u>	<u>3.49%</u>	<u>2.63%</u>

**BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE**  
**FEBRUARY 27, 2014**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Multi-year employment contract for Head Football Coach

**REFERENCE**

December 2013 Board approved material term sheet and directed the University to return with a contract for February

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is requesting approval of a multi-year employment contract for a new Head Football Coach.

The term of the proposed agreement is for five years (plus the one month and twenty days from the date of hire). The base salary is \$800,000 for the first two years, beginning January 11, 2014; \$1,100,000 for year three (January 11, 2016-January 10, 2017); \$1,350,000 in year four (2017-2018); and \$1,450,000 in year five (2018-2019). The Agreement will serve as a rolling Agreement should the team win nine games in a given season. (Note: there is a separate license agreement under which Mr. Harsin will receive an additional \$200,000/yr for the use of his likeness.)

Incentives are as follows:

Athletic incentive pay shall be based on one of the following (whichever is greater), from each of the two categories below:

Category 1:

- a) \$15,000 if the Team is Mountain Division Champion; or,
- b) \$35,000 if the Team participates in a bowl game; or,
- c) \$50,000 if the team is Conference Champion; or,
- d) \$75,000 if the Team participates in a Host Bowl as part of the College Football Playoff (CFP); or
- e) \$100,000 if the Team participates one of the two semi-final Playoff Bowl games in the CFP

Category 2:

- a) \$150,000 if the Team participates in the CFP Championship Bowl game; or
- b) \$250,000 if the Team wins the CFP Championship Bowl game.

**BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE**  
**FEBRUARY 27, 2014**

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Academic incentive pay may be earned as follows:

- a) \$30,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 955 or higher

In the event the coach terminates the agreement for convenience to take another position related to sports, the following liquidated damages shall be due:

- If agreement is terminated during the first or second year, the sum of \$2,000,000
- If the agreement is terminated during the third year, the sum of \$1,750,000
- If the agreement is terminated during the fourth year, the sum of \$500,000

**IMPACT**

Total first year maximum potential annual compensation (including base salary, academic incentives and athletic incentives) is \$1,180,000. No appropriated funds are used. Salary and supplemental compensation will be paid only from athletic department revenues and other non-state funds.

**ATTACHMENTS**

Attachment 1 – Proposed Contract	Page 5
Attachment 2 – Redline Version Contract	Page 21

**STAFF COMMENTS AND RECOMMENDATIONS**

The proposed employment agreement is consistent with the term sheet approved by the Board in December 2013 and is in substantial conformance with the Board-approved model contract. The contract does add a new section 7 for defined terms.

The contract would provide academic incentive pay in the amount of \$30,000 if the annual Academic Progress Rate (APR) equals 955 or higher. To put this into context, BSU's annual football Team APR for the past years has as follows:

2007-08	971
2008-09	1000
2009-10	997
2010-11	984
2011-12	985

The last time the BSU football team was at or below 955 APR for a single year was 2005-06. That year it was 955. The University represents that 955 is still a high standard -- making the program one of the top 40 in the country. The University did not want to saddle the new coach with an unreasonable expectation, so they chose the same APR standard they had for the prior coach.

**BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE**  
**FEBRUARY 27, 2014**

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In addition to base and supplemental compensation, the contract provides that Mr. Harsin is eligible for moving expenses, a vehicle and club membership. Mr. Harsin is also eligible to earn supplemental compensation by assisting with University operated summer camps (the contract is silent on the amount or how it would be calculated).

Under the provision for "Termination of Coach for Convenience of University," BSU would be obligated to pay Mr. Harsin's base compensation plus an additional \$16,666.67 per month for an annualized amount of \$200,000 until the expiration of the term of the contract or until Mr. Harsin obtains "reasonably comparable employment." (Any subsequent employment, regardless of its nature, will result in a corresponding reduction in the amount of compensation the University would be obligated to pay.) This additional \$200,000 represents the amount backed out of the agreed upon base salary and paid instead as part of an accompanying Licensing Agreement. The license has no termination penalty and payments stop immediately if the University terminates employment, so the contract pay-out is grossed up by \$200,000 to represent the total agreed upon compensation package per the Term Sheet.

The subsequent agenda item seeks Board approval of a licensing agreement for likeness and image rights of Mr. Harsin. The value of this agreement would be \$200,000 annually for Mr. Harsin, which would bring his total first year maximum potential annual compensation (including base salary, academic incentives and athletic incentives) up to \$1,380,000.

Finally, the contract provides an annual budget of \$2.2M for the employment of nine assistant coaches. The sources of funds are local (i.e. non-appropriated) funds.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a five year rolling employment agreement with Bryan Harsin as Head Football Coach, for a term commencing December 11, 2013 and expiring on January 31, 2019 with a starting annual base salary of \$800,000, and such base salary increase and supplemental compensation provisions in substantial conformance with the terms of the agreement set forth in Attachment 1.

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

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**EMPLOYMENT AGREEMENT  
2013-2019**

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

ARTICLE 1

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

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University’s Director of Athletics (Director). 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 Program and shall perform such other duties in the University’s athletic Department (Department) as the Director may reasonably assign and as may be described elsewhere in this Agreement. Coach shall, to the best of his ability and consistent with University policies, perform all duties and responsibilities customarily associated with an NCAA Football Bowl Subdivision head football coach.

1.3.1 Coach is expected to devote full-time to Coaching and recruitment involving the Team as the head Coach. If Coach is reasonably required to perform any such additional duties that are not defined in the Agreement, Coach will be notified of his responsibility to perform these duties within a reasonable time frame.

1.3.2 Coach will attend staff meetings, public relation functions, dinners, awards banquets and make appearances as reasonably directed by the Director unless excused by the Director. The Director shall not unreasonably withhold approval for non-attendance. Such functions shall include, but are not limited, to the following:

- a) Television, radio and other public appearances as in the Agreement
- b) The annual BAA Bar-b-que
- c) The BAA/Alumni Auction Dinner
- d) Athletic Department staff meetings called by the Director
- e) Athletic Department Graduation Reception
- f) Bronco Golf Series Tournaments
- g) Other similar Department activities and events

1.3.3 Coach agrees to supervise any staff serving under Coach and to insure, to

the best of his ability, that all staff persons follow all applicable University policies, NCAA, and Conference rules and regulations at all times. Director will keep Coach informed, in writing, of which persons serve under Coach.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years and one (1) month, commencing on December 11, 2013, and terminating, without further notice to Coach, on January 10, 2019, unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least nine (9) victories in a Season (including bowl games). Meaning, one (1) additional year is added for each nine (9) win season on contract terms no less favorable to Coach than the contract terms then applicable to the final year of this Agreement prior to the extension.

2.3.1. By way of example, and for the avoidance of doubt, section 2.3 is to be interpreted so that the term of this Agreement will function as a rolling five year term as long as the football team wins nine (9) games in a Season. If any Season results in less than nine (9) victories, then the term shall not extend for an additional year, rendering this Agreement as a potential rolling four (4) year term if a Season with nine (9) victories follows such year or a potential rolling three (3) year term if a subsequent Season is fewer than nine (9) victories. Subsequent seasons of nine (9) victories or more, or fewer than nine (9) victories, will have the same effects as described in this section until this Agreement is terminated as otherwise provided herein.

ARTICLE 3

3.1 Regular Compensation.

3.1.1 In consideration of Coach's services, the University shall provide to Coach:

- a) A base salary as follows:
  - December 11, 2013 to January 10, 2014 - \$83,000;
  - January 11, 2014 to January 10, 2015 - \$800,000;
  - January 11, 2015 to January 10, 2016 - \$800,000;



January 11, 2016 to January 10, 2017 - \$1,100,000;  
January 11, 2017 to January 10, 2018 - \$1,350,000;  
January 11, 2018 to January 10, 2019 - \$1,450,000,  
all generally payable in biweekly installments in accordance with normal University procedures and all of which is to be paid from non-state funds;

- b) The opportunity to receive such employee benefits calculated on the base salary (within the limits of such plans and benefits) as the University provides generally to non-faculty, non-classified, professional staff employees; and
- c) The opportunity to receive such employee benefits as the Department provides generally to its employees of a comparable level, including moving expenses. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.
- d) The opportunity to receive additional benefits as the Director deems necessary and appropriate including a vehicle, complimentary tickets, and club membership, as set forth in a separate letter.

### 3.2 Supplemental Compensation

3.2.1 Additional Pay based upon performance relating to regular Season and post-Season competition shall be based on the following:

#### Category 1

- a) \$15,000 if the Team is the Mountain Division Champion; or
- b) \$35,000 if the Team participates in a bowl game; or
- c) \$50,000 if the team is the Conference Champion; or
- d) \$75,000 if the Team participates in a Host Bowl as part of the CFP;  
or
- e) \$100,000 if the Team participates in one of the two semi-final Playoff Bowl games in the CFP.

#### Category 2

- f) \$150,000 if the Team participates in the CFP Championship Bowl game; or
- g) \$250,000 if the Team wins the CFP Championship Bowl game.

Coach shall be eligible for supplemental compensation from each Category listed above. Coach shall only be eligible to earn one amount (the highest amount) from each Category. Any additional pay for performance earned pursuant to this section shall be paid on February 1st following the football Season in which earned, as long as Coach remains continuously employed as head Coach to that date.

3.2.2 Academic Incentive Pay may be earned as follows:

- a) \$30,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 955 or higher.

Any pay earned pursuant to this section shall be paid on October 1st each year as long as Coach remains continuously employed as head Coach to that date.

3.3 Media Programs, Public Appearances and Endorsements.

3.3.1 Coach shall appear on or participate in, as requested by the Director, and make all reasonable efforts to make successful University sanctioned television, radio and internet Productions concerning the University and the Program. Agreements requiring the Coach to participate in Productions and public appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media Productions and all parties desiring public appearances by Coach. Coach agrees to cooperate with the University's reasonable requests in order for the Productions to be successful and agrees to provide his services to and perform on the Productions and to cooperate with the University's reasonable requests related to their performance, broadcasting, and telecasting.

3.3.2 It is understood that neither Coach nor any assistant coaches shall appear, without the prior written approval of the Director (such approval not to be unreasonably withheld), on any competing Production (including but not limited to a coach's show, call-in show, or interview show) or news segment, except that this prohibition shall not apply to news media interviews and appearances which are non-recurring and for which no compensation is received.

3.3.3 Coach or any assistant coaches shall have no right, title or interest of any kind or nature whatsoever in or to any materials, works or results related to the Productions, or in any component part thereof and the University shall own all rights to the Productions and shall be entitled, at its option, to produce and market the Productions or negotiate with third parties for the production and marketing of the Productions. The University shall be entitled to retain all revenue generated by the Productions. Upon prior written approval of the Director (such written approval not to be unreasonably withheld), Coach may use the materials, works or results related to the Productions so long as such use does not violate University or NCAA policy and does not result in Coach receiving compensation for such use.

3.3.4 Without the prior written approval of the Director (such written approval not to be unreasonably withheld), Coach shall not appear in any form of Production for commercial endorsement or compensation.

3.4 Intellectual Property Rights.

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

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

3.4.3 During the term of this Agreement, including an extension or renewal pursuant to Section 2.2, the use of Coach's name, image, nickname, signature, voice, likeness, "celebrity rights" and photograph for any other purposes than those outlined in Section 3.4.2 of this Agreement shall be governed by a separate agreement.

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

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

3.7 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by applicable 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(a) and paid directly from the University to Coach, and within any applicable compensation limits established by such plans and except to the extent required by the terms and conditions of a specific fringe benefit program.

#### 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 and reasonably protect their health, safety, and well-being;

4.1.3. Observe and work reasonably to 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 reasonable steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's director of compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The

names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) University's Policy Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Conference.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, would reflect adversely upon the University, the Department or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director (such approval not to be unreasonably withheld), who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use nor may Coach authorize third parties to use, the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President (such approval not to be unreasonably withheld) for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the Conference, or the NCAA.

4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Program, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees. Coach shall be provided an annual budget of \$2,200,000 per year for the employment of the nine (9) on-field assistant coaches.

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports franchise requiring performance of duties set forth

herein prior to the expiration of this Agreement, without giving prior notice to the Director. Coach shall deliver such notice in writing, or by electronic mail, and shall give such notice as soon as reasonably practical but no less than 48 hours prior to such activity.

**ARTICLE 5**

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

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

- a) A deliberate or major or repetitive violation of Coach's duties under this Agreement or the intentional 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 receiving written notice from the University;
- c) A deliberate or major or repetitive violation by Coach of any applicable law (other than minor traffic offenses) 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 (such consent not to be unreasonably withheld);
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's reasonable judgment, reflect adversely on the University, the Department or its athletic programs;
- f) 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;
- g) 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

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

5.1.2 Suspension or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond within at least 14 days after the receipt of the University's written notice. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

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

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

## 5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay or continue to pay Coach, as applicable, as liquidated damages and not a penalty, the applicable regular compensation as set forth in section 3.1.1(a) plus an additional amount at the annual rate of \$200,000, excluding all deductions required by law, payable on the regular paydays of the University until the expiration of the term of this Agreement ends, or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment 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 to the Coach as a result of such other

employment, such adjusted compensation to be calculated for each University pay-period by reducing the applicable gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance of 3.1.1(b) as if he remained a University employee until the term of this Agreement ends or until Coach obtains other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits outside of section 3.1.1 (a) and (b), except as otherwise 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 Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiations of this Agreement 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 if he resigns before the end of the term of the Agreement.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Such termination shall be effective ten (10) days after written notice is given to the University unless otherwise agreed to by the parties. Such termination must occur at a time outside the Team's Regular Season (excluding bowl game) so as to minimize the impact on the Program.



5.3.3 If the Coach terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience prior to January 10, 2018, to commence, or enter into an agreement to commence, "Similar or Related Employment" (as defined in this section 5.3.3), then he (or his designee) shall pay to the University, as liquidated damages and not a penalty, the following sums: if the termination occurs between December 11, 2013 and January 10, 2016, the sum of two-million dollars (\$2,000,000); if the termination occurs between January 11, 2016 and January 10, 2017, the sum of one-million-seven-hundred-fifty-thousand dollars (\$1,750,000); and if the termination occurs between January 11, 2017 and January 10, 2018, the sum of five-hundred-thousand dollars (\$500,000). 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. For purposes of this Section 5.3.3, "Similar or Related Employment" means employment in football, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with a National Football League (NFL) team, or (c) in sports related media. If Coach terminates for convenience and does not immediately commence Similar or Related Employment, and therefore does not pay the liquidated damages, but then at a future date within twelve (12) months of termination for convenience commences, or enters into an agreement to commence in the future, employment as a collegiate head football coach, or professional (NFL) head football coach, or as an assistant coach at a university that is a member of the Conference, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts, or agrees to accept, such employment as a collegiate or professional head coach or assistant coach at a member institution of the Conference. By way of example only and for the avoidance of doubt, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional head coach on January 15, 2017, Coach, or his designee, would owe the University five hundred thousand dollars (\$500,000). However, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional football head coach on July 1, 2017, neither Coach nor his designee would owe the University any liquidated damages.

5.3.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiation of this Agreement 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, that the University will lose the benefit of its investment in the Coach, and that the University may face potentially increased compensation costs if Coach terminates this Agreement for convenience, all of which amounts are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for any and all damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments with the exception of any amounts earned by the

date of termination but not yet paid due to normal payroll procedures.

5.4 Termination due to Disability or Death of Coach.

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

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

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

5.5 Interference by Coach. In the event of termination or suspension, Coach shall comply with all reasonable requests relating to the University's ability to transact business or operate its intercollegiate athletics program.

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

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

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, the President, and the Director; the sufficiency of

legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Trustees and University's rules or policies regarding furloughs or financial exigency.

6.2 University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, vehicles, 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. However, Coach shall be entitled to retain copies of any practice scripts, playbooks, statistics, or recruiting records (to the extent allowed under applicable privacy and confidentiality laws) utilized during his employment by the University. Further, Coach shall be entitled to retain any other personal property developed by Coach prior to his employment by the University or developed on his own time and not for use in his position as the Program's head football coach.

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 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.

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

production by the University is consistent with applicable law, NCAA, University or Conference policy.

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

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

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

the Coach:                         Bryan Harsin  
    Last known address on file with  
    University's Human Resource Services

with a copy to:                    Russ Campbell & Patrick Strong  
    Balch Sports  
    1901 Sixth Avenue North, Suite 1500  
    Birmingham, Alabama 35203

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

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

6.11 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.

6.12 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case (such consent not to be unreasonably withheld), 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.

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

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

6.15 Opportunity to Consult with Attorney. Both parties acknowledge that they have had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

**ARTICLE 7**

7.1. Definitions. The following terms as used in the Agreement will be defined as indicated:

- a) "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
- b) "Athletic Director" or "Director" means the Boise State University Director of Athletics.
- c) "BAA" means the Bronco Athletic Association.
- d) "CFP" mean the College Football Playoff (as the successor to the Bowl Championship Series organization) and its affiliated or contracted Host Bowls, semi-final Playoff Bowls and Championship Bowl games.
- e) "Coaching" means to direct, supervise, mentor and lead the athletes participating on the Team and/or in the Program.
- f) "Conference" means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the date of the applicable event. At the time of the execution of this Agreement, the Conference is the Mountain West Conference. Change of Conference affiliation is at the sole discretion of the University President.
- g) "Department" means the Boise State University Department of Intercollegiate Athletics.
- h) "FBS" means the Football Bowl Subdivision membership category and participation level of the NCAA.
- i) "NCAA" means the National Collegiate Athletic Association.
- j) "Position" will mean the position of head football coach.

- k) “President” means the Boise State University President.
- l) “Productions” means any and all television, radio, podcast, website, webcast, digital, electronic and/or internet (or other similar or newly developed media format) productions or programs concerning or affiliated in any way with the University, the Team, the Program or the Department.
- m) “Program” shall mean the Football program, including the Team and the staff, equipment and operations assigned to, or affiliated with, the Team as decided at the sole, reasonable discretion of the Director. Non-capitalized use of the term “program” in reference to fringe benefit programs, media programs or to athletic programs generally are defined by the ordinary use in context.
- n) “Season” will mean the NCAA regulated football season commencing on the first day of fall practice and ending immediately after the last game of the football regular season or, if applicable to the Team being selected to play in a post-season bowl (“bowl eligible”), after the post-season bowl game involving the University Team.
- o) “Team” means the Boise State University Broncos intercollegiate football team.

In witness whereof the parties have hereunto set their hands on the date below noted:

UNIVERSITY

COACH

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

\_\_\_\_\_  
Bryan Harsin      Date

Approved by the Board on the \_\_\_ day of \_\_\_\_\_, 201\_.

**EMPLOYMENT AGREEMENT  
2013-2019**

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

ARTICLE 1

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

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University’s Director of Athletics (Director). 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 Program and shall perform such other duties in the University’s athletic Department (Department) as the Director may reasonably assign and as may be described elsewhere in this Agreement. ~~The University (College) shall have the right, at any time, to reassign Coach to shall, to the best of his ability and consistent with University policies, perform all duties at the University (College) other than as and responsibilities customarily associated with an NCAA Football Bowl Subdivision head football coach of.~~

1.3.1 Coach is expected to devote full-time to Coaching and recruitment involving the Team, provided that Coach’s compensation and benefits shall not be affected by as the head Coach. If Coach is reasonably required to perform any such reassignment, except additional duties that are not defined in the opportunity to earn supplemental compensation Agreement, Coach will be notified of his responsibility to perform these duties within a reasonable time frame.

1.3.2 Coach will attend staff meetings, public relation functions, dinners, awards banquets and make appearances as provided in sections 3.2.1 through (Depending on supplemental pay provisions used) reasonably directed by the Director unless excused by the Director. The Director shall not unreasonably withhold approval for non-attendance. Such functions shall cease-include, but are not limited, to the following:

- a) Television, radio and other public appearances as in the Agreement
- b) The annual BAA Bar-b-que
- c) The BAA/Alumni Auction Dinner

- d) Athletic Department staff meetings called by the Director
- e) Athletic Department Graduation Reception
- f) Bronco Golf Series Tournaments
- g) Other similar Department activities and events

1.3.3 Coach agrees to supervise any staff serving under Coach and to insure, to the best of his ability, that all staff persons follow all applicable University policies, NCAA, and Conference rules and regulations at all times. Director will keep Coach informed, in writing, of which persons serve under Coach.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years and one (1) month, commencing on December 11, 2013, and terminating, without further notice to Coach, on January 10, 2019, unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least nine (9) victories in a Season (including bowl games). Meaning, one (1) additional year is added for each nine (9) win season on contract terms no less favorable to Coach than the contract terms then applicable to the final year of this Agreement prior to the extension.

2.3.1. By way of example, and for the avoidance of doubt, section 2.3 is to be interpreted so that the term of this Agreement will function as a rolling five year term as long as the football team wins nine (9) games in a Season. If any Season results in less than nine (9) victories, then the term shall not extend for an additional year, rendering this Agreement as a potential rolling four (4) year term if a Season with nine (9) victories follows such year or a potential rolling three (3) year term if a subsequent Season is fewer than nine (9) victories. Subsequent seasons of nine (9) victories or more, or fewer than nine (9) victories, will have the same effects as described in this section until this Agreement is terminated as otherwise provided herein.

## ARTICLE 3



### 3.1 Regular Compensation.

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

- a) ~~An annual~~ A base salary of \$ \_\_\_\_\_ per year, as follows:  
December 11, 2013 to January 10, 2014 - \$83,000;  
January 11, 2014 to January 10, 2015 - \$800,000;  
January 11, 2015 to January 10, 2016 - \$800,000;  
January 11, 2016 to January 10, 2017 - \$1,100,000;  
January 11, 2017 to January 10, 2018 - \$1,350,000;  
January 11, 2018 to January 10, 2019 - \$1,450,000;  
all generally payable in biweekly installments in accordance with normal University (College) procedures, and such salary increases as may all of which is to be determined appropriate by the Director and President and approved by the University (College)'s Board of (Regents or Trustees) — paid from non-state funds;
- b) The opportunity to receive such employee benefits calculated on the base salary (within the limits of such plans and benefits) as the University provides generally to non-faculty ~~exempt, non-classified, professional staff~~ employees; and
- c) The opportunity to receive such employee benefits as the Department provides generally to its employees of a comparable level, including moving expenses. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.
- d) The opportunity to receive additional benefits as the Director deems necessary and appropriate including a vehicle, complimentary tickets, and club membership, as set forth in a separate letter.

### 3.2 Supplemental Compensation

~~3.2.1. Each year the Team is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay to Coach supplemental compensation in an amount equal to (amount or computation)~~

~~of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

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

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

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

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

~~appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum~~  
3.2.1 Additional Pay based upon performance relating to regular Season and post-Season competition shall be based on the following:

Category 1

- a) \$15,000 if the Team is the Mountain Division Champion;  
or
- b) \$35,000 if the Team participates in a bowl game; or
- c) \$50,000 if the team is the Conference Champion; or
- d) \$75,000 if the Team participates in a Host Bowl as part of the CFP; or
- e) \$100,000 if the Team participates in one of the two semi-final Playoff Bowl games in the CFP.

Category 2

- f) \$150,000 if the Team participates in the CFP Championship Bowl game; or
- g) \$250,000 if the Team wins the CFP Championship Bowl game.

Coach shall be eligible for supplemental compensation from each Category listed above. Coach shall only be eligible to earn one amount (the highest amount) from each Category. Any additional pay for performance earned pursuant to this section shall be paid on February 1st following the football Season in which earned, as long as Coach remains continuously employed as head Coach to that date.

3.2.2 Academic Incentive Pay may be earned as follows:

- a) \$30,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 955 or higher.

Any pay earned pursuant to this section shall be paid on October 1st each year as long as Coach remains continuously employed as head Coach to that date.

3.3 Media Programs, Public Appearances and Endorsements.

3.3.1 Coach shall appear on or participate in, as requested by the Director, and make all reasonable efforts to make successful University sanctioned television, radio and internet Productions concerning the University and the Program. Agreements requiring the Coach to participate in Productions and public appearances related to his duties as an employee of University are the property of the University. The

University shall have the exclusive right to negotiate and contract with all producers of media Productions and all parties desiring public appearances by Coach. Coach agrees to cooperate with the University's reasonable requests in order for the Productions to be successful and agrees to provide his services to and perform on the Productions and to cooperate ~~in~~ with the University's reasonable requests related to their performance, broadcasting, and telecasting.

3.3.2 It is understood that neither Coach nor any assistant coaches shall appear, without the prior written approval of the Director (such approval not to be unreasonably withheld), on any competing ~~radio or television program~~Production (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 and appearances which are non-recurring and for which no compensation is received.

3.3.3 Coach or any assistant coaches shall have no right, title or interest of any kind or nature whatsoever in or to any materials, works or results related to the Productions, or in any component part thereof and the University shall own all rights to the Productions and shall be entitled, at its option, to produce and market the Productions or negotiate with third parties for the production and marketing of the Productions. The University shall be entitled to retain all revenue generated by the Productions. Upon prior written approval of the Director (such written approval not to be unreasonably withheld), Coach may use the materials, works or results related to the Productions so long as such use does not violate University or NCAA policy and does not result in Coach receiving compensation for such use.

3.3.4 Without the prior written approval of the Director, (such written approval not to be unreasonably withheld), Coach shall not appear in any form of Production for commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets endorsement or compensation.

3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))<sup>4</sup>  
Intellectual Property Rights.

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

create such intellectual property rights that are not related to the University and that would not compete with the University's registered marks.

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

3.4.3 During the term of this Agreement, including an extension or renewal pursuant to Section 2.2, the use of Coach's name, image, nickname, signature, voice, likeness, "celebrity rights" and photograph for any other purposes than those outlined in Section 3.4.2 of this Agreement shall be governed by a separate agreement.

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

~~(SUMMER CAMP—OPERATED BY COACH)~~ 3.6 Apparel and/or Equipment. Coach may operate a summer youth (Sport) camp at the University (College) under the following conditions:

- ~~a) The summer youth camp operation reflects positively on the University (College) and the Department;~~
- ~~b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University (College) personnel, equipment, or facilities without the prior written approval of the Director;~~

- ~~c) Assistant coaches at the University (College) are given priority when the Coach or the private enterprise selects coaches to participate;~~
- ~~d) The Coach complies with all NCAA (NAIA), Conference, and University (College) rules and regulations related, directly or indirectly, to the operation of summer youth camps;~~
- ~~e) The Coach or the private enterprise enters into a contract with University (College) and \_\_\_\_\_ (campus concessionaire) for all campus goods and services required by the camp.~~
- ~~f) The Coach or private enterprise pays for use of University (College) facilities including the \_\_\_\_\_.~~
- ~~g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.~~
- ~~h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff-\$1 million; (2) catastrophic coverage: camper and staff-\$1 million maximum coverage with \$100 deductible;~~
- ~~i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- ~~j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the~~

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

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

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

3.37 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by applicable 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,(a) and paid directly from the University



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

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

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



obligations under this Agreement. Coach may not use nor may Coach authorize third parties to use, the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President (such approval not to be unreasonably withheld) for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the Conference, or the NCAA.

4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Program, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees. Coach shall be provided an annual budget of \$2,200,000 per year for the employment of the nine (9) on-field assistant coaches.

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports ~~team, franchise~~ requiring performance of duties set forth herein prior to the expiration of this Agreement, without ~~the giving~~ prior approval of notice to the Director. ~~Such approval~~ Coach shall not unreasonably be withheld-deliver such notice in writing, or by electronic mail, and shall give such notice as soon as reasonably practical but no less than 48 hours prior to such activity.

## ARTICLE 5

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

Agreement, Boise State University policies, and regulationsIdaho State Board of Education policies.

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

- a) A deliberate or major or repetitive violation of Coach's duties under this Agreement or the intentional 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 receiving written notice from the University;
- c) A deliberate or major or repetitive violation by Coach of any applicable law (other than minor traffic offenses) 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 (such consent not to be unreasonably withheld);
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's reasonable judgment, reflect adversely on the University, the Department 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~~ f) 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;
- hg) 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

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

5.1.2 Suspension, ~~reassignment~~, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond within at least 14 days after the receipt of the University's written notice. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

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

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

## 5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay or continue to pay Coach, as applicable, as liquidated damages and not a penalty, the salary applicable regular compensation as set forth in section 3.1.1(a), plus an additional amount at the annual rate of \$200,000, excluding all deductions required by law, payable on the regular paydays of the University until the expiration of the term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided; however, in the event Coach obtains other employment 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 to the Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the applicable gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance of 3.1.1(b) as if he remained a University employee until the term of this Agreement ends or until Coach obtains ~~employment or any~~ other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits outside of section 3.1.1 (a) and (b), 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 Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the ~~contract~~-negotiations of this Agreement 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 if he to resign or otherwise terminate his employment with the University (College)~~ resigns before the end of the ~~contract~~ term of the Agreement.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Such termination shall be effective ten (10) days after written notice is given to the University unless otherwise agreed to by the parties. Such termination must occur at a time outside the Team's Regular Season (excluding bowl game) so as to minimize the impact on the Program.

5.3.3 If the Coach terminates this Agreement for convenience ~~at any time~~, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience prior to January 10, 2018, to commence, or enter into an agreement to commence, "Similar or Related Employment" (as defined in this section 5.3.3), then he (or his designee) shall pay to the University, as liquidated damages and not a penalty, the following sums: if the termination occurs between December 11, 2013 and January 10, 2016, the sum of two-million dollars (\$2,000,000); if the termination occurs between January 11, 2016 and January 10, 2017, the sum of one-million-seven-hundred-fifty-thousand dollars (\$1,750,000); and if the termination occurs between January 11, 2017 and January 10, 2018, the sum of five-hundred-thousand dollars (\$500,000). 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. For purposes of this Section 5.3.3, "Similar or Related Employment" means employment in football, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with a National Football League (NFL) team, or (c) in sports related media. If Coach terminates for convenience and does not immediately commence Similar or Related Employment, and therefore does not pay the liquidated damages, but then at a future date within twelve (12) months of termination for convenience commences, or enters into an agreement to commence in the future, employment as a collegiate head football coach, or professional (NFL) head football coach, or as an assistant coach at a university that is a member of the Conference, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts, or agrees to accept, such employment as a collegiate or professional head coach or assistant coach at a member institution of the Conference. By way of example only and for the avoidance of doubt, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional head coach on January 15, 2017, Coach, or his designee, would owe the University five hundred thousand dollars (\$500,000). However, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional football head coach on July 1, 2017, neither Coach nor his designee would owe the University any liquidated damages.

5.3.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the ~~contract negotiations~~negotiation of this Agreement 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 that the University will lose the benefit of its investment in the Coach, and that the University may face~~ potentially increased compensation costs if Coach terminates this Agreement for convenience, all of which damages amounts 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 any and all~~ damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. ~~This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University (College).~~

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments with the exception of any amounts earned by the date of termination but not yet paid due to normal payroll procedures.

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

5.7 No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from



any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

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

## 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, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Trustees and University's rules or policies regarding furloughs or financial exigency.

6.2 University Property. All personal property ~~(excluding vehicle(s) provided through the \_\_\_\_\_ program)~~, material, and articles of information, including, without limitation, keys, credit cards, vehicles, 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. However, Coach shall be entitled to retain copies of any practice scripts, playbooks, statistics, or recruiting records (to the extent allowed under applicable privacy and confidentiality laws) utilized during his employment by the University. Further, Coach shall be entitled to retain any other personal property developed by Coach prior to his employment by the University or developed on his own time and not for use in his position as the Program's head football coach.

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





the Coach: Bryan Harsin  
Last known address on file with  
University's Human Resource Services

with a copy to: Russ Campbell & Patrick Strong  
Balch Sports  
1901 Sixth Avenue North, Suite 1500  
Birmingham, Alabama 35203

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 is signed for, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.4410 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.4211 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.

6.4312 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, (such consent not to be unreasonably withheld), 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.

6.4413 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.4514 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

6.4615 Opportunity to Consult with Attorney. ~~The Coach acknowledges~~Both parties acknowledge that ~~he has~~they have had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

## ARTICLE 7

7.1. Definitions. The following terms as used in the Agreement will be defined as indicated:

- a) “APR” means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
- b) “Athletic Director” or “Director” means the Boise State University Director of Athletics.
- c) “BAA” means the Bronco Athletic Association.
- d) “CFP” mean the College Football Playoff (as the successor to the Bowl Championship Series organization) and its affiliated or contracted Host Bowls, semi-final Playoff Bowls and Championship Bowl games.
- e) “Coaching” means to direct, supervise, mentor and lead the athletes participating on the Team and/or in the Program.
- f) “Conference” means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the date of the applicable event. At the time of the execution of this Agreement, the Conference is the Mountain West Conference. Change of Conference affiliation is at the sole discretion of the University President.
- g) “Department” means the Boise State University Department of Intercollegiate Athletics.
- h) “FBS” means the Football Bowl Subdivision membership category and participation level of the NCAA.
- i) “NCAA” means the National Collegiate Athletic Association.
- j) “Position” will mean the position of head football coach.
- k) “President” means the Boise State University President.
- l) “Productions” means any and all television, radio, podcast, website, webcast, digital, electronic and/or internet (or other similar or newly developed media format) productions or programs concerning or affiliated in any way with the University, the Team, the Program or the Department.
- m) “Program” shall mean the Football program, including the Team and the staff, equipment and operations assigned to, or affiliated with, the Team as decided at the sole, reasonable discretion of the

Director. Non-capitalized use of the term “program” in reference to fringe benefit programs, media programs or to athletic programs generally are defined by the ordinary use in context.

n) “Season” will mean the NCAA regulated football season commencing on the first day of fall practice and ending immediately after the last game of the football regular season or, if applicable to the Team being selected to play in a post-season bowl (“bowl eligible”), after the post-season bowl game involving the University Team.

o) “Team” means the Boise State University Broncos intercollegiate football team.

In witness whereof the parties have hereunto set their hands on the date below noted:

UNIVERSITY

COACH

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

\_\_\_\_\_  
Bryan Harsin      Date

Approved by the Board on the \_\_\_\_ day of \_\_\_\_\_, 201\_.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE**  
**FEBRUARY 27, 2014**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

License Contract with Bryan Harsin Enterprises, LLC

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Boise State University is requesting approval of a license contract with Bryan Harsin Enterprises, LLC. The subject matter of the contract is the likeness and image rights of Bryan Harsin. Mr. Harsin has assigned such personal rights to a limited liability company. The University proposes to license such rights from the LLC for use for any lawful purpose of the University, subject to the conditions of the license.

The University shall pay the LLC \$200,000 per year for such rights. The license will run concurrent with Harsin's employment contract with the University. After expiration of the employment contract, the University will terminate the license but retain a perpetual right to use the image rights for historical and factually accurate commercial activity.

**IMPACT**

The source of funds is Athletic Department non-state funds.

**ATTACHMENTS**

Attachment 1 – Proposed Contract

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

BSU seeks to enter into a licensing agreement with the entity "Bryan Harsin Enterprises, LLC" for the use of Mr. Harsin's name, image, voice, signature, etc. In consideration of granting these usage rights to BSU, Mr. Harsin would be paid \$16,666.67 per month for the term of his employment agreement, for an annualized amount of \$200,000.

The only other agreement of this type brought to the Board for its consideration was for the benefit of Chris Petersen, and was approved in April 2012.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a license agreement with Bryan Harsin Enterprises, LLC, in substantial conformance with the terms of the agreement set forth in Attachment 1.

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

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**LICENSE AGREEMENT**

This **LICENSE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of the 11<sup>th</sup> day of January, 2014 (the “Effective Date”), by and between **BRYAN HARSIN ENTERPRISES, LLC**, an Arkansas limited liability company (“Licensor”), and **BOISE STATE UNIVERSITY** (“University”), and acknowledged by **BRYAN HARSIN**, individually (“Harsin”).

**RECITALS:**

**WHEREAS**, pursuant to that certain Employment Agreement by and between the University and Harsin dated effective January 11, 2014 (the “Employment Agreement”), Harsin serves as the head coach of the University’s football program; and

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

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

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

**AGREEMENT:**

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

1. **Sublicense Grant**. During the term of this Agreement, Licensor hereby grants to the University the exclusive right and sublicense to use the Property, including the right to manufacture, market, distribute, sell, publish or otherwise disseminate the Licensed Products, as well as on packaging, promotional, and advertising material associated therewith, in connection

with and in relation to the University's Interests (the "Sublicense Rights"); provided, however, that the Sublicense Rights shall be subject to the limitations set forth in the remainder of this Section 1. Licensor reserves, and otherwise maintains, all rights in the Property which are not in connection with or in relation to the University's Interests. Harsin acknowledges that in connection with the grant of the Sublicense Rights hereunder, he consents to the University's appropriation of his privacy rights, provided that the University's use of the Property does not present Harsin in a false light, cause infliction of emotional distress to Harsin, or otherwise result in a breach of this Agreement.

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

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

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

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

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

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

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

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

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



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

(d) If the quality of a class of the Licensed Products falls below a quality standard previously approved by Licensor, University shall use its best efforts to restore such quality. If the University has not taken appropriate steps to restore such quality within thirty (30) days after notification by Licensor, the Licensed Product at issue may not be further manufactured, marketed, distributed, or sold;

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

### 1.3 **Property Rights.**

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

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

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

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

(e) Marks. Licensor shall be responsible for registration of Licensor's Marks with federal or other authorities, as applicable, at its sole cost, however, University may assume responsibility for obtaining the same with the written consent of Licensor. University shall submit any registration or application to Licensor, or his designee, for approval prior to making a filing with the USPTO. To the extent the Marks do not incorporate or derive from University Owned Intellectual Property as defined herein, University acknowledges and agrees

that its first use in commerce of any of the Marks shall inure to the benefit of Licensor and vest ownership rights in the same to Licensor.

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

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

**1.4 Post-Termination Rights.**

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

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

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

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

consents to the University's appropriation of his privacy rights in connection with the grant of the license in this section.

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

1.6 **Infringement.**

(a) Licensor shall have the right, in its discretion, to institute and prosecute lawsuits against third persons for infringement of any Property right sublicensed in this Agreement, and to retain any recoveries therefrom. Any lawsuit brought by Licensor shall be prosecuted solely at the cost and expense of Licensor and all sums recovered in any such lawsuits, whether by judgment, settlement, or otherwise, in excess of the amount of Licensor's attorneys' fees and other out of pocket expenses of such suit, shall be divided equitably between Licensor and University based on their respective rights under this Agreement.

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

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

2. **State of Incorporation.** Licensor is currently incorporated in the State of Arkansas, but intends to reincorporate in the State of Idaho within six (6) months of entering this Agreement. The parties intend that this Agreement shall be in full effect after Licensor changes the state of incorporation to Idaho. The parties further intend that this Agreement shall not require an amendment based solely on such change in place of incorporation. To the extent either party deems an amendment necessary, the parties shall work in good faith to amend this agreement to account for the change in place of incorporation on substantially same terms.

3. **Term.** The parties intend that this Agreement shall have a term identical to the Employment Agreement and that this Agreement shall be extended or terminated if and when the Employment Agreement is extended or terminated, as applicable. In this respect, this Agreement

shall commence on the Effective Date and shall continue thereafter until January 10, 2019, unless terminated earlier as specifically provided in Section 3 hereof. This Agreement shall automatically extend if and when the term of the Employment Agreement is extended and such extension shall be for the same length of time as the Employment Agreement is extended. Provided, always, nothing herein shall preclude the parties from agreeing in writing to extend the term of this Agreement after the termination of the Employment Agreement, and to continue the grant of the Sublicense Rights on the terms and conditions set forth in such extension.

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

5. **Royalties.** In consideration of Licensor granting the Sublicense Rights to the University under this Agreement, the University shall pay Licensor a royalty at the monthly rate of \$16,667.00 for each month during the term of this Agreement, payable on the last day of the month ("Royalty"). The parties agree that the payments of said Royalties shall be paid to Licensor without any federal, state, or local wage withholding and that Licensor and/or Harsin shall be solely responsible for the payment of all appropriate income tax and other withholding obligations due upon receipt of the Royalties.

6. **Indemnification.** Subject to the limits of the Idaho Tort Claims Act as set forth in Idaho Code §6-901 et. seq., University irrevocably covenants and agrees from and after the Effective Date hereof to defend, indemnify, and save and hold harmless Licensor and Harsin from and against any claims, actions, causes of actions, damages, proceedings, liabilities, obligations, losses, costs, or expenses (including, without limitation, attorney fees and court costs) arising out of or resulting from University's use of the Property, including but not limited to claims alleging defects in the Licensed Products, alleging deception in endorsements, or otherwise arising under intellectual property law.

7. **Warranty.** Licensor represents and warrants to University that (a) it has the rights necessary to enter into this Agreement and to perform all obligations and provide all licenses granted herein free of the rightful claim of any third person by way of infringement or the like; and (b) it has not granted licenses thereunder to any other entity that would restrict rights granted hereunder.

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

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

10. **Miscellaneous Provisions.**

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

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

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

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

10.5 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one (1) Agreement. The signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. Telecopy signatures shall be deemed effective as originals.

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

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

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

**BOISE STATE UNIVERSITY:**

**BRYAN HARSIN ENTERPRISES, LLC**

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

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

Bryan Harsin, Member

Name: \_\_\_\_\_

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

**ACKNOWLEDGED BY:**

\_\_\_\_\_  
Bryan Harsin, Individually