

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

TAB	DESCRIPTION	ACTION
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	BOISE STATE UNIVERSITY	
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	BOISE STATE UNIVERSITY	
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**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

BOISE STATE UNIVERSITY

SUBJECT

Multi-year contract with Shawn Garus, Head Women's Volleyball Coach

REFERENCE

June 2012

The Idaho State Board of Education (Board) approved a two and one half year employment agreement with Women's Head Volleyball Coach Shawn Garus.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

In June 2012, the Board approved a two and one half year employment contract with Shawn Gaurs as the Head Women's Volleyball Coach terminating January 31, 2015. Boise State University (BSU) now requests approval to enter into a new multi-year contract with Coach Garus as Head Women's Volleyball Coach.

IMPACT

The new contract will be a two (2) year agreement, commencing on February 1, 2015 and terminating on January 31, 2017, with the option for a one-year extension. The salary is \$87,610, with incentives as follows:

Academic Achievement

Academic incentive pay may be earned if annual team APR ranks nationally and meets the following levels in the national ranking within women's volleyball:

National Rank Within Sport:

970-974	\$1,500
975-979	\$1,750
980-984	\$2,000
985 and above	\$5,000

Athletic Achievement

Conference Championship	\$5,000
	OR
Qualifying team for NCAA Tournament	\$3,000
	AND
Top 25 National Ranking at End of Season	\$2,500
NCAA Regional Coach of the Year	\$3,000
NCAA National Coach of the Year	\$5,000
Conference Coach of the Year	\$3,000
Winning Record	\$1,500

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Maximum potential annual compensation (base salary and incentive payments) is \$112,610. In addition, Garus may operate additional youth volleyball camps at BSU pursuant to the proposed agreement.

In the event Garus terminates the agreement for convenience, the following liquidated damages will be due: \$20,000 for the first year or \$10,000 for the second year. There are no liquidated damages due if the agreement is terminated in year three, the optional renewal year.

Finally, Garus may also earn supplemental compensation by assisting with university sponsored volleyball camps.

ATTACHMENTS

Attachment 1 – Clean version of Proposed Contract	Page 3
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Attachment 3 – 4 Year APR Scores	Page 33

STAFF COMMENTS AND RECOMMENDATIONS

The maximum proposed incentive pay for academic achievement is \$5,000 which is the equivalent of a conference championship. The Board has historically looked favorably on academic incentives at that level. The proposed employment agreement is in substantial conformance with the Board's model contract.

This contract reflects a \$910 increase in base salary and total maximum potential compensation from the current contract.

The contract is in substantial conformance with the model contract.

The Athletic Committee met on December 16 to review this contract and will provide its recommendation at the December 18 Board meeting.

BOARD ACTION

I move to approve the request by Boise State University to enter into a two year employment agreement with Shawn Garus, Head Women's Volleyball Coach, commencing on February 1, 2015 and terminating on January 31, 2017, at a base salary of \$87,610 and supplemental compensation provisions, as submitted.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into this _____ day of _____, ("Effective Date") by and between Boise State University ("University") and Shawn Garus ("Coach").

ARTICLE 1

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

1.3. Duties. Coach shall manage and supervise the University's the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. Coach shall, to the best of Coach's ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years, commencing on February 1, 2015 and terminating, without further notice to Coach, on January 31, 2017 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University on or before October 1, 2016 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of University's Board Education. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this Agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount of \$87,610 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

3.2.1. Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

National Score within Sport		
970-974	=	\$1,500
975-979	=	\$1,750
980-984	=	\$2,000
985 and above	=	\$5,000

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

3.2.2. Athletic Achievement Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

Conference Championship:	\$5,000
OR	

Qualify team for NCAA Tournament:	\$3,000
Top 25 National Ranking at End of Season:	\$2,500
NCAA Regional Coach of the Year:	\$3,000
NCAA National Coach of the Year:	\$5,000
Conference Coach of the Year:	\$3,000
Winning Record:	\$1,500

If Coach qualifies for Athletic Incentive Pay under this Section, University will pay Coach on the first regular pay date in February 2014 if Coach is still employed by the University on that date.

3.2.3. Conditions for payment of Academic and Athletic Achievement Incentive supplemental compensation

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

3.2.4 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.5 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the

Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

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

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

ARTICLE 4

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

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

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

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

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

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

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

ARTICLE 5

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

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

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

- c) A deliberate or major violation by Coach of any applicable law or the policies, rules, or regulations of the University, the University's governing board, the Conference, or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team;
or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.

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

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

University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience 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, Coach shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 31, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, 2016 and January 31, 2017 and inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages

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

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

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) 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 of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this Agreement shall be subject to: the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Trustees and University's rules or policies regarding financial exigency.

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

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

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

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

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

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

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

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

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

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

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

the Coach: Shawn Garus
last known address on file
with University Human Resource Services

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day

facsimile delivery is verified. Actual notice, however and from whoever received, shall always be effective.

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

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

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

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

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

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

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

UNIVERSITY

COACH

Dr. Robert Kustra, President

Shawn Garus

Approved by the Board on the ____ day of _____, 2014.

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EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into this _____ day of _____, ~~2012~~ ("Effective Date") by and between Boise State University ("University") and Shawn Garus ("Coach").

ARTICLE 1

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

1.3. Duties. Coach shall manage and supervise the University's ~~intercollegiate women's volleyball team~~ (the "~~Team~~") and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement ~~and any addenda hereto.~~ Coach shall, to the best of Coach's ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment ~~of two (2) years,~~ commencing on ~~July~~February 1, ~~2012~~2015 and terminating, without further notice to Coach, on January 31, ~~2015~~2017 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University on or before October 1, 2016 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of University's Board ~~of Trustees~~Education. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this Agreement count in any way toward tenure at the University.

|

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount ~~set forth in the attached Addendum~~ of \$87,610 per year, payable in biweekly installments in accordance with normal University procedures ~~(except as provided in the Addendum)~~, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. ~~University~~Coach may ~~provide~~earn supplemental compensation, as ~~set forth in the attached Addendum~~follows:

~~3.2.1~~3.2.1. Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

<u>National Score within Sport</u>		
<u>970-974</u>	<u>=</u>	<u>\$1,500</u>
<u>975-979</u>	<u>=</u>	<u>\$1,750</u>
<u>980-984</u>	<u>=</u>	<u>\$2,000</u>
<u>985 and above</u>	<u>=</u>	<u>\$5,000</u>

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

3.2.2. Athletic Achievement Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

<u>Conference Championship:</u>	<u>\$5,000</u>
<u>OR</u>	
<u>Qualify team for NCAA Tournament:</u>	<u>\$3,000</u>
<u>Top 25 National Ranking at End of Season:</u>	<u>\$2,500</u>
<u>NCAA Regional Coach of the Year:</u>	<u>\$3,000</u>
<u>NCAA National Coach of the Year:</u>	<u>\$5,000</u>
<u>Conference Coach of the Year:</u>	<u>\$3,000</u>
<u>Winning Record:</u>	<u>\$1,500</u>

If Coach qualifies for Athletic Incentive Pay under this Section, University will pay Coach on the first regular pay date in February 2014 if Coach is still employed by the University on that date.

3.2.3. Conditions for payment of Academic and Athletic Achievement Incentive supplemental compensation

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

3.2.24 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

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

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

ARTICLE 4

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

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

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

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

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

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

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

from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

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

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;

- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules, or regulations of the University, the University's governing board, the Conference, or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or Director's designee shall

provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

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

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

5.2 Termination of Coach for Convenience of University.

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

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

Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience 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, Coach shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 31, ~~2013~~2016, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, ~~2013~~2016 and January 31, ~~2014~~2017 and inclusive, the sum of \$10,000.00. The liquidated damages

shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

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

ARTICLE 6

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

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

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

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of

any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

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

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

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

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

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

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

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

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

the Coach: Shawn Garus
1910 last known address on file
with University Drive Human Resource Services
Boise, Idaho 83725-1025

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

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

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

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

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

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

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

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

UNIVERSITY

COACH

Mark Coyle, Director of Athletics

Shawn Garus

Dr. Robert Kustra, President

Shawn Garus

Approved by the Board on the ____ day of _____, ~~2012~~2014.

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BOISE STATE UNIVERSITY

Women's Volleyball APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2009-10	2010-11	2011-12	2012-13
Women's Volleyball	950	1000	1000	1000
<i>National % Rank by Sport</i>	<i>0-10</i>	<i>90-100</i>	<i>90-100</i>	<i>90-100</i>

REPORT YEAR

Raw Score for single year

*Percentile Rank for Sport***MULTI-YEAR (4-Year Rolling Average)**

Women's Volleyball	927	948	957	994
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**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

BOISE STATE UNIVERSITY

SUBJECT

Multi-year contract for Gordon Presnell, Head Women's Basketball Coach

REFERENCE

February 2011

The Idaho State Board of Education (Board) approved a five year employment agreement with Head Women's Basketball Coach Gordon Presnell

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

In January 2011, the Board approved a five year employment contract with Gordon Presnell as the new Head Women's Basketball Coach terminating March 31, 2015. Boise State University (BSU) requests approval to enter into a new multi-year contract with Coach Presnell as Head Women's Basketball Coach.

IMPACT

The new contract will be for two (2) years and three (3) months, December 19, 2014 – March 31, 2017. The salary is \$189,132, with incentives as follows:

Academic Achievement

Academic incentive pay may be earned if annual team APR ranks nationally within women's basketball above the 50th percentile as follows:

National Rank within Sport:

50th - 59.9%	\$5,000
60th - 69.9%	\$7,500
70th - 79.9%	\$10,000
80th % or above	\$12,500

In the event Gordon Presnell terminates the Agreement for convenience, the following liquidated damages will be due: \$40,000 for the first year, \$20,000 for the second year, or \$10,000 for the third year.

Athletic Achievement

Conference Regular Season Champions	\$10,000
The greater of the following two:	
Conference Tournament Finalist	\$3,000
Conference Tournament Champions	\$10,000
NCAA Tournament Appearance	\$5,000 per game
WNIT Appearance	\$3,000 per game
The greater of the following two:	

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

Winning Record (more wins than losses)	\$4,000
20 Wins	\$8,000

Maximum potential annual compensation (base salary and incentive payments) is \$237,632. In addition, the coach may operate additional summer camps at BSU pursuant to the proposed agreement.

ATTACHMENTS

Attachment 1 – Clean version of Proposed Contract	Page 3
Attachment 2 – Redline Compare of the 2011-2015 to Proposed	Page 17
Attachment 3 – 4 Year APR Scores	Page 31

STAFF COMMENTS AND RECOMMENDATIONS

The base pay in the employment agreement reflects a 0.4% increase over the Coach's current base salary (or 8.1% over the base salary originally approved in 2011). The maximum proposed incentive pay for academic achievement is \$12,500 which is more than any other athletic incentive amount. The proposed employment agreement is in substantial conformance with the Board's model contract.

The Athletic Committee met on December 16 to review this contract and will provide its recommendation at the December 18 Board meeting.

BOARD ACTION

I move to approve the request by Boise State University to enter into a two year, three month employment agreement with Gordon Presnell, Head Women's Basketball Coach, commencing on December 19, 2014 and terminating on March 31, 2017, at a base salary of \$189,132 and supplemental compensation provisions, as submitted.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into by and between Boise State University (the “University”) and Gordon H. Presnell (“Coach”).

ARTICLE 1

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years three months, commencing on December 19, 2014 and terminating without further notice to Coach on March 31, 2017 (the “Term”) unless sooner terminated in accordance with other provisions of this Agreement.

2.2. 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. Automatic Extensions. The term of this Agreement will automatically be extended by one (1) additional year commencing on April 1 and concluding on March 31

for each season in which the team has at least eighteen (18) wins. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the Women's National Invitation Tournament ("WNIT"), or the National Collegiate Athletic Association ("NCAA") Tournament, to the exclusion of all other pre-season exhibition games or post-season tournaments.

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary of \$189,132 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" set forth in set forth in section 3.1.1(a) as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

3.2.1 Athletic Achievement

- a) Conference Regular Season Champions \$10,000
- b) The greater of the following two:
 - Conference Tournament Finalist \$3,000
 - Conference Tournament Champions \$10,000
- c) NCAA Tournament Appearance \$5,000 per game
- d) WNIT Appearance \$3,000 per game
- e) The greater of the following two:
 - Winning Record (more wins than losses) \$4,000

20 Wins

\$8,000

3.2.2 Academic Achievement

Academic Incentive Pay may be earned if annual team APR ranks nationally within women's basketball above the 50th percentile as follows:

National Rank Within Sport

50th - 59.9%	=	\$5,000
60th - 69.9%	=	\$7,500
70th - 79.9 %	=	\$10,000
80th % or above	=	\$12,500

3.2.3 Conditions for payment of Academic and Athletic supplemental compensation:

a. If Coach qualifies for Athletic Achievement Supplemental Compensation pursuant to section 3.2.1, University will pay Coach on the first regular pay date in July, following the year in which such supplemental compensation is calculated but only if Coach is still employed by the University on that date. Ranking shall be determined based on NCAA National End of Season Ranking.

b. If Coach qualifies for Academic Achievement Supplemental Compensation pursuant to section 3.2.2, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

c. In order to receive any of the 3.2.1 supplemental compensation, the Team's retention rate must be at least 50% for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4 Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate women's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University 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 sole discretion of the President in consultation with the Director and approved by the University's Board of Trustees.

3.2.5 The Coach may receive compensation hereunder from the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the

exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including, but not limited to, a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements, which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Summer Camp Operated by the University. Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's basketball 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 basketball camps, the University shall pay Coach a reasonable supplemental compensation during each year of his employment as head coach at the University. The summer youth camp must be operated by Coach in a manner that reflects positively on the University and the Department. The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps. All revenues and expenses of the Camp shall be deposited with and paid by the University.

In the event of termination of this Agreement, suspension, or reassignment, University 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 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. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated

company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Director of NCAA 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 will be provided periodically to Coach by the University. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) the University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Conference.

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

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

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

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

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

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

4.7 Specific Duties of Coach. The Coach is expected to devote full-time to coaching and recruitment involving the Team as the head coach. The Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The annual BAA barbecue
- b) The weekly BAA function during the relevant season;
- c) The annual BAA Endowment dinner;
- d) The BSU Athletic Hall of Fame dinner;
- e) The BAA Bronze Bronco Award banquet;
- f) The BAA/Alumni Auction dinner;
- g) All Department staff meetings called by the Director;
- h) Athletic Department Graduation Reception;
- i) Bronco Golf Series Tournaments.

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the rules, regulations, or policies, of the University, the University's governing board, the Conference or the NCAA, including, but not limited to, any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

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

5.2.3 The parties have both been represented by, or had the opportunity to be represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by

Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before March 31, 2015, the sum of \$40,000; (b) if the Agreement is terminated between April 1, 2015 and March 31, 2016 inclusive, the sum of \$20,000; (c) if the Agreement is terminated between April 1, 2016 and March 16, 2017 inclusive, the sum of \$10,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board Rule Manual (ID ADMIN. CODE 08.01.01 et seq) 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 of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this Agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Trustees and University's rules regarding financial exigency.

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

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

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

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

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

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

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

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

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

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

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

the Coach: Gordon H. Presnell
Last known address on file with
University's Human Resource Services

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

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

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

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

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

ATTACHMENT 1

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

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

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

UNIVERSITY

COACH

Robert Kustra, President

Date

Gordon H. Presnell

Date

Approved by the Board on the ____ day of _____, 20__.

EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into by and between Boise State University, (~~the “University”~~) and Gordon H. Presnell, (~~“Coach”~~).

ARTICLE 1

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~five (5)~~ two (2) years ~~three months~~, commencing on ~~April 1, 2010~~ December 19, 2014 and terminating without further notice to Coach on March 31, ~~2015~~ 2017 (~~the “Term”~~) unless sooner terminated in accordance with other provisions of this Agreement.

~~Extension or 2.2~~ 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~~ University’s Board of ~~Trustee~~ Trustees. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach’s service pursuant to this ~~agreement~~ Agreement count in any way toward tenure at the University.

2.3 Automatic Extensions. The term of this Agreement will automatically be extended by one (1) additional year commencing on April 1 and concluding on March 31 for

each season in which the team has at least eighteen (18) wins. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the Women's National Invitation Tournament ("WNIT"), or the National Collegiate Athletic Association ("NCAA") Tournament, to the exclusion of all other pre-season exhibition games or post-season tournaments.

ARTICLE 3

3.1 Regular Compensation.

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

- a) ~~An annual~~A salary of ~~\$174,900~~\$189,132 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" set forth in set forth in section 3.1.1(a) as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

3.2.1 Athletic Achievement

- a) WACConference Regular Season Champions
~~—————\$5~~\$10,000
- b) The greater of the following two:

<u>WACConference</u> Tournament Finalist	————— \$3,000
<u>WACConference</u> Tournament Champions	<u>\$15</u> <u>10,000</u>
- c) NCAA Tournament ~~Appearances~~Appearance \$5,000 per game
- d) WNIT Appearance \$3,000 per game

e)	20 Wins	\$4,000
f)	e) The greater of the following two:	
	Winning Record (more wins than losses)	\$4,000
	<u>20 Wins</u>	<u>\$8,000</u>

3.2.2 Academic Achievement

Academic Incentive Pay may be earned if your 4 year annual team APR ranks nationally ~~within your sport~~ women's basketball above the 50th percentile as follows:

National Rank Within Sport

50th - 59.9%	=	\$5,000
60th - 69.9%	=	\$7,500
70th - 79.9 %	=	\$10,000
80th % or above	=	\$12,500

3.2.3 Conditions for payment of Academic and Athletic supplemental compensation:

a. ~~Payment date for academic achievement supplemental compensation and for athletic achievement supplemental compensation shall be made July 1st of each year following the completion of the season in which it is earned. If Coach qualifies for Athletic Achievement Supplemental Compensation pursuant to section 3.2.1, University will pay Coach on the first regular pay date in July, following the year in which such supplemental compensation is calculated but only if Coach is still employed by the University on that date. Ranking shall be determined based on NCAA National End of Season Ranking.~~

b. If Coach qualifies for Academic Achievement Supplemental Compensation pursuant to section 3.2.2, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

c. In order to receive any of the 3.2.1 supplemental compensation, the ~~basketball team's~~ Team's retention rate must be at least 50% for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4 Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate women's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University 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 sole discretion of the President in consultation with the Director and approved by the University's Board of Trustees.

3.2.5 The Coach ~~shall~~may receive ~~the sum of \$5,100 annually~~compensation hereunder from the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs). ~~This sum shall be paid monthly.~~ Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither ~~each~~Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including, but not limited to, a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements, which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Summer Camp Operated by the University. Coach agrees that the University has the exclusive right to operate youth basketball 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~~Coach's~~ capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's basketball 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 basketball camps, ~~the University shall pay Coach a reasonable supplemental compensation during each year of his employment as head coach at the University.~~ The summer youth camp must be operated by Coach in a manner that reflects positively on the University and the Department. The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps. All revenues and expenses of the Camp shall be deposited with and paid by the University.

In the event of termination of this Agreement, suspension, or reassignment, University 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 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. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or

equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products. ____

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's University's governing board, the conference, of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's University's Director of NCAA Compliance if Coach has reasonable

cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises ~~are attached as Exhibit C.~~ will be provided periodically to Coach by the University. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) ~~University's Policies;~~ the University's Policy Manual; ~~(d)~~ the policies of the Department; ~~(e)~~ (ed) NCAA rules and regulations; and ~~(f)~~ (fe) the rules and regulations of the ~~Western Athletic Conference (WAC).~~

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

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

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

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

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

4.7 Specific Duties of Coach. The Coach is expected to devote full-time to coaching and recruitment involving the ~~Women's Basketball team~~Team as the ~~Head Coach~~head coach. The Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by ~~Athletic~~the Director unless excused by ~~Athletic~~the Director. Such functions shall include, but are not limited to, the following:

- a) The annual BAA barbecue
- b) The weekly BAA function during the relevant season;
- c) The annual BAA Endowment dinner;
- d) The BSU Athletic Hall of Fame dinner;
- e) The BAA Bronze Bronco Award banquet;
- f) The BAA/Alumni Auction dinner;
- g) All ~~Athletic~~ Department staff meetings called by ~~Athletic~~the Director;
- h) Athletic Department Graduation Reception;
- i) Bronco Golf Series Tournaments.

ARTICLE 5

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

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

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

- c) A deliberate or major violation by Coach of any applicable law or the ~~policies, rules or~~ regulations, or policies, of the University, the University's governing board, the ~~conference~~Conference or the NCAA, including, but not limited to, any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (~~2010~~) working days absence of Coach from duty without the University's consent;
- ~~d)e)~~ Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- e)f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- ~~f)g)~~ The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the ~~conference~~Conference, or the NCAA;
- ~~g)h)~~ The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the ~~conference~~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)i)~~ A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the ~~conference~~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~~Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the "base salary set forth in section 3.1.1(a) and the amount set forth in section 3.2.5, 1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) and the amount set forth in section 3.2.5 (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before ~~June 1, 2014~~March 31, 2015, the sum of ~~\$6040,000~~; (b) if the Agreement is terminated between ~~June~~April 1, ~~2014, 2015~~ and ~~May~~March 31, ~~2012~~2016 inclusive, the sum of ~~\$4520,000~~; (c) if the Agreement is terminated between ~~June~~April 1, ~~2012~~2016 and ~~May 31, 2013~~March 16, 2017 inclusive, the sum of ~~\$3010,000~~. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

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

5.4 Termination ~~due~~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'sUniversity'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'sCoach's death, Coach'sCoach's salary and all other benefits shall terminate as of the last day worked, except that the Coach'sCoach'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'sCoach's estate or beneficiaries thereunder.

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

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

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

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

have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board Rule Manual (~~IDAPA-08~~[ID ADMIN. CODE 08.01.01 et seq](#)) 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 of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this ~~agreement~~[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 ~~(Regents or Trustees)~~ and ~~University's~~[University's](#) rules regarding financial exigency.

6.2 University Property. All personal property ~~(excluding vehicle(s) provided through the Courtesy Car program)~~, material, and articles of information, including, without limitation, keys, credit cards, 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~~[Term](#) of this ~~agreement~~[Agreement](#) or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the State of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the ~~courts of the State of~~[state district court in Ada County, Boise](#), Idaho.

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

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

6.9 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'sUniversity's sole discretion.

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

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

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

the Coach: Gordon H. Presnell
 Last known address on file with
 University'sUniversity's Human Resource Services

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

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

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

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

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

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

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

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

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

UNIVERSITY

COACH

Robert Kustra, President Date

Gordon H. Presnell Date

Approved by the SBOE~~Board~~ on the ____ day of _____, 20__.

BOISE STATE UNIVERSITY

Women's Basketball APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2009-10	2010-11	2011-12	2012-13
Women's Basketball	926	1000	1000	962
<i>National % Rank by Sport</i>	<i>0-10</i>	<i>90-100</i>	<i>90-100</i>	<i>20-30</i>

REPORT YEAR

Raw Score for single year

*Percentile Rank for Sport***MULTI-YEAR (4-Year Rolling Average)**

Women's Basketball	982	991	990	981
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**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

IDAHO STATE UNIVERSITY

SUBJECT

Multi-year employment agreement for Michael D. Kramer, Head Football Coach

REFERENCE

February 2011

The Idaho State Board of Education (Board) approved a five year employment agreement with Head Football Coach Michael Kramer

APPLICABLE STATUTE, RULE OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University (ISU) is requesting approval for a new three-year, one-month employment agreement for Michael D. Kramer, Head Football Coach (his current contract expires on January 21, 2015). The employment agreement contains the duties, responsibilities and conditions of employment. A model contract matrix of the employment agreement that identifies departures from the model contract form and provides justification for these changes is included as Attachment 3. The position is funded by state appropriated funds.

IMPACT

The annual salary for this position is \$154,523.20 per year plus supplemental compensation incentives as set forth below.

Athletic Incentive Pay may be earned as follows:

Conference Champion or Co-Champion			\$5,943
NCAA Championship Playoffs			\$5,943
Average Attendance at Home Games			
6,000 – 6,999	= \$2,000		
7,000 – 7,999	= \$4,000		
8,000 – 8,999	= \$6,000		
9,000 – 9,999	= \$8,000		
10,000+	= \$10,000		
Big Sky Conference Coach of the Year			\$5,943
Game Wins			
8 wins:	= \$2,000		
9 wins	= \$4,000		
10 wins	= \$6,000		
11 wins	= \$8,000		
12 wins	= \$10,000		
NCAA Men's Football Tournament			
Play-In	8 Teams	1 st win	\$5,000
Round 2	16 Teams	2 nd win	\$5,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

Round 3	8 Teams	3 rd win	\$5,000
Round 4	4 Teams	4 th win	\$8,000
Round 6	2 Teams	5 th win	\$10,000
Possible National Championship Winner Total:			\$28,000 / \$33,000

Game Guarantee ("Money Games") = 1% of contractual payment if team loses and 3% if team wins.

Maximum potential annual compensation (base salary and estimated maximum potential incentive except for Game Guarantee) is \$225,352.80.

The Coach is also eligible to receive other supplemental compensation through University operated summer camps.

Liquidated damages for the Coach terminating the contract early for his own convenience are \$30,000 for the first year, \$20,000 for the second year and \$10,000 for the third year.

ATTACHMENTS

Attachment 1	Employment Agreement	Page 5
Attachment 2	Employment Agreement – Redline To Model Contract	Page 19
Attachment 3	Model Contract Matrix Changes	Page 37
Attachment 4	4 Year APR Scores	Page 39

STAFF AND COMMENTS AND RECOMMENDATIONS

The base pay in the employment agreement reflects a 10% increase over the Coach's current base salary. The university requests this increase in recognition of program success this season under the coach's leadership and in an effort to make his salary more competitive for retention purposes.

This contract includes two unique types of incentive payments which haven't been considered by the Board before. First, there is an incentive for the Coach to schedule money games to counteract any disincentive these games might otherwise create based on other incentive payments (e.g. game wins). Second, there is incentive pay for achieving levels of average attendance at home games. The rationale being that strong attendance generates gate revenue, builds excitement and creates fan loyalty.

In addition, under the proposed contract the Head Coach would not be eligible to receive supplemental compensation based on APR scores. In an effort to drive more money down to his assistant coaches, the Coach requested academic incentive compensation be paid to assistant coaches as follows: Each year, assistant coaches shall be eligible to receive in equal shares supplemental compensation in an aggregate amount of up to \$8,000 based on the single-year APR score achievement and behavior of Team members. The incentive is stratified as follows:

**BUSINESS AFFAIRS AND HUMAN RESOURCES
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970-979	= \$2,000
980-989	= \$4,000
990-999	= \$6,000
1,000	= \$8,000

Board policy provides that "Each contract for a head coach or athletic director shall include incentives in the form of supplemental compensation, separate from any other incentives, based upon the academic performance of the student athletes whom the coach or athletic director supervises." As such, approval of ISU's proposed contract would require a waiver of Board policy.

This contract exercises the option under Board policy to provide that the Coach does not accrue any annual leave but rather takes leave with prior written approval of the athletic director.

The Athletic Committee met on December 16 to review this contract and will provide its recommendation at the December 18 Board meeting.

BOARD ACTION

I move to waive Board Policy II.H.3 only with respect to the requirement that a coach contract include supplemental compensation incentive based upon academic performance, and only for purposes of the contract submitted as Attachment 1.

Moved by _____ Seconded by _____ Carried Yes_____ No_____

I move to approve the request by Idaho State University to enter into a three year, one month employment agreement with Michael D. Kramer, Head Basketball Coach, commencing on December 19, 2014 and terminating on January 21, 2018, at a base salary of \$154,523.20 and supplemental compensation provisions, as submitted.

Moved by _____ Seconded by _____ Carried Yes_____ No_____

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and Michael D. Kramer (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.9 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, one (1) month, commencing on December 19, 2014 and terminating, without further notice to Coach, on January 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$154,523.20 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees);
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits. Provided, however, that Coach agrees he does not accrue leave, but may take leave with prior written approval from the Director. Coach acknowledges by acceptance of this Contract that all annual leave accrued under Coach's prior contract of employment has been used or paid off, or is hereby forfeited.

3.2 Supplemental Compensation

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

3.2.2. Each year the Team competes for the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ($2/52 \times \text{Annual Salary}$) of Coach's Annual Salary during the fiscal year in which the post-season participation are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Coach shall not be eligible to receive supplemental compensation based on APR scores. In consideration of Coach's waiver of such supplemental compensation, University agrees that supplemental compensation may be paid to assistant football

coaches as follows: Each year, assistant football coaches shall be eligible to receive in equal shares supplemental compensation in an aggregate amount of up to \$8,000 based on the single-year APR score achievement and behavior of Team members. Said amount shall be payable only if Coach continues to be employed as University head Football coach as of the ensuing July 1st, and shall be payable only to assistant coaches who continue to be employed by the University as assistant coaches as of the ensuing July 1st. The determination of whether assistant coaches will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the University's Board of Trustees. The determination shall be based on the following factors: the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere and the Team's single-year ranking based on attainment of the following levels:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
Score of 970-979	\$ 2,000.00
Score of 980-989	\$ 4,000.00
Score of 990-999	\$ 6,000.00
Score of 1,000	\$ 8,000.00

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

3.2.4 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving an average attendance at home Football games at the following levels, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in amounts equal to the following. Average attendance numbers shall be determined and announced by the University Ticket office. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation:

6,000-6,999	\$ 2,000.00
7,000-7,999	\$ 4,000.00
8,000-8,999	\$ 6,000.00
9,000-9,999	\$ 8,000.00
10,000+	\$10,000.00

3.2.5 Each year the Coach earns recognition as the Big Sky Conference Football Coach of the Year, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ($2/52 \times$ Annual Salary) of Coach's Annual Salary during the fiscal year in which the Big Sky Conference

Football Coach of the Year recognition is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving a predetermined number of wins, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to the following:

8 wins:	\$ 2,000.00
9 wins:	\$ 4,000.00
10 wins:	\$ 6,000.00
11 wins:	\$ 8,000.00
12 wins:	\$10,000.00

The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7 Each year the Team advances in the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Play-in	8 Teams	1 st win	\$5,000.00
Round 2	16 Teams	2 nd win	\$5,000.00
Round 3	8 Teams	3 rd win	\$5,000.00
Round 4	4 Teams	4 th win	\$8,000.00
Round 5	2 Teams	5 th win	\$10,000.00

Possible national championship winner computation bonus total:
\$28,000.00/\$33,000.00

3.2.8 Each year the Coach shall have the opportunity to receive supplemental compensation for the Team's participation in "money games" (where another team pays the Team to play them at the other team's location). If Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation for each such money game in an amount equal to either: (a) one percent (1%) of contractual payment received by the University for participation in the money game if the Team loses the money game; or (b) three percent (3%) of contractual payment received by the University if the Team wins the game.

3.2.9 **(SUMMER CAMP—OPERATED BY UNIVERSITY)** Coach agrees that the University has the exclusive right to operate youth Football camps on its

campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head Football coach at the University, or direct those net revenues as an enhancement to the Football program budget at the University. This amount shall be paid within 30 days after all camp billed have been paid.

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

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

ARTICLE 4

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

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

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

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

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

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

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

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

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

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

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

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

University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 20, 2016, the sum of \$30,000.00; (b) if the Agreement is terminated between January 21, 2016 and January 20, 2017 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 21, 2017 and January 20, 2018 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in

Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

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

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

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

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

the University: Director of Athletics

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

with a copy to: President Arthur Vailas
921 S. 8th Ave. Stop
Pocatello, ID 83209-

the Coach: Michael D. Kramer
Last known address on file with
University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY

COACH

Arthur C. Vailas, President Date

Michael D. Kramer Date

Approved by the Board of Trustees on the ____ day of _____, 2014.

(MODEL ATHLETICS CONTRACT)**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between _____ (Idaho State University (College); University) and _____ Michael D. Kramer (Coach).

ARTICLE 1

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

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

1.3. **Duties.** Coach shall manage and supervise the Team and shall perform such other duties in the University (College)'s University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University (College) shall have the right, at any time, to reassign Coach to duties at the University (College) other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through (Depending on supplemental pay provisions used) — 3.2.9 shall cease.

ARTICLE 2

2.1. **Term.** This Agreement is for a fixed-term appointment of _____ (—three (3) years, one (1) month, commencing on _____ December 19, 2014 and terminating, without further notice to Coach, on _____ January 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

2.2. **Extension or Renewal.** This Agreement is renewable solely upon an offer from the University (College) and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board of Education Trustees. This Agreement in no way grants to Coach

a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University (College).

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ _____ \$154,523.20 per year, payable in biweekly installments in accordance with normal University (College) procedures, and such salary increases as may be determined appropriate by the Director and Chief executive officer President and approved by the University (College)'s University's Board of (Regents or Trustees) ;
- b) The opportunity to receive such employee benefits as the University (College) provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University (College)'s University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits. Provided, however, that Coach agrees he does not accrue leave, but may take leave with prior written approval from the Director. Coach acknowledges by acceptance of this Contract that all annual leave accrued under Coach's prior contract of employment has been used or paid off, or is hereby forfeited.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs), and if Coach continues to be employed as University (College)'s University's head (Sport) Football 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 two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) eligibility are is achieved. The

University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.2—~~

~~3.2.2.~~ Each year the Team ~~is ranked in~~ competes for the ~~top 25 in the (national rankings of sport's division)~~ NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University (College)'s University's head ~~—(Sport)—~~ Football 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 two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in effect on which the date of the final poll. post-season participation are achieved. The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.3~~ ~~Each year~~ Coach shall not be eligible to receive supplemental compensation based on APR scores. In consideration of Coach's waiver of such supplemental compensation, University agrees that supplemental compensation may be paid to assistant football coaches as follows: Each year, assistant football coaches shall be eligible to receive in equal shares supplemental compensation in an aggregate amount of up to ~~(amount or computation)~~ \$8,000 based on the ~~academics~~ single-year APR score achievement and behavior of Team members. Said amount shall be payable only if Coach continues to be employed as University head Football coach as of the ensuing July 1st, and shall be payable only to assistant coaches who continue to be employed by the University as assistant coaches as of the ensuing July 1st. The determination of whether ~~Coach~~ assistant coaches will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the ~~Chief executive officer~~ President in consultation with the Director, and approved by the University's Board of Trustees. The determination shall be based on the following factors: the ~~Academic Progress Rate set by the Board, grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students;~~ the conduct of Team members on the University ~~(College)~~ campus, at authorized University ~~(College)~~ activities, in the community, and elsewhere—and the Team's single-year ranking based on attainment of the following levels:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
<u>Score of 970-979</u>	<u>\$ 2,000.00</u>
<u>Score of 980-989</u>	<u>\$ 4,000.00</u>
<u>Score of 990-999</u>	<u>\$ 6,000.00</u>
<u>Score of 1,000</u>	<u>\$ 8,000.00</u>

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

3.2.4 Each year the Coach shall be eligible have the opportunity 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 for achieving an average attendance at home Football games at the following levels, and if Coach to various constituency groups, including continues to be employed as University's head Football coach as of the ensuing July 1st, the University (College) students, staff, faculty, alumni and boosters; and any other factors the Chief executive officer wishes to consider. The determination of whether shall pay to Coach will receive such supplemental compensation and in a amounts equal to the timing of the payment(s) following. Average attendance numbers shall be at the discretion of the Chief executive officer in consultation with the Director.

determined and announced by the

~~3.2.5~~ The Coach shall receive the sum of (amount or computation) from the University (College) or the Ticket office. 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 determine the appropriate manner in which it shall be paid (terms or conditions of payment). Agreements requiring the Coach to participate in Programs related to his duties as an employee of University (College) are the property of the University (College). The University (College) shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets. pay Coach any such supplemental compensation:

<u>6,000-6,999</u>	<u>\$ 2,000.00</u>
<u>7,000-7,999</u>	<u>\$ 4,000.00</u>
<u>8,000-8,999</u>	<u>\$ 6,000.00</u>
<u>9,000-9,999</u>	<u>\$ 8,000.00</u>
<u>10,000+</u>	<u>\$10,000.00</u>

3.2.5 3.2.6—Each year the Coach earns recognition as the Big Sky Conference Football Coach of the Year, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in which the Big Sky Conference Football Coach of the Year recognition is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving a predetermined number of wins, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to the following:

8 wins:	\$ 2,000.00
9 wins:	\$ 4,000.00
10 wins:	\$ 6,000.00
11 wins:	\$ 8,000.00
12 wins:	\$10,000.00

The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7 Each year the Team advances in the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Play-in	8 Teams	1 st win	\$5,000.00
Round 2	16 Teams	2 nd win	\$5,000.00
Round 3	8 Teams	3 rd win	\$5,000.00
Round 4	4 Teams	4 th win	\$8,000.00
Round 5	2 Teams	5 th win	\$10,000.00

Possible national championship winner computation bonus total:
\$28,000.00/\$33,000.00

3.2.8 Each year the Coach shall have the opportunity to receive supplemental compensation for the Team's participation in "money games" (where another team pays the Team to play them at the other team's location). If Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation for each such money game in an amount equal to either: (a) one percent (1%) of contractual payment

received by the University for participation in the money game if the Team loses the money game; or (b) three percent (3%) of contractual payment received by the University if the Team wins the game.

3.2.9 (SUMMER CAMP—OPERATED BY UNIVERSITY ~~(COLLEGE)~~)

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

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

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

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

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

3.2.710 Coach agrees that the University (College) has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University (College). Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) adidas 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) a adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name) adidas, or give a lecture at an event sponsored in whole or in part by (Company Name) adidas, 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) Football coach. In order to avoid entering into an agreement with a competitor of (Company Name) adidas, Coach shall submit all outside consulting agreements to the University (College) for review and approval prior to execution. Coach shall also report such outside income to the University (College) in accordance with NCAA (or NAIA) rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including (Company Name) adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University (College), the University

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

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

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

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

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

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

ARTICLE 5

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

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

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

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

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

5.1.3 In the event of any termination for good or adequate cause, the University (College)'s University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University (College) shall not be liable for the loss of any

collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

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

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

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

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: _____ (a) if the Agreement is terminated on or before January 20, 2016, the sum of \$30,000.00; (b) if the Agreement is terminated between January 21, 2016 and January 20, 2017 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 21, 2017 and January 20, 2018 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as ~~provided~~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.

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

5.87 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University (College) employees, if the University (College) suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University (College) from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures, IDAPA 08.01.01 et seq., Manual, and the University (College) Faculty-Staff Handbook.

ARTICLE 6

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

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

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

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

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

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

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

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

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

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

the University (College): _____ Director of Athletics

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

with a copy to: _____~~Chief executive officer~~ _____ President Arthur
Vailas

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

the Coach: Michael D. Kramer
Last known address on file with
University (College)'s University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY (COLLEGE) _____
COACH

_____, Chief executive officer Arthur C. Vailas, President Date _____
_____, Michael D. Kramer Date _____

Approved by the Board of —(Regents or Trustees)— on the ____ day of _____, 20102014.

MICHAEL D. KRAMER – FOOTBALL COACH - MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM (AS ADAPTED FROM MODEL COACH FORM)			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	3.2.1	3.2.1	To tie bonus compensation to performance in conference play.
2	3.2.2	3.2.2, 3.2.7	To tie bonus compensation to performance in post-season play.
3	3.2.3	3.2.3	To permit APR bonuses to be paid to assistant coaches rather than head coach.
4	3.2.4	3.2.4, 3.2.6	To create bonus incentive for increasing attendance at home games and winning more games, to meet objective of University.
5	---	3.2.8	To create incentive to Coach to schedule “money” games, which would tend to detract from Coach’s ability to earn other performance bonuses.
6	3.2.6	3.2.9	To incentivize Coach to participate in and manage the University-operated youth football camps by making all revenues from such camps, net of ISU’s expenses, available to the Coach as additional compensation or to supplement the football program budget. Coach has in the past used camp revenues to supplement program budget or provide additional compensation to assistant coaches. Provision on Coach-operated summer camps removed. To comply with IRS regulations, Coach will be required to designate the use of funds two months or more prior to the camp.

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IDAHO STATE UNIVERSITY
Football APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2009-10	2010-11	2011-12	2012-13
Football	883	903	1000	975
National % Rank by Sport	1-10	1-10	1-10	30-40

REPORT YEAR
Raw Score for single year
Percentile Rank for Sport

MULTI-YEAR (4-Year Rolling Average)

Football	888	881	914	941
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BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014

IDAHO STATE UNIVERSITY

SUBJECT

Extension of multi-year contract for Athletic Director

REFERENCE

October 2011

The Idaho State Board of Education (Board) approved a 3-year contract for the Athletic Director, Jeffrey K. Tingey.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University (ISU) is requesting approval to extend the contract agreement for Jeffrey K. Tingey, Director of Athletics (see Attachment 1). The term of the Employment Agreement is for a fixed-term commencing upon approval of the agreement by the Board, and terminating on June 30, 2017. The employment agreement contains the duties, responsibilities and conditions of employment. A model contract matrix of the employment agreement that identifies departures from the model contract form and provides justification for these changes is included as Attachment 3. The position is funded by state appropriated funds.

IMPACT

The annual salary for this position is \$120,931.20 per year plus supplemental compensation incentives as set forth below.

Academic Achievement

Academic incentive pay may be earned if Athletic Department average APR meets the following scores:

970-979	= \$1,500
980-989	= \$2,000
990-999	= \$2,500
1,000	= \$3,000

Athletic Incentive

Combined ticket sales for football, men's & women's basketball, women's soccer and volleyball is 10% higher than the immediate prior year = \$4,651.20

Annual payments for media appearances = \$15,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 18, 2014**

Maximum potential annual compensation (base salary and maximum potential incentive) is \$143,582.40.

ATTACHMENTS

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement – Redline to Model	Page 17
Attachment 3	Model Contract Changes Matrix	Page 37
Attachment 4	4 Year APR scores	Page 39

STAFF COMMENTS AND RECOMMENDATIONS

In October 2011 the Board approved a three-year contract for the Director terminating on June 30, 2014. ISU is now requesting approval of a contract extension through June 30, 2017, which equates to a contract term of approximately 2½ years.

The base pay in the employment agreement reflects a 10% increase over the Director's current base salary. The university requests this increase in recognition of program success under the Director's leadership and in an effort to make his salary more competitive (compared to his conference counterparts) for retention purposes.

Additional non-cash benefits in this contract include:

- (1) a university-funded professional development opportunity for the Director; and
- (2) a country club membership.

Note: Board policy provides that "membership at a country club shall be limited to institution senior management, shall be specifically provided for in an employment agreement and requires prior Board approval."

Staff recommends approval.

BOARD ACTION

I move to approve the request by Idaho State University to extend a multi-year employment agreement with Jeffrey K. Tingey, Athletic Director, for a term commencing on December 19, 2014 and terminating on June 30, 2017, at a base salary of \$120,931.20 and supplemental compensation provisions, as submitted.

Moved by _____ Seconded by _____ Carried Yes____ No_____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY, and Jeffrey K. Tingey, (Athletic Director, hereafter "Director").

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Director as the director of its intercollegiate athletics program (Program). Director represents and warrants that Director is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Director shall report and be responsible directly to the University's President or the President's designee. Director shall abide by the reasonable instructions of the President or the President's designee and shall confer with the President or his/her designee on all administrative and technical matters. All references herein to the President shall be considered to include the President's designee.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in the University's athletic program as the President may assign and as may be described elsewhere in this Agreement. Independent of the University's right to reassign Director to other duties for cause as set forth elsewhere in this Agreement, the University shall have the right, at any time, to reassign Director to duties at the University other than as Director of the Program, provided that Director's compensation and benefits shall not be affected by any such reassignment, except to the extent described elsewhere in this Agreement.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term commencing upon approval of this Agreement by the University's Board of Trustees and terminating, without further notice to Director, on June 30, 2017 unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$120,931.20 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees.

3.2 Supplemental Compensation

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

- a) The Director may qualify for supplemental pay if the departmental average NCAA Academic Progress Rate for that year meets the following scores:

<u>Department APR Score</u>	<u>Incentive pay</u>
970-979	\$1,500
980-989	\$2,000
990-999	\$2,500
1000	\$3,000

- b) If in any year during the term of this Agreement the combined unit ticket sales for football, women's basketball, men's basketball, women's volleyball, and women's soccer is ten percent (10%) higher than the immediately prior year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation (1/26th of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.

- c) **Supplemental Compensation.** The Director shall receive the sum of \$15,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in "Appearances"). Director's right to receive such payment shall vest on January 1 of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's policies and procedures. This sum shall be paid in two equal installments in January and July of each year. Agreements requiring the Director to participate in Appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Director. Director agrees to cooperate with the University in order for the Appearances to be successful and agrees to provide his services to and perform on the Appearances and to cooperate in their production, broadcasting, and telecasting. It is understood that Director shall not appear without the prior written approval of the President on any radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director shall not appear in any commercial endorsements that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

- 3.3 **Professional Development Opportunity.** During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.

- 3.4 Country Club Membership. Provided that funding for this purpose is made available to the University from outside sources, University agrees to purchase membership for the Director in Juniper Hills Country Club for his personal use and for the benefit of his advancement and fundraising activities.
- 3.5 General Conditions of Compensation. All compensation provided by the University to Director is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Director participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Director, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that coaches and assistant coaches, and any other employees for whom Director is administratively responsible, and the members of any team in the Program know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's Director of Compliance if Director 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. Director shall cooperate fully with the University and Department at all times. The names or titles of employees whom Director supervises are attached as Exhibit C. The applicable laws, policies, rules, and

regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Policies and Procedures; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference.

4.2 Outside Activities. Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Director from devoting Director's full time and best efforts to the performance of Director's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program.

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

4.4 Hiring Authority. Director shall have the responsibility and the sole authority to recommend to the President the hiring and termination of coaches and assistant coaches for all teams in the Program, but the decision to hire or terminate a coach or assistant coach shall be made by the Director (after recommendation by a head coach, in the case of assistant coaches), and shall, when necessary or appropriate, be subject to the approval of the President and the University's Board of Trustees.

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

ARTICLE 5

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

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

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

other employees for whom Director is administratively responsible, or a member of any team of the Program, if Director knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

5.2 Termination of Director for Convenience of University.

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

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

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

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

5.3 Termination by Director for Convenience.

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

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

5.3.3 If the Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Director terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, one of the following sums: \$50,000.00 if terminated during the first year of the contract; \$40,000.00 if terminated

during the second year of the contract; and \$30,000.00 if terminated during the third year of the contract. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

5.4 Termination due to Disability or Death of Director.

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

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

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

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

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

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

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

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

the University: President Arthur C. Vailas
 921 S. 8th Ave.
 Stop 8410
 Pocatello, Idaho 83209

the Director: Jeffrey K. Tingey
 Last known address on file with
 University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY

DIRECTOR

Arthur C. Vailas, President Date

Jeffry K. Tingey Date

Approved by the Board of Trustees on the ____ day of _____, 2014.

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~~(MODEL ATHLETICS CONTRACT)~~

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY, ~~_____ (University (College))~~, and Jeffrey K. Tingey, (Athletic Director, hereafter "Director"), ~~_____ (Coach)~~.

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University (College) shall employ DirectorCoach as the directorhead coach of its intercollegiate athletics program (Program). ~~_____(Sport)_____ team (Team) (or Director of Athletics)~~. ~~Coach (Director)~~ represents and warrants that DirectorCoach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. DirectorCoach shall report and be responsible directly to the University's President University (College)'s Director or the President'sDirector's designee. DirectorCoach shall abide by the reasonable instructions of the President Director or the President'sDirector's designee and shall confer with the PresidentDirector or his/herthe Director's designee on all administrative and technical matters. All references herein to the PresidentCoach shall also be considered to includeunder the general supervision of the President's designee.University (College)'s Chief executive officer (Chief executive officer).

1.3. Duties. DirectorCoach shall manage and supervise the ProgramTeam and shall perform such other duties in the University'sUniversity (College)'s athletic program as the PresidentDirector may assign and as may be described elsewhere in this Agreement. Independent of the University's right to reassign Director to other duties for cause as set forth elsewhere in this Agreement, the University The University (College) shall have the right, at any time, to reassign DirectorCoach to duties at the University (College) other than as Directorhead coach of the ProgramTeam, provided that Director'sCoach's compensation and benefits shall not be affected by any such reassignment, except to the extent described elsewhere in this Agreement. that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through (Depending on supplemental pay provisions used)_____ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of _____ (____) years, commencing upon approval of this Agreement by the University's Board of Trusteeson _____ and terminating, without further notice to DirectorCoach, on June 30, 2017_____ unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$120,931.20\$~~ _____ per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the ~~PresidentDirector and Chief executive officer~~ and approved by the ~~University'sUniversity (College)'s~~ Board of ~~(Regents or Trustees)~~ _____;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; ~~and~~
- ~~c) The opportunity to receive such employee benefits as the University (College)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.~~

3.2 Supplemental Compensation

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

- a) The Director may qualify for supplemental pay if the departmental average NCAA Academic Progress Rate for that year meets the following scores:

<u>Department APR Score</u>	<u>Incentive pay</u>
<u>970-979</u>	<u>\$1,500</u>
<u>980-989</u>	<u>\$2,000</u>
<u>990-999</u>	<u>\$2,500</u>
<u>1000</u>	<u>\$3,000</u>

b) If in any year during the term of this Agreement the combined unit ticket sales for football, women's basketball, men's basketball, women's volleyball, and women's soccer is ten percent (10%) higher than the immediately prior year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation (1/26th of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.

3.2.1. Supplemental Compensation. The Director~~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 of sport's division), 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 Chief executive officer in consultation with the Director. The determination shall be based on the following factors: the Academic Progress Rate set by the Board, 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 Chief executive officer 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 Chief executive officer in consultation with the Director.

c) 3.2.5 The Coach shall receive the sum of \$15,000 (amount or computation) from the University (College) or the University's University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in "Appearances". Director's media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on January 1 the date of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's policies and procedures. the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid in two equal installments in January and July of each year (terms or conditions of payment). Agreements requiring the Director Coach to participate in Appearances Programs related to his duties as an employee of University (College) are the property of the University. (College). The University (College) shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Director. Director Coach. Coach agrees to cooperate with the University (College) in order for the Appearances Programs to be successful and agrees to provide his services to and perform on the Appearances Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that Director neither Coach nor any assistant coaches shall not appear without the prior written approval of the President Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that

this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director, Coach shall not appear in any commercial endorsements thatwhich are broadcast on radio or television that conflict with those broadcast on the University'sUniversity (College)'s designated media outlets.

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

3.3 Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.

3.4 Country Club Membership. Provided that funding for this purpose is made available to the University from outside sources, University agrees to purchase membership for the Director in Juniper Hills Country Club for his personal use and for the benefit of his advancement and fundraising activities.

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

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

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

~~(College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~

- j) ~~All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

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

3.5 ~~3.3~~ General Conditions of Compensation. All compensation provided by the University ~~(College)~~ to DirectorCoach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which DirectorCoach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University ~~(College)~~ to DirectorCoach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

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

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

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

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

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

Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the Big Sky Conference. ~~—(Sport)—conference of which the University (College) is a member.~~

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

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

4.4 Hiring Authority. DirectorCoach shall have the responsibility and the sole authority to recommend to the PresidentDirector the hiring and termination of coaches and assistant coaches for all teams in the ProgramTeam, but the decision to hire or terminate a coach or an assistant coach shall be made by the Director (after recommendation by a head coach, in the case of assistant coaches), and shall, when necessary or appropriate, be subject to the approval of the PresidentChief executive officer and the University'sUniversity (College)'s Board of ~~—(Trustees or Regents)—~~.

4.5 ~~Scheduling~~. ~~Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team~~

~~competitions, but the final decision shall be made by the Director or the Director's designee.~~

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

ARTICLE 5

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

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

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

- f) The failure of DirectorCoach to represent the University (College) and its athletic programs positively in public and private ~~forums~~;
- ~~g)~~ ~~g)~~ The failure of DirectorCoach to fully and promptly cooperate with the NCAA (NAIA) or the University (College) in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the University'sUniversity (College)s governing board, the conference, or the NCAA; ~~(NAIA)~~;
- ~~h)~~ ~~h)~~ The failure of DirectorCoach to report a known violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the University'sUniversity (College)s governing board, the conference, or the NCAA; ~~(NAIA)~~, by one of the coaches orCoach's assistant coaches, or any other employees for whom DirectorCoach is administratively responsible, or a member of any team of the ProgramTeam; or
- ~~i)~~ ~~i)~~ A violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the University'sUniversity (College)s governing board, the conference, or the NCAA; ~~(NAIA)~~, by one of the coaches orCoach's assistant coaches, any other employees for whom DirectorCoach is administratively responsible, or a member of any team of the ProgramTeam if DirectorCoach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University (College) as follows: before the effective date of the suspension, reassignment, or termination, the PresidentDirector or his designee shall provide DirectorCoach 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. DirectorCoach shall then have an opportunity to respond. After DirectorCoach responds or fails to respond, University (College) shall notify DirectorCoach 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'sUniversity (College)s obligation to provide compensation and benefits to DirectorCoach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University (College) shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4 If found in violation of NCAA (NAIA) regulations, DirectorCoach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA (NAIA) enforcement procedures. This

section applies to violations occurring at the University ~~(College)~~ or at previous institutions at which the ~~Director~~Coach was employed.

5.2 Termination of DirectorCoach for Convenience of University ~~.(College).~~

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

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

5.2.3 The parties have both been represented by, ~~or had the opportunity to consult with,~~ legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the DirectorCoach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University ~~.(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University ~~.(College)~~ and the acceptance thereof by DirectorCoach shall constitute adequate and reasonable compensation to DirectorCoach for the damages and injury suffered by DirectorCoach

because of such termination by University ~~.(College).~~ The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by DirectorCoach for Convenience.

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

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

5.3.3 If the DirectorCoach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the DirectorCoach terminates this Agreement for his convenience he shall pay to the University ~~.(College).~~ as liquidated damages and not a penalty, one of the following sums: \$50,000.00 if terminated during the first year of the contract; \$40,000.00 if terminated during the second year of the contract; and \$30,000.00 if terminated during the third year of the contract.sum: _____. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as provideprovided elsewhere in this Agreement, if DirectorCoach terminates this Agreement for convenience, he shall forfeit to the extent

permitted by law his right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of [DirectorCoach](#).

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

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

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

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

5.7 No Liability. The University [\(College\)](#) shall not be liable to [DirectorCoach](#) 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 [DirectorCoach](#), regardless of the circumstances.

5.8 Waiver of Rights. Because the [DirectorCoach](#) is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University [\(College\)](#) employees, if the University [\(College\)](#) suspends or reassigns [DirectorCoach](#), or

terminates this Agreement for good or adequate cause or for convenience, ~~Director~~Coach shall have all the rights provided for in this Agreement but hereby releases the University ~~(College)~~ from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures, ~~IDAPA 08.01.01 et seq., and the University (College) Faculty-Staff Handbook.~~

ARTICLE 6

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

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

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

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

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

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

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

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

6.9 Confidentiality. The DirectorCoach hereby consents and agrees that this document may be released and made available to the public after it is signed by the DirectorCoach. The DirectorCoach 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'sUniversity (College)'s sole discretion.

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

the University: President Arthur C. Vailas
921 S. 8th Ave.
Stop 8410
Pocatello, Idaho 83209

the (College): Director: Jeffrey K. Tingey of Athletics

with a copy to: Chief executive officer

the Coach:
 Last known address on file with
University'sUniversity (College)'s Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY DIRECTOR(COLLEGE)
COACH

Arthur C. Vailas, President, Chief executive officer Date Jeffry K.
Tingey Date

Approved by the Board of (Regents or Trustees) on the ____ day of _____ ,
20142010.

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Jeff Tingey – Athletic Director - MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM (AS ADPATED FROM MODEL COACH FORM)			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	1.2	1.2	Reporting Relationship altered to show reporting to President
2	1.3	1.3	Duties altered to be applicable to Athletic Director
3	3.1(c)		Deleted as inapplicable to A.D.
4	3.2.1	3.2.1	Supplemental compensation provisions altered to be appropriate to A.D. position
5	3.2	3.2.1 a)	Supplemental Compensation for APR scores tied to athletic department average one-year scores to provide a reasonably achievable incentive
6	3.2	3.2.1 b)	Tied bonuses to Combined Ticket Sales to meet objective of University to increase attendance at games
7	3.3	3.3	Added Professional Development Opportunity as beneficial to both parties
8		3.4	Added Country Club Membership provided that funding is provided by booster club
9	4.2	4.2	Outside activities provision altered to remove inapplicable provisions
10			
11			
12			

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IDAHO STATE UNIVERSITY

All Sports APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2009-10	2010-11	2011-12	2012-13
All Sports	939	950	983	973
<i>National % Rank by Sport</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

REPORT YEAR

Raw Score for single year

Percentile Rank for Sport

MULTI-YEAR (4-Year Rolling Average)

All Sports	934	937	950	963
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