

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
FEBRUARY 19, 2015**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AMENDMENT TO BOARD POLICY</b> Section I – Human Resources, First Reading	Motion to approve
<b>2</b>	<b>BOISE STATE UNIVERSITY</b> Multi-Year Employment Agreement – Football Head Coach	Motion to approve
<b>3</b>	<b>BOISE STATE UNIVERSITY</b> Multi-Year Term Sheets – Football, Coordinators	Motion to approve
<b>4</b>	<b>IDAHO STATE UNIVERSITY</b> Amendment to Multi-Year Employment Agreement – Football Head Coach	Motion to approve
<b>5</b>	<b>IDAHO STATE UNIVERSITY</b> Appointment of Vice President for Research and Dean of the Graduate School	Motion to approve

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**SUBJECT**

Board Policy II – Human Resources, Sections F., L., and M.

**REFERENCE**

June 2011

Idaho State Board of Education (Board) approved second reading of Policy V.M.

**APPLICABLE STATUTES, RULE OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Sections II.F, II.L., and II.M.

**BACKGROUND / DISCUSSION**

In June 2011, the Board approved an amendment to Section II.M. which made the Board's policy on delegated authority<sup>1</sup> internally consistent by removing the option to appeal a final personnel-related decision to the Board. Board staff has since discovered another inconsistency in Board policies II.F. and II.L. which provides employees the right to appeal contract non-renewal and disciplinary decisions to the Board. While the Board has the discretion to hear or not hear the appeal under each of the respective policies, this belies the fact that the affirmative right to appeal is in conflict with Board policies II.B. and II.M. The proposed amendment to Policy II.F. clarifies that a non-classified contract employee may appeal non-renewal of their contract only if discrimination prohibited by law is alleged and the chief executive officer is the subject of the allegation. The proposed amendment to Policy II.L. strikes the conflicting language and clarifies that "Discipline, up to and including dismissal, of an employee is not appealable to the Board." Policy II.M. is amended to clarify that institution and agency internal policies for grievances and appeals must be exhausted before an employee may seek judicial review.

Section II.F.2. provides that payments in addition to fixed salaries may be authorized by the chief executive officer. A proposed amendment clarifies that such additional payments must be based on meritorious performance or for additional duties beyond those set forth in an employee's contract.

Section II.F. also contains a minor amendment to update an Idaho Code reference.

**IMPACT**

The proposed amendments will: (1) make Board policies internally consistent with respect to finality of employment decisions by institutions and agencies; and

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<sup>1</sup> See Board Policy II.B.2.b.: "Within the general delegation of authority ... the chief executive officers shall have the authority to manage, supervise and control the personnel and human resources of the institutions and agencies. Organizational structure, duty assignments, place of work, shift placement, salaries, work hour adjustments, benefit determinations, reductions in force and all similar and related work place decisions are the prerogative of the chief executive officers except or unless as limited by other applicable provisions of Board or institutional policy."

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(2) clarify the circumstances under which payments in addition to fixed salaries may be authorized.

**ATTACHMENTS**

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Attachment 2 – Section II.L. – First Reading	Page 9
Attachment 3 – Section II.M. – First Reading	Page 11

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

I move to approve the first reading of proposed amendments to Board policy Sections II.F., II.L. and II.M., as presented.

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

**1. Employment Terms**

- a. All non-classified employees, except those set forth in Section II.F.1.b. below, serve at the pleasure of the chief executive officer, and may be dismissed at any time, with or without cause, and without notice, at the discretion of the chief executive officer.

**b. Employment Contracts**

- i. An institution may provide employment contracts to its non-classified employees. If an institution chooses to offer employment contracts to its non-classified employees, the employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-classified employees have no continued expectation of employment beyond their current contract of employment.
- ii. Non-classified employees, who serve pursuant to contracts of employment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or through furlough or work hour adjustments (as provided for in section II.B.2.c of Board Policy).
- iii. Each employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution.
- iv. Each contract of employment shall include a statement to the following effect and intent: "The terms of employment set forth in this contract of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of University of Idaho), and the policies and procedures of the institution." The contract shall also state that it may be terminated at any time for adequate cause, as defined in Section II.L. of Board Policy, or

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when the Board declares a state of financial exigency, as defined in Section II.N. of Board Policy. The contract shall also state that it may be non-renewed pursuant to Section II.F.5. of Board Policy.

- v. No contract of employment with such an employee may exceed one (1) year without the prior express approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.

**2. Compensation**

- a. Salary – All non-classified employees shall receive a fixed salary. Payment in addition to the fixed salary may be authorized by the chief executive officer for documented meritorious performance or to compensate a professional annual employee for short-term work assignments or additional duties beyond what is outlined in an employee's contract. All initial salaries for non-classified employees are established by the chief executive officer, subject to approval by the Board where applicable. The Board may make subsequent changes for any non-classified employee salary or may set annual salary guidelines and delegates to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective or paid to the non-classified employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.
- b. Salaries, Salary Increases and other Compensation related items
  - i. Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA-HR), or its equivalent, without prior Board approval.
  - ii. Appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees' salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent's rate, whichever is greater.
  - iii. Overtime Compensation – Non-classified employees earning annual leave at the equivalent rate of two (2) days for each month or major fraction thereof of credited state service are not eligible for either cash compensation or compensatory time off for overtime work. Non-classified

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employees in positions that are defined as “non-exempt” under the Fair Labor Standards Act earn overtime at a rate of one and one-half (1½) hours for each overtime hour worked. Other non-classified employees may earn compensatory time off at the discretion of the chief executive officer at a rate not to exceed one (1) hour of compensatory time for each hour of overtime worked.

- iv. Credited State Service - The basis for earning credited state service will be the actual hours paid not to exceed forty (40) per week.
- v. Pay Periods - All non-classified employees are paid in accordance with a schedule established by the state controller.
- vi. Automobile Exclusion - Unless expressly authorized by the Board, no non-classified employee will receive an automobile or automobile allowance as part of his or her compensation.

**3. Annual Leave**

- a. Non-classified employees at the institutions, agencies earn annual leave at the equivalent rate of two (2) days per month or major fraction thereof of credited state service. Twelve-month employees employed at the entities named above may accrue leave up to a maximum of 240 hours. An employee who has accrued the maximum will not earn further leave until the employee's use of annual leave reduces the accrual below the maximum.

Non-classified employees in positions which are covered under the Fair Labor Standards Act earn annual leave ~~according to § 67-5334 and are in accordance with and~~ subject to the maximum leave accruals in Idaho Code § 67-5335(2)34.

- b. Non-classified employees appointed to less than full-time positions earn annual leave on a proportional basis dependent upon the terms and conditions of employment.
- c. Professional Leave - At the discretion of the chief executive officer, non-classified employees may be granted professional leave with or without compensation under conditions and terms as established by the chief executive officer.
- d. Pursuant to section 59-1606(3), Idaho Code, when a classified employee's position is changed to non-classified, or when a classified employee is moved into a non-classified position, and that employee, due to the employee's years of service, has an annual leave balance in excess of 240 hours, then the institution may pay the employee as supplemental pay the balance that is in excess of 240 hours.

**4. Performance Evaluation**

Each institution or agency must establish policies and procedures for the performance evaluation of non-classified employees, and are responsible for implementing those policies in evaluating the work performance of employees. The purposes of employee evaluations are to identify areas of strength and weakness, to improve employee work performance, and to provide a basis on which the chief executive officers and the Board may make decisions concerning retention, promotion, and merit salary increases. All non-classified employees must be evaluated annually. Any written recommendations that result from a performance evaluation must be signed by the appropriate supervisor, a copy provided to the employee and a copy placed in the official personnel file of the employee. Evaluation ratings that result in findings of inadequate performance of duties or failure to perform duties constitute adequate cause as set forth in Section II.L. of Board Policy.

**5. Non-Renewal of Non-classified Contract Employees**

- a. Notice of the decision of the chief executive officer to not renew a contract of employment must be given in writing to the non-classified employee at least sixty (60) calendar days before the end of the existing period of appointment for annual appointments. For appointments of less than one year, the written notice must be at least thirty (30) days prior to the end of the existing period of appointment. Reasons for non-renewal need not be stated. Non-renewal without cause is the legal right of the Board. If any reasons for non-renewal are provided to the employee for information, it does not convert the non-renewal to dismissal for cause and does not establish or shift any burden of proof. Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) (or thirty days where applicable) calendar days notice to the employee.
- b. Except as set forth in this paragraph, non-renewal is not grievable within the institution nor is it appealable to the Board. However, if an employee presents bona fide allegations and evidence to the chief executive officer of the institution that the non-renewal of the contract of employment was the result of discrimination prohibited by applicable law, the employee is entitled to use the internal discrimination grievance procedure [set forth in Section II.M.](#) to test the allegation. If the chief executive officer is the subject of the allegations, the employee may present the bona fide allegations and evidence to the Executive Director. The normal internal grievance procedure for discrimination must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The institution is required to offer evidence of its reasons for non-renewal only if the employee has made a prima facie showing that the recommendation of non-renewal was made for reasons prohibited by



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applicable law. Unless mutually agreed to by the parties in writing, the use of the discrimination grievance procedure will not delay the effective date of non-renewal. Following the discrimination grievance procedures, if any, the decision of the institution, is final, subject to Section II.F.5.c., below.

- c. If, and only if, the chief executive officer is the subject of the alleged discrimination prohibited by applicable law, ~~T~~the non-classified contract employee may petition the Board to review the final action of the institution. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. Nothing in this section should be construed as any prohibition against filing a complaint with any appropriate state or federal entity, including but not limited to the Equal Employment Opportunity Commission (EEOC) or the Idaho Human Rights Commission (IHRC).

**6. Tenure**

Non-classified employees are generally not entitled to tenure. Certain, very limited, exceptions to this general rule are found in Subsection G.6 of these personnel policies and procedures.

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**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: L. Discipline - Adequate Cause – All Employees**

December 2008April 2015

**1. Classified Employees**

Classified employees are subject to discipline, up to and including dismissal, as provided for in Chapter 53, Title 67, Idaho Code and the rules of the State Division of Human Resources.

**2. Non-classified Employees**

All University of Idaho classified employees, and all non-classified employees (including all faculty employees) of the Board or of any Board governed agency or institution are subject to discipline, up to and including dismissal, for adequate cause.

**3. Definition**

“Adequate cause” means one (1) or more acts or omissions which, singly or in the aggregate, have directly and substantially affected or impaired an employee’s performance of his professional or assigned duties or the interests of the Board, institution or agency. In addition, any conduct seriously prejudicial to the Board, an institution or agency may constitute adequate cause for discipline, up to and including dismissal. Examples include, but are not limited to, one or more instances of sexual harassment or other form of harassment prohibited by law; immorality; criminality; dishonesty; unprofessional conduct; actions in violation of policies, directives, or orders of the Board, an institution or agency; unsatisfactory or inadequate performance of duties, or failure to perform duties.

**4. Procedures**

In each case the issue of whether or not adequate cause exists should be determined fairly by the institution or agency recognizing and affording protection to the rights of the employee and to the interests of the Board and its institutions or agencies.

- a. Discipline, up to and including dismissal, of employees before the expiration of the stated period of appointment or employment contract will be only for adequate cause, as determined by the appropriate administrative officers to whom this responsibility is delegated by the Chief Executive Officer of the institution. Each institution or agency shall have a process that provides employees with written notice of contemplated discipline and an opportunity to be heard. The employee may be placed on administrative leave with pay until he or she has exercised the opportunity to respond, or declined, either affirmatively or through inaction to do so, and the recommendation has been acted upon by the Chief Executive Officer or designee.

# Idaho State Board of Education

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#### Subsection: L. Discipline - Adequate Cause – All Employees

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The Chief Executive Officer or designee must notify the employee of the recommendation and proceed in the following manner:

- (1) The notice must be in writing, and may be personally served upon the employee, or be sent by first-class mail, postage pre-paid, to the employee at the last known address on file for the employee.
  - (2) The notice must contain a concise statement of the reasons and nature of the discipline.
  - (3) Each institution or agency shall provide for internal grievance procedures in addition to the foregoing in accordance with Section II.M., Grievance and Appeal Procedure. Except as set forth in Section II.M, discipline, up to and including dismissal may be effective prior to the initiation by the employee of the internal grievance procedure.
- b. ~~Upon receipt of the final findings and recommendations, including those resulting from an internal grievance, an employee may file an appeal with the Board as set forth in Section II.M. The Board may, if it chooses to hear an appeal, by a majority of the total membership, approve, reject, or amend such findings, recommendations, or suggestions, if any, or may remand the matter for additional evidence, recommendations, or suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the employee. The Board may employ a hearing officer for carrying out the Board's duties under this paragraph. Discipline, up to and including dismissal, of an employee is not appealable to the Board.~~
- c. If, under extraordinary circumstances, the Board itself initiates discipline, up to and including dismissal, against an employee, it must, by majority vote, direct the Chief Executive Officer or any other administrator as may be appropriate to follow established procedures for discipline of the employee.

## GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: M. Grievance and Appeal Procedures – All Employees

~~June~~April 201145

### 1. Classified Employees

Provisions for grievance and appeals procedures for classified employees are provided for in Chapter 53, Title 67 Idaho Code and the rules of the State Division of Human Resources. The University of Idaho shall, to the extent practical, provide for similar grievance and appeals procedures for its classified employees.

### 2. Non classified Employees (including Faculty Employees)

Each institution and agency must establish internal policies and procedures to provide for grievances and appeals for human resource matters. Such policies and procedures shall be forwarded to the Executive Director for review and maintenance on file in the Office of the State Board of Education. Internal procedures must include the following elements:

- a. provision for informal resolution;
- b. procedures for filing a formal, written complaint;
- c. reasonable time requirements;
- d. a description of the hearing body; and
- e. requirements for retention of records.

~~Pursuant to~~In accordance with Board Policy II.B.2.b., the Board delegates authority for personnel management to the chief executive officers. ~~Accordingly, Except as otherwise provided in Section II.F.,~~ human resource matters are not appealable to the Board. Internal institution and agency policies for grievances and appeals must be exhausted before an employee may seek judicial review.

**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: M. Grievance and Appeal Procedures – All Employees

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Boise State University (BSU) requests approval for a new five year contract with Head Football Coach Bryan Harsin

**REFERENCE**

December 2013	The Idaho State Board of Education (Board) approved material term sheet and directed BSU to return with a contract for February
February 2014	Board approved employment agreement for 2014-2019

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Bryan Harsin is the Head Football Coach at BSU. In February 2014, the Board approved a five year Employment Agreement for Bryan Harsin. The football team had a successful first year under Coach Harsin and BSU requests permission to enter into a new five year employment agreement with Coach Harsin. The new contract would make the following changes from the current version:

- 1) One-year extension: the Agreement is for five years, terminating on January 10, 2020.
- 2) The Agreement shall be extended by one additional year if the football team has at least eight victories in a season. (The contract is similar to the standard issued by Boise State University, including the extension year language based on eight games. Eight games was the same standard used for the prior head football coach.) For each year the Base Agreement is extended pursuant to this provision, base pay for that extension year shall increase by \$100,000.
- 3) The Coach shall receive a one-time payment of \$100,000 as a signing/performance incentive.

In addition, BSU has a License Agreement with Bryan Harsin Enterprises LLC that runs co-extensive with the employment agreement. While there are no material changes to that contract, it is being updated to remain co-extensive with the employment agreement.

**IMPACT**

Total maximum potential annual compensation (including base salary, licensing royalties, academic and athletic incentives):

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<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
\$1,500,000	\$1,700,000	\$1,950,000	\$2,050,000	\$2,150,000

If the coach terminates the Agreement for convenience, the liquidated damages are as follows:

<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
\$2,000,000	\$1,750,000	\$500,000	\$0	\$0

**ATTACHMENTS**

Attachment 1 – Proposed Contract	Page 5
Attachment 2 – Proposed License Agreement	Page 21
Attachment 3 – Redline to Prior License Agreement	Page 29
Attachment 4 – Redline to Prior Board Approved Contract 2014-2019	Page 37
Attachment 5 – Redline of Proposed Contract to Model Agreement	Page 55
Attachment 6 – 2009-2013 APR Summary for BSU University Football	Page 75
Attachment 7 – Mountain West Head Coach Salaries	Page 77

**STAFF COMMENTS AND RECOMMENDATIONS**

Under the current Agreement, Mr. Harsin's contract is extended by one additional year for each season in which the football team has at least nine wins (including bowl games). Since BSU ended its season 12-2, the contract was already extended by operation of law.

The proposed Agreement would reduce the number of wins needed for automatic extensions to the term of contract from nine to eight. The rationale being that 8 wins was the benchmark under the previous head coach. Staff notes, however, that this prior precedent may not be as applicable now that BSU will be playing more games (at least 13 next season). Staff also observes that if BSU has a winning football program it appears counter-intuitive to "lower the bar" for the coach. If the purpose of the contract extension provision is to incent the coach's performance, reducing the number of wins seems to be going in the wrong direction. Furthermore, staff observes that if the contract term is going to be extended, then it stands to reason there should be a corresponding extension in the liquidated damages schedule. Otherwise, over time the university will bear a disproportionate share of the risk.

The current contract provides for additional one-time pay based upon performance relating to regular season and post-season competition. Under this provision Mr. Harsin will be paid \$75,000 since the team participated in a Host Bowl as part of the College Football Playoff. In addition, the proposed agreement would pay Mr. Harsin another one-time payment of \$100,000 upon execution of the Agreement.



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Mr. Harsin is currently the third highest paid coach in the Mountain West Conference.

The Athletics Committee expressed concern about the appropriateness of decreasing the number of wins for purpose of eligibility for an automatic contract extension.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a five-year employment agreement with Bryan Harsin, Head Football Coach, with a retroactive effective date of January 11, 2015 and terminating on January 10, 2020, at a base salary of \$800,000, and such base salary increases and supplemental compensation provisions as submitted.

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

I move to approve amendments to the license agreement between Boise State University and Bryan Harsin Enterprises, LLC, to provide a monthly royalty payment of \$16,667, as submitted.

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

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**EMPLOYMENT AGREEMENT  
2015-2020**

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

ARTICLE 1

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

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

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

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

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

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

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

which persons serve under Coach.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on January 11, 2015, and terminating, without further notice to Coach, on January 10, 2020, unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least eight (8) victories in a Season (including bowl games). Meaning, one (1) additional year is added for each eight (8) win season on contract terms no less favorable to Coach than the contract terms then applicable to the final year of this Agreement prior to the extension, provided, however, the base salary for the additional year will reflect a raise of \$100,000 over the base salary then applicable to the final year of this Agreement prior to the extension.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) A base salary as follows:
  - January 11, 2015 to January 10, 2016 - \$800,000;
  - January 11, 2016 to January 10, 2017 - \$1,100,000;
  - January 11, 2017 to January 10, 2018 - \$1,350,000;
  - January 11, 2018 to January 10, 2019 - \$1,450,000;

January 11, 2019 to January 10, 2020 - \$1,550,000,  
all generally payable in biweekly installments in accordance with  
normal University procedures and all of which is to be paid from  
non-appropriated funds;

- b) A one-time payment of \$100,000, which shall be paid after execution of this Agreement, but prior to March 1, 2015.
- c) The opportunity to receive such employee benefits calculated on the base salary (within the limits of such plans and benefits) as the University provides generally to non-faculty, non-classified, professional staff employees; and
- d) The opportunity to receive such employee benefits as the Department provides generally to its employees of a comparable level, including moving expenses. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.
- e) The opportunity to receive additional benefits as the Director deems necessary and appropriate including a vehicle, complimentary tickets, and club membership, as set forth in a separate letter.

### 3.2 Supplemental Compensation

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

#### Category 1

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

#### Category 2

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

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

3.2.2 Academic Incentive Pay may be earned as follows:

- a) \$20,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 955 or higher; and
- b) \$10,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 975 or higher; and
- c) \$5,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 985 or higher; and
- d) \$15,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 990 or higher.

These amounts are cumulative. By way of example, and for the avoidance of doubt, if the Team APR equals 990 or higher, Coach will earn \$50,000 in Academic Incentive Pay. Any pay earned pursuant to this section shall be paid on October 1st each year as long as Coach remains continuously employed as head Coach to that date.

3.3 Media Programs, Public Appearances and Endorsements.

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

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

3.3.3 Coach or any assistant coaches shall have no right, title or interest of any kind or nature whatsoever in or to any materials, works or results related to the Productions, or in any component part thereof and the University shall own all rights to the Productions and shall be entitled, at its option, to produce and market the Productions or negotiate with third parties for

the production and marketing of the Productions. The University shall be entitled to retain all revenue generated by the Productions. Upon prior written approval of the Director (such written approval not to be unreasonably withheld), Coach may use the materials, works or results related to the Productions so long as such use does not violate University or NCAA policy and does not result in Coach receiving compensation for such use.

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

### 3.4 Intellectual Property Rights.

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

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

3.4.3 During the term of this Agreement, including an extension or renewal pursuant to Section 2.2 or 2.3, the use of Coach's name, image, nickname, signature, voice, likeness, "celebrity rights" and photograph for any other purposes than those outlined in Section 3.4.2 of this Agreement shall be governed by a separate agreement.

3.5 Summer Camp—Operated By University. Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees

to assist with reasonable requests related to the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach supplemental compensation during each year of his employment as head football coach at the University.

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

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

#### **ARTICLE 4**

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the Conference, and



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

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

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

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

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

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

## **ARTICLE 5**

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

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

- a) A deliberate or major or repetitive violation of Coach's duties under this Agreement or the intentional refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after receiving written notice from the University;
- c) A deliberate or major or repetitive violation by Coach of any applicable law (other than minor traffic offenses) or the policies, rules or regulations of the University, the University's governing board, the Conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent (such consent not to be unreasonably withheld);
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's reasonable judgment, reflect adversely on the University, the Department or its athletic programs;

- f) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- g) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- h) A deliberate or major or repetitive violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.

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

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

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

**5.2 Termination of Coach for Convenience of University.**

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay or continue to pay Coach, as applicable, as

liquidated damages and not a penalty, the applicable regular compensation as set forth in section 3.1.1(a) plus an additional amount at the annual rate of \$200,000, excluding all deductions required by law, payable on the regular paydays of the University until the expiration of the term of this Agreement ends, or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid to the Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the applicable gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance of 3.1.1(b) as if he remained a University employee until the term of this Agreement ends or until Coach obtains other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits outside of section 3.1.1 (a) and (b), except as otherwise required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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

### 5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience prior to January 10, 2018, to commence, or enter into an agreement to commence, "Similar or Related Employment" (as defined in this section 5.3.3), then he (or his designee) shall pay to the University, as liquidated damages and not a penalty, the following sums: if the termination occurs between January 11, 2015 and January 10, 2016, the sum of two-million dollars (\$2,000,000); if the termination occurs between January 11, 2016 and January 10, 2017, the sum of one-million-seven-hundred-fifty-thousand dollars (\$1,750,000); and if the termination occurs between January 11, 2017 and January 10, 2018, the sum of five-hundred-thousand dollars (\$500,000). The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. For purposes of this Section 5.3.3, "Similar or Related Employment" means employment in football, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with a National Football League (NFL) team, or (c) in sports related media. If Coach terminates for convenience and does not immediately commence Similar or Related Employment, and therefore does not pay the liquidated damages, but then at a future date within twelve (12) months of termination for convenience commences, or enters into an agreement to commence in the future, employment as a collegiate head football coach, or professional (NFL) head football coach, or as an assistant coach at a university that is a member of the Conference, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts, or agrees to accept, such employment as a collegiate or professional head coach or assistant coach at a member institution of the Conference. By way of example only and for the avoidance of doubt, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional head coach on January 15, 2017, Coach, or his designee, would owe the University five hundred thousand dollars (\$500,000). However, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional football head coach on July 1, 2017, neither Coach nor his designee would owe the University any liquidated damages.

5.3.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiation of this Agreement and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, that the University will lose the benefit of its investment in the Coach, and that the University may face potentially increased compensation costs if Coach terminates this Agreement for convenience, all of which amounts are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance

thereof by University shall constitute adequate and reasonable compensation to University for any and all damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty.

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

5.9 Annual Leave Upon Termination. In the event of non-renewal or termination of Coach's employment under any provision of this section 5, Coach will use or forfeit all accumulated annual leave prior to the final date of employment and terminate Coach's employment with no annual leave balance.

**ARTICLE 6**

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

6.2 University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, vehicles, personnel records, recruiting records, Team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director. However, Coach shall be entitled to retain copies of any practice scripts, playbooks, statistics, or recruiting records (to the extent allowed under applicable privacy and confidentiality laws) utilized during his employment by the University. Further, Coach shall be entitled to retain any other personal property developed by Coach prior to his employment by the University or developed on his own time and not for use in his position as the Program's head football coach.

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

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

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

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

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

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

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

the University:	Director of Athletics 1910 University Drive Boise, Idaho 83725-1020
with a copy to:	President 1910 University Drive Boise, Idaho 83725-1000
the Coach:	Bryan Harsin Last known address on file with University's Human Resource Services
with a copy to:	Russ Campbell & Patrick Strong Balch Sports 1901 Sixth Avenue North, Suite 1500 Birmingham, Alabama 35203

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

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



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

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

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

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

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

## **ARTICLE 7**

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

- a) "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
- b) "Athletic Director" or "Director" means the Boise State University Director of Athletics.
- c) "BAA" means the Bronco Athletic Association.
- d) "CFP" mean the College Football Playoff (as the successor to the Bowl Championship Series organization) and its affiliated or contracted Host Bowls, semi-final Playoff Bowls and Championship Bowl games.
- e) "Coaching" means to direct, supervise, mentor and lead the athletes participating on the Team and/or in the Program.
- f) "Conference" means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the

date of the applicable event. At the time of the execution of this Agreement, the Conference is the Mountain West Conference. Change of Conference affiliation is at the sole discretion of the University President.

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

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Bryan Harsin      Date

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

**LICENSE AGREEMENT**

This **LICENSE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of the 11<sup>th</sup> day of January, 2015 (the “Effective Date”), by and between **BRYAN HARSIN ENTERPRISES, LLC**, an Idaho limited liability company (“Licensor”), and **BOISE STATE UNIVERSITY** (“University”), and acknowledged by **BRYAN HARSIN**, individually (“Harsin”).

**RECITALS:**

**WHEREAS**, pursuant to that certain Employment Agreement by and between the University and Harsin dated effective January 11, 2015 (the “Employment Agreement”), Harsin serves as the head coach of the University’s football program; and

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

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

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

**AGREEMENT:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **1.3 Property Rights.**

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

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

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

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

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

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

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

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

#### **1.4 Post-Termination Rights.**

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

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

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

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

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

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

1.6 **Infringement.**

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

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

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

2. **Term.** The parties intend that this Agreement shall have a term identical to the Employment Agreement and that this Agreement shall be extended or terminated if and when the Employment Agreement is extended or terminated, as applicable. In this respect, this Agreement shall commence on the Effective Date and shall continue thereafter until January 10, 2020, unless terminated earlier as specifically provided in Section 3 hereof. This Agreement shall automatically extend if and when the term of the Employment Agreement is extended and such extension shall be for the same length of time as the Employment Agreement is extended. Provided, always, nothing herein shall preclude the parties from agreeing in writing to extend the term of this Agreement after the termination of the Employment Agreement, and to continue the grant of the Sublicense Rights on the terms and conditions set forth in such extension.

3. **Termination.** This Agreement shall terminate immediately upon the termination of the Employment Agreement for any reason. Upon the termination of this Agreement, Licensor shall be entitled to receive all Royalties (as defined in Section 4 hereof) that have accrued under this Agreement through the termination date. The Royalties shall cease to accrue

as of the end of the day on the termination date. Such amounts of accrued, but unpaid, Royalties shall be due and payable to Licensor within sixty (60) days following the termination date.

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

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

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

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

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

9. **Miscellaneous Provisions.**

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



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

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

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

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

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

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

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

**BOISE STATE UNIVERSITY:**

**BRYAN HARSIN ENTERPRISES, LLC**

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

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

Bryan Harsin, Member

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

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

**ACKNOWLEDGED BY:**

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

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## **LICENSE AGREEMENT**

This **LICENSE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of the 11<sup>th</sup> day of January, 2014<sup>5</sup> (the “Effective Date”), by and between **BRYAN HARSIN ENTERPRISES, LLC**, an Idaho limited liability company (“Licensor”), and **BOISE STATE UNIVERSITY** (“University”), and acknowledged by **BRYAN HARSIN**, individually (“Harsin”).

### **RECITALS:**

**WHEREAS**, pursuant to that certain Employment Agreement by and between the University and Harsin dated effective ~~December~~ January 11, 2013<sup>5</sup> (the “Employment Agreement”), Harsin serves as the head coach of the University’s football program; and

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

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

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

### **AGREEMENT:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **1.3 Property Rights.**

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

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

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

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

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

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

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

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

#### **1.4 Post-Termination Rights**

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

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

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

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

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

1.6 **Infringement.**

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

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

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

2. **Term.** The parties intend that this Agreement shall have a term identical to the Employment Agreement and that this Agreement shall be extended or terminated if and when the Employment Agreement is extended or terminated, as applicable. In this respect, this Agreement shall commence on the Effective Date and shall continue thereafter until January 10, 2019~~20~~<sup>20</sup>, unless terminated earlier as specifically provided in Section 3 hereof. This Agreement shall automatically extend if and when the term of the Employment Agreement is extended and such extension shall be for the same length of time as the Employment Agreement is extended. Provided, always, nothing herein shall preclude the parties from agreeing in writing to extend the term of this Agreement after the termination of the Employment Agreement, and to continue the grant of the Sublicense Rights on the terms and conditions set forth in such extension.

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

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

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

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

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

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

9. **Miscellaneous Provisions.**

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

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



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

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

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

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

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

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

**BOISE STATE UNIVERSITY:**

**BRYAN HARSIN ENTERPRISES, LLC**

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

By: \_\_\_\_\_  
Bryan Harsin, Member

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

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

**ACKNOWLEDGED BY:**

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

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**EMPLOYMENT AGREEMENT**  
**2013~~5~~-2019~~20~~**

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

ARTICLE 1

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

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

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

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

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

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

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

which persons serve under Coach.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years ~~and one (1) month~~, commencing on ~~December~~ January 11, 201~~35~~20, and terminating, without further notice to Coach, on January 10, 201~~9~~20, unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least ~~nine~~ eight (98) victories in a Season (including bowl games). Meaning, one (1) additional year is added for each ~~nine-eight~~ (98) win season on contract terms no less favorable to Coach than the contract terms then applicable to the final year of this Agreement prior to the extension, provided, however, the base salary for the additional year will reflect a raise of \$100,000 over the base salary then applicable to the final year of this Agreement prior to the extension.

2.3.1. By way of example, and for the avoidance of doubt, section 2.3 is to be interpreted so that the term of this Agreement will function as a rolling five year term as long as the football team wins ~~nine-eight~~ (98) games in a Season. If any Season results in less than ~~nine-eight~~ (98) victories, then the term shall not extend for an additional year, rendering this Agreement as a potential rolling four (4) year term if a Season with ~~nine-eight~~ (98) victories follows such year or a potential rolling three (3) year term if a subsequent Season is fewer than ~~nine-eight~~ (98) victories. Subsequent seasons of ~~nine-eight~~ (98) victories or more, or fewer than ~~nine-eight~~ (98) victories, will have the same effects as described in this section until this Agreement is terminated as otherwise provided herein.

## ARTICLE 3

3.1 Regular Compensation.

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

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

January 11, 2016 to January 10, 2017 - \$1,100,000;  
 January 11, 2017 to January 10, 2018 - \$1,350,000;  
 January 11, 2018 to January 10, 2019 - \$1,450,000;  
January 11, 2019 to January 10, 2020 - \$1,550,000.

all generally payable in biweekly installments in accordance with normal University procedures and all of which is to be paid from non-appropriated funds;

- b) A one-time payment of \$100,000, which shall be paid after execution of this Agreement, but prior to March 1, 2015.
- c) The opportunity to receive such employee benefits calculated on the base salary (within the limits of such plans and benefits) as the University provides generally to non-faculty, non-classified, professional staff employees; and
- ed) The opportunity to receive such employee benefits as the Department provides generally to its employees of a comparable level, including moving expenses. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.
- de) The opportunity to receive additional benefits as the Director deems necessary and appropriate including a vehicle, complimentary tickets, and club membership, as set forth in a separate letter.

### 3.2 Supplemental Compensation

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

#### Category 1

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

#### Category 2

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

- g) \$250,000 if the Team wins the CFP Championship Bowl game.

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

3.2.2 Academic Incentive Pay may be earned as follows:

- a) \$20,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 955 or higher; and
- b) \$10,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 975 or higher; and
- c) \$5,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 985 or higher; and
- d) \$15,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 990 or higher.

These amounts are cumulative. By way of example, and for the avoidance of doubt, if the Team APR equals 990 or higher, Coach will earn \$50,000 in Academic Incentive Pay. Any pay earned pursuant to this section shall be paid on October 1st each year as long as Coach remains continuously employed as head Coach to that date.

3.3 Media Programs, Public Appearances and Endorsements.

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

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

3.3.3 Coach or any assistant coaches shall have no right, title or interest of any kind or nature whatsoever in or to any materials, works or results related to the Productions, or in

any component part thereof and the University shall own all rights to the Productions and shall be entitled, at its option, to produce and market the Productions or negotiate with third parties for the production and marketing of the Productions. The University shall be entitled to retain all revenue generated by the Productions. Upon prior written approval of the Director (such written approval not to be unreasonably withheld), Coach may use the materials, works or results related to the Productions so long as such use does not violate University or NCAA policy and does not result in Coach receiving compensation for such use.

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

### 3.4 Intellectual Property Rights.

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

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

3.4.3 During the term of this Agreement, including an extension or renewal pursuant to Section 2.2 or 2.3, the use of Coach's name, image, nickname, signature, voice, likeness, "celebrity rights" and photograph for any other purposes than those outlined in Section 3.4.2 of this Agreement shall be governed by a separate agreement.

3.5 Summer Camp—Operated By University. Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The

University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist with reasonable requests related to the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach supplemental compensation during each year of his employment as head football coach at the University.

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

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

#### ARTICLE 4

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

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

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

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



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

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

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

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

Trustees. Coach shall be provided an annual budget of \$2,200,000 per year for the employment of the nine (9) on-field assistant coaches.

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

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

## **ARTICLE 5**

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

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

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

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay or continue to pay Coach, as applicable, as liquidated damages and not a penalty, the applicable regular compensation as set forth in section 3.1.1(a) plus an additional amount at the annual rate of \$200,000, excluding all deductions required by law, payable on the regular paydays of the University until the expiration of the term of this Agreement ends, or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid to the Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the applicable gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance of 3.1.1(b) as if he remained a University employee until the term of this Agreement ends or until Coach obtains other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits outside of section 3.1.1 (a) and (b), except as otherwise required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience prior to January 10, 2018, to commence, or enter into an agreement to commence, "Similar or Related Employment" (as defined in this section 5.3.3), then he (or his designee) shall pay to the University, as liquidated damages and not a penalty, the following sums: if the termination occurs between ~~December~~ January 11, 2013~~5~~ and January 10, 2016, the sum of two-million dollars (\$2,000,000); if the termination occurs between January 11, 2016 and January 10, 2017, the sum of one-million-seven-hundred-fifty-thousand dollars (\$1,750,000); and if the termination occurs between January 11, 2017 and January 10, 2018, the sum of five-hundred-thousand dollars (\$500,000). The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. For purposes of this Section 5.3.3, "Similar or Related Employment" means employment in football, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with a National Football League (NFL) team, or (c) in sports related media. If Coach terminates for convenience and does not immediately commence Similar or Related Employment, and therefore does not pay the liquidated damages, but then at a future date within twelve (12) months of termination for convenience commences, or enters into an agreement to commence in the future, employment as a collegiate head football coach, or professional (NFL) head football coach, or as an assistant coach at a university that is a member of the Conference, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts, or agrees to accept, such employment as a collegiate or professional head coach or assistant coach at a member institution of the Conference. By way of example only and for the avoidance of doubt, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional head coach on January 15, 2017, Coach, or his designee, would owe the University five hundred thousand dollars (\$500,000). However, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional football head coach on July 1, 2017, neither Coach nor his designee would owe the University any liquidated damages.

5.3.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiation of this Agreement and have bargained for and

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

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

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

5.9 Annual Leave Upon Termination. In the event of non-renewal or termination of Coach's employment under any provision of this section 5, Coach will use or forfeit all accumulated annual leave prior to the final date of employment and terminate Coach's employment with no annual leave balance.

## ARTICLE 6

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

6.2 University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, vehicles, personnel records, recruiting records, Team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director. However, Coach shall be entitled to retain copies of any practice scripts, playbooks, statistics, or recruiting records (to the extent allowed under applicable privacy and confidentiality laws) utilized during his employment by the University. Further, Coach shall be entitled to retain any other personal property developed by Coach prior to his employment by the University or developed on his own time and not for use in his position as the Program's head football coach.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## ARTICLE 7

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

- a) "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
- b) "Athletic Director" or "Director" means the Boise State University Director of Athletics.
- c) "BAA" means the Bronco Athletic Association.

- d) “CFP” mean the College Football Playoff (as the successor to the Bowl Championship Series organization) and its affiliated or contracted Host Bowls, semi-final Playoff Bowls and Championship Bowl games.
- e) “Coaching” means to direct, supervise, mentor and lead the athletes participating on the Team and/or in the Program.
- f) “Conference” means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the date of the applicable event. At the time of the execution of this Agreement, the Conference is the Mountain West Conference. Change of Conference affiliation is at the sole discretion of the University President.
- g) “Department” means the Boise State University Department of Intercollegiate Athletics.
- h) “FBS” means the Football Bowl Subdivision membership category and participation level of the NCAA.
- i) “NCAA” means the National Collegiate Athletic Association.
- j) “Position” will mean the position of head football coach.
- k) “President” means the Boise State University President.
- l) “Productions” means any and all television, radio, podcast, website, webcast, digital, electronic and/or internet (or other similar or newly developed media format) productions or programs concerning or affiliated in any way with the University, the Team, the Program or the Department.
- m) “Program” shall mean the Football program, including the Team and the staff, equipment and operations assigned to, or affiliated with, the Team as decided at the sole, reasonable discretion of the Director. Non-capitalized use of the term “program” in reference to fringe benefit programs, media programs or to athletic programs generally are defined by the ordinary use in context.
- n) “Season” will mean the NCAA regulated football season commencing on the first day of fall practice and ending immediately after the last game of the football regular season or, if applicable to the Team being selected to play in a post-season bowl (“bowl eligible”), after the post-season bowl game involving the University Team.
- o) “Team” means the Boise State University Broncos intercollegiate football team.

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Bryan Harsin      Date

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

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## EMPLOYMENT AGREEMENT 2015-2020

This Employment Agreement ("Agreement") is entered into by and between Boise State University ("University") and [Bryan Harsin](#) ("Coach").

### ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and Program and shall perform such other duties in the University's athletic Department (Department) as the Director may reasonably assign and as may be described elsewhere in this Agreement. The University (College) shall have the right, at any time, to reassign Coach to shall, to the best of his ability and consistent with University policies, perform all duties at the University (College) other than as and responsibilities customarily associated with an NCAA Football Bowl Subdivision head football coach of.

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

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

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

1.3.3 Coach agrees to supervise any staff serving under Coach and to insure, to the best of his ability, that all staff persons follow all applicable University policies, NCAA, and

Conference rules and regulations at all times. Director will keep Coach informed, in writing, of which persons serve under Coach.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on January 11, 2015, and terminating, without further notice to Coach, on January 10, 2020, unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3. Extensions to Initial Term. The term of this Agreement shall be extended by one (1) additional year for each season in which the football team has at least eight (8) victories in a Season (including bowl games). Meaning, one (1) additional year is added for each eight (8) win season on contract terms no less favorable to Coach than the contract terms then applicable to the final year of this Agreement prior to the extension, provided, however, the base salary for the additional year will reflect a raise of \$100,000 over the base salary then applicable to the final year of this Agreement prior to the extension.

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

## ARTICLE 3

### 3.1 Regular Compensation.

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

- a) ~~An annual~~ A base salary of \$\_\_\_\_\_ per year, as follows:  
January 11, 2015 to January 10, 2016 - \$800,000;  
January 11, 2016 to January 10, 2017 - \$1,100,000;  
January 11, 2017 to January 10, 2018 - \$1,350,000;  
January 11, 2018 to January 10, 2019 - \$1,450,000;  
January 11, 2019 to January 10, 2020 - \$1,550,000.

all generally payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and all of which is to be paid from non-appropriated funds;

- b) A one-time payment of \$100,000, which shall be paid after execution of this Agreement, but prior to March 1, 2015.
- c) The opportunity to receive such employee benefits calculated on the base salary increases as may be determined appropriate by the Director and Chief executive officer and approved by (within the University (College)'s Board limits of ~~(Regents or Trustees)~~;
- b) The opportunity to receive such employee plans and benefits) as the University provides generally to non-faculty ~~exempt, non-classified, professional staff~~ employees; and
- ed) The opportunity to receive such employee benefits as the Department provides generally to its employees of a comparable level, including moving expenses. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.
- e) The opportunity to receive additional benefits as the Director deems necessary and appropriate including a vehicle, complimentary tickets, and club membership, as set forth in a separate letter.

### 3.2 Supplemental Compensation

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

#### Category 1

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

Category 2

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

Coach shall be eligible for a (bowl game) supplemental compensation from each Category listed above. Coach shall only be eligible to earn one amount (the highest amount) from each Category. Any additional pay for performance earned pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs), and if Coach continues to be this section shall be paid on February 1st following the football Season in which earned, as long as Coach remains continuously 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 Coach to that date.

(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.~~

~~3.2.5 The Coach shall receive the sum of (amount~~

3.2.2 Academic Incentive Pay may be earned as follows:

- a) \$20,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 955 or higher; and
- b) \$10,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 975 or higher; and
- c) \$5,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 985 or higher; and
- d) \$15,000 if the annual football Team APR rating (for the previous fall and spring semesters) equals 990 or higher.

These amounts are cumulative. By way of example, and for the avoidance of doubt, if the Team APR equals 990 or computation) from the University (College) or the University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum higher, Coach will earn \$50,000 in Academic Incentive Pay. Any pay earned pursuant to this section shall be paid on October 1st each year as long as Coach remains continuously employed as head Coach to that date.

~~3. (terms or conditions of payment) ——— 3 Media Programs, Public Appearances and Endorsements.~~

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

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

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

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

### 3.4 Intellectual Property Rights.

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

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

3.4.3 During the term of this Agreement, including an extension or renewal pursuant to Section 2.2 or 2.3, the use of Coach's name, image, nickname, signature, voice, likeness, "celebrity rights" and photograph for any other purposes than those outlined in Section 3.4.2 of this Agreement shall be governed by a separate agreement.

### 3.5 Summer Camp—Operated By University. Coach agrees that the University=

#### ~~3.2.6 (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 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 inwith reasonable requests related to the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach supplemental compensation during each year of his employment as head football coach at the University.~~

~~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)~~

~~3.6 Apparel 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 Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University (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) any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, 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.

3.3—7 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by applicable law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1 (a) and paid directly from the University to Coach, and within any applicable compensation limits established by such plans and except to the extent required by the terms and conditions of a specific fringe benefit program.

#### ARTICLE 4

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

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

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

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

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

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

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

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

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

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

4.7 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher



education or with any professional sports ~~team, franchise~~ requiring performance of duties set forth herein prior to the expiration of this Agreement, without ~~the giving~~ prior ~~approval of~~ notice to the Director. ~~Such approval~~ Coach shall ~~not unreasonably be withheld~~ deliver such notice in writing, or by electronic mail, and shall give such notice as soon as reasonably practical but no less than 48 hours prior to such activity.

## ARTICLE 5

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

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

- a) A deliberate or major or repetitive violation of Coach's duties under this Agreement or the intentional refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after receiving written notice from the University;
- c) A deliberate or major or repetitive violation by Coach of any applicable law (other than minor traffic offenses) or the policies, rules or regulations of the University, the University's governing board, the Conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent (such consent not to be unreasonably withheld);
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's reasonable judgment, reflect adversely on the University, ~~the~~ Department or its athletic programs;
- f) The failure of Coach to ~~represent the University (College) and its athletic programs positively in public and private forums~~;
- g) ~~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)-g)~~ The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- h) A deliberate or major or repetitive violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.

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

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

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

## 5.2 Termination of Coach for Convenience of University.

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

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



of this Agreement ends, or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid to the Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the applicable gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance of 3.1.1(b) as if he remained a University employee until the term of this Agreement ends or until Coach obtains ~~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, outside of section 3.1.1 (a) and (b), except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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

### 5.3 Termination by Coach for Convenience.

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

5.3.2 The Coach, for his own convenience, may terminate this Agreement during

its term by giving prior written notice to the University. ~~Termination. Such termination~~ shall be effective ten (10) days after written notice is given to the University unless otherwise agreed to by the parties. Such termination must occur at a time outside the Team's Regular Season (excluding bowl game) so as to minimize the impact on the Program.

5.3.3 If the Coach terminates this Agreement for convenience ~~at any time~~, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience prior to January 10, 2018, to commence, or enter into an agreement to commence, "Similar or Related Employment" (as defined in this section 5.3.3), then he (or his designee) shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sums: if the termination occurs between January 11, 2015 and January 10, 2016, the sum:-

\_\_\_\_\_ of two-million dollars (\$2,000,000); if the termination occurs between January 11, 2016 and January 10, 2017, the sum of one-million-seven-hundred-fifty-thousand dollars (\$1,750,000); and if the termination occurs between January 11, 2017 and January 10, 2018, the sum of five-hundred-thousand dollars (\$500,000). The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. For purposes of this Section 5.3.3, "Similar or Related Employment" means employment in football, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with a National Football League (NFL) team, or (c) in sports related media. If Coach terminates for convenience and does not immediately commence Similar or Related Employment, and therefore does not pay the liquidated damages, but then at a future date within twelve (12) months of termination for convenience commences, or enters into an agreement to commence in the future, employment as a collegiate head football coach, or professional (NFL) head football coach, or as an assistant coach at a university that is a member of the Conference, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts, or agrees to accept, such employment as a collegiate or professional head coach or assistant coach at a member institution of the Conference. By way of example only and for the avoidance of doubt, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional head coach on January 15, 2017, Coach, or his designee, would owe the University five hundred thousand dollars (\$500,000). However, if Coach terminates for convenience on February 1, 2016, and accepts employment as a collegiate or professional football head coach on July 1, 2017, neither Coach nor his designee would owe the University any liquidated damages.

5.3.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the ~~contract negotiations~~ negotiation of this Agreement and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, ~~in addition to that the University will lose the benefit of its investment in the Coach, and that the University may face~~ potentially increased compensation costs if Coach terminates this Agreement for convenience, all of which damages amounts are extremely difficult to determine with certainty. ~~—~~ The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to

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

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

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

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

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

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

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

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

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

Board of Education Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Policies.

5.9 Annual Leave Upon Termination. In the event of non-renewal or termination of Coach's employment under any provision of this section 5, Coach will use or forfeit all accumulated annual leave prior to the final date of employment and terminate Coach's employment with no annual leave balance.

## ARTICLE 6

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

6.2 University Property. All personal property ~~(excluding vehicle(s) provided through the~~ \_\_\_\_\_ program), material, and articles of information, including, without limitation, keys, credit cards, vehicles, personnel records, recruiting records, Team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director. However, Coach shall be entitled to retain copies of any practice scripts, playbooks, statistics, or recruiting records (to the extent allowed under applicable privacy and confidentiality laws) utilized during his employment by the University. Further, Coach shall be entitled to retain any other personal property developed by Coach prior to his employment by the University or developed on his own time and not for use in his position as the Program's head football coach.

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

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a 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.~~ 6.7 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

~~6.9~~ 8 Non-Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion so long as such production by the University is consistent with applicable law, NCAA, University or Conference policy.

~~6.10~~ 9 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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

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

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

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

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

~~6.11—10~~ Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

~~6.12—11~~ Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

~~6.13—12~~ Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case (such consent not to be unreasonably withheld), use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

~~6.14~~13 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

~~6.15—14~~ Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Trustees.

~~6.16—15~~ Opportunity to Consult with Attorney. ~~The Coach acknowledges Both parties acknowledge~~ that he has they have had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

## ARTICLE 7

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

- a) "APR" means Academic Progress Rate as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs.
- b) "Athletic Director" or "Director" means the Boise State University Director of Athletics.
- c) "BAA" means the Bronco Athletic Association.



- d) “CFP” mean the College Football Playoff (as the successor to the Bowl Championship Series organization) and its affiliated or contracted Host Bowls, semi-final Playoff Bowls and Championship Bowl games.
- e) “Coaching” means to direct, supervise, mentor and lead the athletes participating on the Team and/or in the Program.
- f) “Conference” means the athletic conference in which the University is a member for purposes of inter-collegiate Football competition as of the date of the applicable event. At the time of the execution of this Agreement, the Conference is the Mountain West Conference. Change of Conference affiliation is at the sole discretion of the University President.
- g) “Department” means the Boise State University Department of Intercollegiate Athletics.
- h) “FBS” means the Football Bowl Subdivision membership category and participation level of the NCAA.
- i) “NCAA” means the National Collegiate Athletic Association.
- j) “Position” will mean the position of head football coach.
- k) “President” means the Boise State University President.
- l) “Productions” means any and all television, radio, podcast, website, webcast, digital, electronic and/or internet (or other similar or newly developed media format) productions or programs concerning or affiliated in any way with the University, the Team, the Program or the Department.
- m) “Program” shall mean the Football program, including the Team and the staff, equipment and operations assigned to, or affiliated with, the Team as decided at the sole, reasonable discretion of the Director. Non-capitalized use of the term “program” in reference to fringe benefit programs, media programs or to athletic programs generally are defined by the ordinary use in context.
- n) “Season” will mean the NCAA regulated football season commencing on the first day of fall practice and ending immediately after the last game of the football regular season or, if applicable to the Team being selected to play in a post-season bowl (“bowl eligible”), after the post-season bowl game involving the University Team.
- o) “Team” means the Boise State University Broncos intercollegiate football team.

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Bryan Harsin      Date

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



## BOISE 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	984	985	980	973
<i>National % Rank by Sport</i>	<i>90-100</i>	<i>90-100</i>	<i>90-100</i>	<i>90-100</i>

REPORT YEAR
Raw Score for single year
<i>Percentile Rank for Sport</i>

MULTI-YEAR (4-Year Rolling Average)				
Football	989	993	988	981

NATIONAL AVERAGE NCAA ACADEMIC PROGRESS RATE (APR) SCORES FOR FOOTBALL (BOWL SUBDIVISION)				
	2009-10	2010-11	2011-12	2012-13
Football	949	952	954	957

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**Mountain West Head Football Coach Salaries  
2014 season**

**Mountain Division**

Air Force Academy	\$892,750
Boise State University*	\$1,000,004
Colorado State University	\$1,500,000
University of New Mexico	\$783,690
Utah State University	\$576,434
University of Wyoming	\$832,000

**West Division**

San Diego State University	\$802,000
San Jose State University	\$525,000
University of Nevada – Las Vegas	\$850,000
University of Nevada - Reno	\$575,000
University of Hawaii	\$620,500
Fresno State University	\$1,435,000

\* Salary negotiated took into consideration the  
\$1,750,000 buyout to Arkansas State University

Source: <http://sports.usatoday.com/ncaa/salaries/>

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 19, 2015**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Boise State University (BSU) requests approval of the material terms for the defensive coordinator, Marcel Yates of its football team

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

BSU is seeking a three-year contract for the defensive coordinator for the men's football program. The defensive coordinator is one of the primary assistant coaches of the football team. The team's success has prompted BSU to offer the three-year agreement to one of its assistant coaches. Multi-year contracts (two, three and even five year contracts) for the offensive and defensive coordinator positions have become common in successful Division I FBS programs.

BSU is proposing a Material Term Sheet at this time and will return to the Board with a full employment contract at a future State Board of Education (Board) meeting. The Board model contract for coaches contemplates a head coach agreement so the contracts will be based on the Board-approved model but properly adjusted to account for the differing role of the assistant coaches.

The contract will contain a provision that the contract is terminable on 30 days' notice if the head coach is no longer employed by BSU.

**IMPACT**

Material terms are as follows:

**Term:** Fixed term contract of three years

**Base Compensation:**

Year 1: \$330,000

Year 2: \$330,000

Year 3: \$330,000

**Pay for Performance - Athletic:**

Conference Championship Game = \$2,000

Bowl game = \$3,000

One of the six CFP bowl games = \$16,250

**Pay for Performance - Academic:**

APR between 955-959 – up to \$2,000 or

APR between 960-964 – up to \$3,000 or

APR between 965-969 – up to \$4,000 or

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 19, 2015**

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APR 970 or higher – up to \$5,000.

**Buy-Out Provision:** If Assistant Coach terminates early without cause, he may be required, at University's discretion, to pay liquidated damages as follows:

Year 1: \$75,000

Year 2: \$50,000

No state funds are used and these amounts are paid only from program revenues, media, donations and other non-state funds.

**ATTACHMENTS**

Attachment 1 – Material Term Sheets for Yates

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

This is a case of first impression for the Board in that there is currently no assistant coach at any institution on a multi-year contract.

The proposed base compensation represents a \$14,500 increase for Marcel Yates.

The term sheet was revised by BSU on February 12, 2015. The Athletics Committee did not have an opportunity to convene to review the revisions.

**BOARD ACTION**

I move to approve the request by Boise State University to authorize an offer of multi-year employment to the football defensive coordinator, Marcel Yates, with a retroactive date of January 12, 2015, and to bring to the Board for approval an employment agreement in substantial conformance with the term sheet set forth in Attachment 1, at a future Board meeting.

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



## BOISE STATE UNIVERSITY

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### Material Term Sheet Between Boise State University and Coach Marcel Yates

This Material Term Sheet outlines the material terms that will be incorporated into a formal Employment Agreement (“Agreement”) between Boise State University (“University”) and Coach Marcel Yates (“Yates”). The parties agree to work together in good faith to finalize a formal Agreement (in substantial conformance with the University Board of Trustees model contract) within a reasonable period of time following the execution of this Material Term Sheet.

- **Term:** 3 Years, beginning March 1, 2015, ending February 28, 2018
- **Compensation:** \$330,000 per year
- **Termination by University for Convenience:** In the event the University terminates Yates during the Term, he shall be entitled to the compensation remaining on Agreement that he would have received but for termination. This amount shall be subject to an offset mitigation provision in the event Yates secures other comparable employment prior to the University’s full satisfaction of such payments.
- **Termination of Head Coach:** In the event that Head Coach Bryan Harsin resigns or is terminated, Yates’s employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days’ prior written notice.
- **Termination by Yates Without Cause:** In the event Yates terminates the Agreement without cause during the Term, Yates, or his designee, may be responsible, at the sole discretion of the University, for providing the University the following amount depending on the date of such termination:
  - Year 1: \$75,000
  - Year 2: \$50,000
- **Athletic Achievement Incentive Pay:** If the football team participates in the Conference Championship Game, Yates will receive a \$2,000 bonus. In addition, if the football team participates in a bowl game, Yates will receive a \$3,000 bonus, **or** if the football team participates in one of the six CFP (College Football Playoff) bowl games, Yates will receive a \$16,250 bonus.
- **Academic Achievement Incentive Pay:** Yates may receive a sum based on the annual Academic Progress Rate (“APR”) rating for 2014-2015:
  - APR between 955-959 – up to \$2,000; **or**
  - APR between 960-964 – up to \$3,000; **or**
  - APR between 965-969 – up to \$4,000 **or**
  - APR 970 or higher – up to \$5,000.

- **Board of Trustees Approval Required:** This Material Term Sheet shall only be binding after approval by the University Board of Trustees. This Material Term Sheet is intended to be replaced by the Agreement at a future meeting of the University Board of Trustees. The University shall seek such approval at the earliest opportunity.

By executing this Material Term Sheet, the parties understand and agree that they accept the terms contained herein.

**Boise State University**

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

Its: Athletics Director

Date: \_\_\_\_\_, 2015

**Marcel Yates**

\_\_\_\_\_  
Date: \_\_\_\_\_, 2015



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 19, 2015**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Amendment to employment agreement with Michael D. Kramer, Head Football Coach.

**REFERENCE**

February 2011	The Idaho State Board of Education (Board) approved an employment agreement with Michael D. Kramer, Head Football Coach
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December 2014	The Board approved a new 3-year, 1-month employment agreement with Coach Kramer
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**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND/DISCUSSION**

In December 2014, the Board approved a new three-year, one-month employment agreement with Michael D. Kramer, Head Football Coach. Following further review of the agreement, Idaho State University (ISU) proposes the following amendments be made:

1. In Sections 3.2.1 to 3.2.8, amend the date of eligibility for the various bonuses from July 1 to February 1.
2. In Section 5.3.3, amend the last date on which the coach's resignation could result in liquidated damages from January 20, 2018 to "the end of the 2017 ISU football season, including any post-season games".

**IMPACT**

The proposed amendments would discourage the coach from delaying resignation or retirement in order to collect bonuses, which would benefit ISU by allowing more time to find a replacement. The change to Section 5.3.3 would better reflect the intent of the parties, as ISU would suffer no damages if Coach resigned after the end of the football season in the final year of his contract.

**ATTACHMENTS**

Attachment 1	Current Employment Agreement	Page 3
Attachment 2	Proposed First Amendment Redline	Page 17

**STAFF AND COMMENTS AND RECOMMENDATIONS**

The Athletics Committee has reviewed this contract and forwards it to the full Board with recommendation for approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 19, 2015**

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**BOARD ACTION**

I move to approve the request by Idaho State University to amend the wording in Sections 3.2.1 to 3.2.8 and Section 5.3.3 in the employment agreement with Michael D. Kramer, Head Football Coach, as proposed.

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

**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.

### **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 a 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 ( $2/52 \times \text{Annual Salary}$ ) 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 <sup>st</sup> win	\$5,000.00
Round 2	16 Teams	2 <sup>nd</sup> win	\$5,000.00
Round 3	8 Teams	3 <sup>rd</sup> win	\$5,000.00
Round 4	4 Teams	4 <sup>th</sup> win	\$8,000.00
Round 5	2 Teams	5 <sup>th</sup> 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 an 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. 8<sup>th</sup> Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: President Arthur Vailas  
921 S. 8<sup>th</sup> 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.

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## FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This Agreement (Amendment) is entered into by and between Idaho State University (University) and Michael D. Kramer (Coach) to amend the Employment Agreement previously entered into effective December 19, 2014. This Amendment shall be contingent upon approval by the Idaho State Board of Education (Board) and will be effective immediately upon approval.

1. Sections 3.2.1 through 3.2.8 of the Employment Agreement are hereby amended, subject to Board approval, to read in their entirety as follows:

### 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~~February 1<sup>st</sup>, 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 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~~February 1<sup>st</sup>, 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 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~~February 1<sup>st</sup>, and shall be payable only to assistant coaches who continue to be employed by the University as assistant coaches as of the ensuing July 1<sup>st</sup>. 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:*

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

*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~~February 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:*

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

*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~~February 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 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~~February 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~~February 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 <sup>st</sup> win	\$5,000.00
Round 2	16 Teams	2 <sup>nd</sup> win	\$5,000.00
Round 3	8 Teams	3 <sup>rd</sup> win	\$5,000.00
Round 4	4 Teams	4 <sup>th</sup> win	\$8,000.00
Round 5	2 Teams	5 <sup>th</sup> 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~~February 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.

2. Section 5.3.3 of the Employment Agreement is hereby amended, subject to Board approval, to read in its entirety as follows:

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 end of the 2017 ISU football season, including any post-season games, 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.*

3. All other provisions of the Employment Agreement remain as stated therein.
4. Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Amendment 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

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 Arthur C. Vailas, President      Date

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 Michael D. Kramer      Date

Approved by the Board of Trustees on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**IDAHO STATE UNIVERSITY**

**SUBJECT**

Approval of the appointment of Cornelis J. Van der Schyf as Vice President for Research and Dean of the Graduate School.

**APPLICABLE STATUTE, RULE OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Section II.B.3.a., and Section II.F.2.b.(i).

**BACKGROUND/DISCUSSION**

With the resignation of Dr. Howard Grimes, Vice President for Research and Economic Development, Idaho State University (ISU) requests State Board approval to appoint Dr. Cornelis J. Van der Schyf as Vice President for Research and Dean of the Graduate School. Dr. Van der Schyf has served as Dean of the Graduate School at ISU since April, 2013.

Prior to coming to ISU, he served as Chair and Professor of Pharmaceutical Sciences and Associate Dean for Research & Graduate Studies in the College of Pharmacy at Northeast Ohio Medical University (NEOMED). Before joining NEOMED, Dr. Van der Schyf served as associate professor and graduate program advisor for pharmaceutical sciences at the Texas Tech University Health Sciences Center School of Pharmacy. Prior to this role he served as senior research scientist and then research associate professor at the Peters Center for the Study of Parkinson's Disease in the Department of Chemistry and Department of Biomedical Sciences and Pathobiology at Virginia-Maryland College of Veterinary Medicine, Virginia Polytechnic Institute and State University in Blacksburg, Va.

Dr. Van der Schyf holds 14 patents, serves or has served on several NIH Study Sections and many other national and international granting agencies, is a member of the Phi Beta Delta Honor Society, Sigma Xi, The Scientific Research Society, and has received several teaching and research honors, including South Africa's highest honor in drug discovery research, the FARMOVS Prize for Pharmacology and Drug Development.

He earned his B.Pharm., M.Sc., D.Sc. (Ph.D.), and DTE degrees from Potchefstroom University in South Africa, and completed a postdoctoral fellowship in the Department of Medicinal Chemistry at the University of Connecticut, during which he conducted research at the Francis Bitter National Magnet Lab at MIT in Cambridge, Mass.

**IMPACT**

The salary for this appointment, at \$190,008, does not exceed the chief executive officer's salary and is below the College and University Professional

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 19, 2015**

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Association for Human Resources (CUPA-HR) median salary for public institutions within the Carnegie classification of Doctoral Research High, of \$226,000. In accordance with Board policy, this appointment requires Board approval.

**ATTACHMENTS**

Attachment 1 Letter of Offer and Acceptance

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**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

I move to approve the request by Idaho State University for the appointment of Cornelis J. Van der Schyf as Vice President for Research and Dean of the Graduate School, commencing on March 1, 2015, at a salary of \$190,008.

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

# Idaho State UNIVERSITY

Vice President for Finance and Administration  
921 South 8th Avenue, Stop 8219 • Pocatello, Idaho 83209-8219

January 26, 2015

Cornelis J. Van der Schyf  
921 S. 8<sup>th</sup> Ave., Stop 8075  
Pocatello, ID 83209

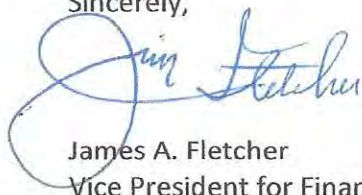
Dear Neels,

I am pleased to formalize the President's offer to you with the expanded 12 month, full-time, non-classified appointment as Vice President for Research and Dean of the Graduate School at Idaho State University. In this role you will continue to hold tenure as a full Professor in the Department of Biomedical and Pharmaceutical Sciences in the College of Pharmacy. This initial appointment will begin on March 1, 2015, and has an annualized salary of \$190,008, along with ISU's standard comprehensive benefit and non-classified retirement package. In this role, you will report directly to the President as you continue to expand the research mission at Idaho State University. Additionally, you will also continue to report to the Provost on activities of the Graduate School.

Please indicate your acceptance of this offer by submitting a signed copy of this letter to Ms. Dorothy Ruth, Management Assistant in Finance and Administration, Administration Building Room 229, or via email at [ruthdoro@isu.edu](mailto:ruthdoro@isu.edu).

We are very pleased to have you continue as a member of the University community in this expanded leadership role. Senior Administration looks forward to continued success from the Office of Research and Graduate School under your guidance.

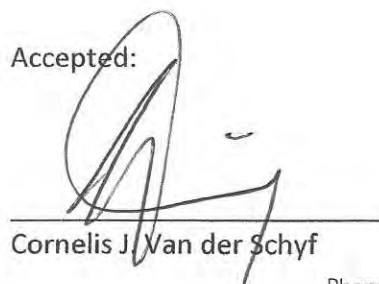
Sincerely,



James A. Fletcher  
Vice President for Finance and Administration

cc: Brian J. Sagendorf, HR Director  
Brian Hickenlooper, Assistant Vice President for Finance and Administration

Accepted:

  
Cornelis J. Van der Schyf

1/27/2015  
Date

Phone: (208) 282-2404 • Fax: (208) 282-3414 • [www.isu.edu](http://www.isu.edu)  
*ISU is an Equal Opportunity Employer*

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