

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
JUNE 18, 2015**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENTS/TERMS</b>	Motion to approve
<b>2</b>	<b>AMENDMENT TO BOARD POLICY</b> Section II – Human Resources, Section H., Coaches and Athletic Directors - Second Reading	Motion to approve
<b>3</b>	<b>BOISE STATE UNIVERSITY</b> Multi-Year Employment Agreement – Football Defensive Coordinator	Motion to approve
<b>4</b>	<b>IDAHO STATE UNIVERSITY</b> Multi-Year Employment Agreement – Head Women’s Soccer Coach	Motion to approve
<b>5</b>	<b>UNIVERSITY of IDAHO</b> Multi-Year Employment Agreement – Head Women’s Volleyball Coach	Motion to approve
<b>6</b>	<b>OFFICE OF THE STATE BOARD OF EDUCATION</b> Hiring of Executive Director	Motion to approve

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**SUBJECT**

Chief Executive Officers Contracts

**REFERENCE**

April 2015

Idaho State Board of Education (Board) completed evaluation for the executive director of the Office of the State Board of Education

May 2015

Board completed performance evaluations and approved salaries for the chief executive officers of Boise State University, Idaho State University, University of Idaho, Lewis-Clark State College, and Eastern Idaho Technical College.

**BACKGROUND/DISCUSSION**

The Board approved three year contracts for the four year institution presidents at the August 2010 Board meeting, and extended those terms for one additional year for FY11, FY12, FY13, FY 14, and FY15.

**IMPACT**

Contracts for the presidents are amended to extend the current contract term for one (1) additional year and incorporate the salaries approved at the May 2015 Board meeting.

**BOARD ACTION**

I move to approve the amended employment agreement for Dr. Robert Kustra as President of Boise State University.

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

I move to approve the amended employment agreement for Dr. Chuck Staben as President of the University of Idaho.

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

I move to approve the amended employment agreement for Dr. Art Vailas, as President of Idaho State University.

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

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I move to approve the amended employment agreement for Dr. Tony Fernandez as President of Lewis-Clark State College.

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

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**SUBJECT**

Board Policy II.H. – Coaches and Athletic Directors, Second Reading

**REFERENCE**

August 2014

Idaho State Board of Education (Board) approved second reading to Policy II.H. regarding academic incentive payment provisions in coach contracts

April 2015

The Board approved first reading to Policy II.H. regarding multi-year contracts for assistant coaches

**APPLICABLE STATUTES, RULE OR POLICY**

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

**BACKGROUND / DISCUSSION**

At the April 2015 Board meeting, the Board approved the first reading of the changes requested by the Athletic Committee to Board Policy II.H. Material changes to the policy include the following:

1. The policy is extended to assistant coaches;
2. The maximum term of a contract is increased from three years to five years;
3. A liquidated damages clause for an assistant coach may be void upon the departure of the head coach; and
4. Codification of required supporting documents and information for contracts.

**IMPACT**

Proposed revisions sets out provisions in regard to assistant coaches.

**ATTACHMENTS**

Attachment 1 – Section II.H. – Second Reading

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

There were no changes between first and second reading. Staff recommends approval.

**BOARD ACTION**

I move to approve the second reading of the proposed amendment to Board policy Section II.H, as presented in Attachment 1.

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

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**Idaho State Board of Education**

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: H. Coaches and Athletic Directors**

August/June 2014/5

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1. Agreements Longer Than One Year

The chief executive officer of an institution is authorized to enter into a contract for the services of a ~~head~~ coach or athletic director with that institution for a term of more than one (1) year, but not more than ~~three-five~~ (35) years, subject to approval by the Board as to the terms, conditions, and compensation there under, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. ~~All such contracts must contain a liquidated damages clause provision in favor of the institution, applicable in the event that the coach or athletic director terminates the contract for convenience, in an amount which is a reasonable approximation of damages which might be sustained if the contract is terminated.~~ A contract in excess of three (3) years, ~~or a (whether fixed or rolling) three (3) year contract, may be considered by the Board upon the documented must showing of~~ extraordinary circumstances. ~~All contracts must be submitted for Board approval prior to the contract effective date. Each contract for the services shall follow the general form approved by the Board as a model contract. Such cContracts shall define the entire employment relationship between the Board and thea coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The June 2014 Board revised and approved multiyear model contract is adopted by reference into this policy. The model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.~~

- a. Each contract for the services shall follow the general form approved by the Board as a model contract. The June 2014 Board revised and approved multiyear model contract is adopted by reference into this policy. The model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.
- b. All such contracts must contain a liquidated damages clause provision in favor of the institution, applicable in the event that a coach or athletic director terminates the contract for convenience, in an amount which is a reasonable approximation of damages which might be sustained if the contract is terminated.
  - i. If a head coach resigns or is terminated and there is one or more assistant coach for the same sport on a multi-year contract, the liquidated damages clause for the assistant coach(es) may be waived.
- c. Contracts submitted for Board approval shall include the following supporting documentation (either in the agenda cover page or as an attachment):
  - i. a summary of all supplemental compensation incentives;
  - ii. quantification of maximum potential annual compensation (i.e. base salary plus maximum incentive pay);
  - iii. employment agreement (clean version), employment agreement (redline to Board-approved model contract), and for current coaches a redline of proposed employment agreement to current employment agreement;

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- iv. in the case of National Collegiate Athletic Association (NCAA) institutions, a 4-year history of the institution's Academic Progress Rate (APR) raw scores and national average APR scores for the applicable sport;
  - v. a schedule of base salaries and incentive payments of all other same sport coaches in the institution's conference; and
  - vi. documentation on how the institution arrived at the proposed liquidated damages amount(s), and a summary of publically-available liquidated damages and buyout provisions for coaches of the same sport at all other public institutions in the conference.
- d. All contracts must be submitted for Board approval prior to the contract effective date.
- a.—

2. Agreements For One Year Or Less

The chief executive officer of an institution is authorized to enter into a contract for the services of a ~~head~~ coach or athletic director with that institution for a term of one (1) year or less and an annual salary of \$150,000 or less without Board approval. Each contract shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The December 9, 2010 Board revised and approved model contract is adopted by reference into this policy. The single-year model contract may be found on the Board's website at <http://boardofed.idaho.gov/>.

3. Academic Incentives

Each contract for a ~~head~~ coach or athletic director shall include incentives in the form of supplemental compensation, separate from any other incentives, based upon the academic performance of the student athletes whom the coach or athletic director supervises. Each year a coach or athletic director may be eligible to receive supplemental compensation based on achievement of the incentive. Awarding supplemental compensation shall be contingent upon achievement of one or more measures including, but not limited to, (in the case of the National Collegiate Athletic Association (NCAA) institutions), the NCAA Academic Progress Rate (APR). The Board shall approve the APR against which achievement of the incentive shall be based (in whole or in part) and the basis for computing the incentive. Information provided to the Board in determining the raw score to be used should include a 4-year history of the institution's APR raw scores and national average APR scores for that sport. Any such supplemental compensation paid to coach or athletic director shall be separately reported to the Board.

4. Part-time Coaches Excepted

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

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5. Assistant Coaches

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

6. Annual Leave

- a. All existing contracts and accrued leave held by coaches at the institutions on the effective date of this policy shall be grandfathered under policy II.F. for purposes of accruing annual leave until the coach's contract renewal.
- b. Following the effective date of this policy, the institutions shall have the authority to negotiate annual leave for all coach contract renewals and new hires using one of the two options below:
  - i. Annual leave may be earned and accrued consistent with non-classified employees as set forth in policy II.F.; or
  - ii. Pursuant to section 59-1606(3), Idaho Code, coaches do not accrue leave, but may take leave with prior written approval from the athletic director. Under this option, any accrued annual leave balance at the time of the coach's contract renewal shall be forfeited or paid off, and the new contract shall document the forfeiture or compensation of that leave.

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Employment Contract for Defensive Coordinator Marcel Yates

**REFERENCE**

February 2015

Board approved material term sheet and directed Boise State University (BSU) to return with a contract

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is seeking approval of 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 a three-year agreement to Marcel Yates. Multi-year contracts (two, three and even five year contracts) for the offensive and defensive coordinator positions have become common in successful Division I football programs.

The contract is similar to the standard issued by BSU in conformance with the Board approved Model Agreement.

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

**IMPACT**

No state funds are used to fulfill the terms of this contract. Amounts are paid only from program revenues, media, donations and other non-state funds. 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 - 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  
APR 970 or higher – up to \$5,000

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**Pay for Performance - Athletic:**

Conference Championship Game	\$2,000
Bowl game	\$3,000 or
One of the six CFP bowl games	\$16,500

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

Year 1 (March 1, 2015 – February 29, 2016):	\$75,000
Year 2 (March 1, 2016 – February 28, 2017):	\$50,000

Maximum potential annual compensation (base salary and supplemental compensation) is \$353,500.

**ATTACHMENTS**

Attachment 1 – Proposed Contract	Page 5
Attachment 2 – Redline of Proposed Contract to Model Agreement	Page 19
Attachment 3 – 2009-2013 APR Summary	Page 35

**STAFF COMMENTS AND RECOMMENDATIONS**

The maximum academic incentive pay is \$5,000, which exceeds the athletic incentive pay for a conference championship. The Board has historically looked favorably on academic incentives at that level. It should be noted, however, that for the last four years the annual APR rating for BSU football has exceeded 970, so the Academic Pay for Performance tiers as set forth under "Impact" above are not much of a stretch goal.

The contract also provides the coach a vehicle for personal and business use.

The proposed employment agreement is in substantial conformance with the Board's model contract. Board Policy II.F. prohibits automobile or automobile allowances unless expressly authorized by the Board.

The Athletic Committee will provide its recommendation to the Board at the June Board meeting.

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**BOARD ACTION**

I move to approve the request by Boise State University to enter into a three-year employment agreement with Marcel Yates, Football Defensive Coordinator, for a term commencing on March 1, 2015 and terminating on February 28, 2018, at a base salary of \$330,000 and supplemental compensation provisions as set forth in Attachment 1.

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

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”) by and between Boise State University (“the University”) and Marcel Yates (“Coach”).

**ARTICLE 1**

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

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

1.3. Duties. Coach shall serve as the defensive coordinator for the Team and shall perform such other duties in the University’s athletic program as the Head Coach may assign and as may be described elsewhere in this Agreement. Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on March 1, 2015 and terminating, without further notice to Coach, on February 28, 2018 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University’s Board of 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) A salary in the amount of \$330,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Head Coach and Director and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees;
- c) Assignment of one vehicle for personal and professional use during the term of this Agreement. State insurance premiums for the designated vehicle shall be paid by Coach. Any vehicle assigned shall be returned in the same or similar condition as it was upon being assigned, reasonable wear and tear excepted; and
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

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

3.2.1. Athletic Achievement Incentive Pay.

- a) If the football team participates in the Conference Championship Game, Coach will receive a \$2,000 bonus.

In addition,

- b) If the football team participates in a bowl game, Coach will receive a \$3,000 bonus, **or**
- c) If the football team participates in one of the six CFP (College Football Playoff) bowl games, Coach will receive a \$16,500 bonus.

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

3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate ("APR") rating is between 955-959, Coach will receive a sum of \$2,000; **or**

- b) If the annual APR rating is between 960-964, Coach will receive a sum of \$3,000; **or**
- c) If the annual APR rating is between 965-969, Coach will receive a sum of \$4,000 **or**
- d) If the annual APR rating is 970 or higher, Coach will receive a sum of \$5,000.

If Coach qualifies for Academic Achievement Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association (“NCAA”), if Coach is still employed by the University on that date.

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

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

3.2.4 Coach may receive the compensation hereunder from the University or the University’s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, “Programs”). Agreements requiring Coach to participate in Programs related to Coach’s duties as an employee of the 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 in order for the Programs to be successful and agrees to provide Coach’s services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. Coach shall not appear without the prior written approval of the Head Coach and the Director on any radio or television program (including but not limited to a coach’s show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Head Coach and Director, Coach shall not appear in any commercial endorsements.

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

3.2.6 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during

official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of the 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.

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

#### ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall perform all duties and responsibilities as assigned by the Head Coach, such duties and responsibilities may include, but are not limited to:

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 Board of Trustees, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that any 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 Head Coach and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations,

Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) Governing Policies and Procedures and Rule Manual of the University's Board of Trustees; (b) the University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Conference.

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

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

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

**ARTICLE 5**

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules, or regulations of the University, the University's Board of Trustees, the Conference, or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, 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 Board of Trustees, the Conference, or the NCAA, by

any 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 Board of Trustees, the Conference, or the NCAA, by any 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 Head Coach, Director, or the Head Coach's or the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the 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 Coach was employed.

## 5.2 Termination of Coach due to Resignation or Termination of Head Coach

In the event of the resignation or termination of the Head Coach, Coach'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. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

## 5.3 Termination of Coach for Convenience of University.

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

5.3.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the “base salary” set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform the University within ten (10) business days of obtaining other employment and to advise the 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 the University shall constitute a material breach of this Agreement and the University’s obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach’s services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to the University all compensation paid by the University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

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

5.4 Termination by Coach for Convenience.

5.4.1 Coach recognizes that Coach’s promise to work for the University for the entire term of this Agreement is of the essence of this Agreement. Coach also recognizes that the

University is making a highly valuable investment in Coach's employment by entering into this Agreement and that its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University before the end of the contract Term.

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

5.4.3 If 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 Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, the following sums: if the termination occurs between March 1, 2015 and February 29, 2016, the sum of seventy-five thousand dollars (\$75,000) or if the termination occurs between March 1, 2016 and February 28, 2017, the sum of fifty thousand dollars (\$50,000). 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. Provided, however, if Coach terminates this Agreement following the death or disability of the Head Coach, such termination will not be considered termination by Coach for convenience, and therefore no liquidated damages shall be owed by Coach to the University.

5.4.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the 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 the University shall constitute adequate and reasonable compensation to the 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.

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

#### 5.5 Termination Due to Disability or Death of Coach.

5.5.1 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, or dies.

5.5.2 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 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 Coach's estate or beneficiaries hereunder.

5.5.3 If this Agreement is terminated because 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 Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which Coach is entitled by virtue of employment with the University.

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

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

**ARTICLE 6**

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this Agreement shall be subject to: the approval of the University's Board of Trustees, the Director, and the Head Coach; 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, 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 Head 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 state district court in Ada County, Boise, Idaho.

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

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

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

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

the University:

Boise State University

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

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

Coach: Marcel Yates  
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. Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of Coach's official University duties.

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

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

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES**

**JUNE 18, 2015**

**ATTACHMENT 1**

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

UNIVERSITY

COACH

\_\_\_\_\_  
Mark Coyle, Director of Athletics      Date

\_\_\_\_\_  
Marcel Yates      Date

\_\_\_\_\_  
Dr. Robert Kustra, President      Date

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

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EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date") by and between Boise State University ("the University") and Marcel Yates ("Coach").

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the defensive coordinator for the Team and shall perform such other duties in the University's athletic program as the Head Coach may assign and as may be described elsewhere in this Agreement. ~~The University (College) Coach shall have the right, at any time, to reassign Coach to duties at the University (College) other than as head coach~~ best of the Team, provided that Coach's compensation ability, and consistent with University policies and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through (Depending on supplemental pay provisions used) shall cease procedures, perform all duties and responsibilities customarily associated with the Position.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on March 1, 2015 and terminating, without further notice to Coach, on February 28, 2018 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board of 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) A salary in the amount of \$330,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Head Coach and Director and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; ~~and~~
- ~~c) Assignment of one vehicle for personal and professional use during the term of this Agreement. State insurance premiums for the designated vehicle shall be paid by Coach. Any vehicle assigned shall be returned in the same or similar condition as it was upon being assigned, reasonable wear and tear excepted; and~~
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

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

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

~~3.2.2. Each year the Team is ranked in the top 25 in the (national rankings of sport's division), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The~~

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

~~3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the Chief executive officer in consultation with the Director. The determination shall be based on the 3.2.1. Athletic Achievement Incentive Pay.~~

- ~~a) If the football team participates in the Conference Championship Game, Coach will receive a \$2,000 bonus.~~

~~In addition,~~

- ~~b) If the football team participates in a bowl game, Coach will receive a \$3,000 bonus, or~~
- ~~c) If the football team participates in one of the six CFP (College Football Playoff) bowl games, Coach will receive a \$16,500 bonus.~~

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

~~3.2.2. Academic Achievement Incentive Pay.~~

- ~~a) If the annual Academic Progress Rate (“APR”) rating is between 955-959, Coach will receive a sum of \$2,000; or~~
- ~~b) If the annual APR rating is between 960-964, Coach will receive a sum of \$3,000; or~~
- ~~c) If the annual APR rating is between 965-969, Coach will receive a sum of \$4,000 or~~
- ~~d) If the annual APR rating is 970 or higher, Coach will receive a sum of \$5,000.~~

~~If Coach qualifies for Academic Achievement Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association (“NCAA”), if Coach is still employed by the University on that date.~~

~~3.2.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. 3. Conditions for payment of Athletic and Academic Achievement supplemental compensation.

Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation and such justification shall be separately reportable to the Board of 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.~~  
3.2.4 Coach may receive the compensation hereunder=

~~3.2~~ from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs). ~~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 shall be paid (terms or conditions of payment) \_\_\_\_\_.~~". Agreements requiring Coach to participate in Programs related to Coach's duties as an employee of the 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 in order for the Programs to be successful and agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. ~~It is understood that neither Coach nor any assistant coaches shall not appear without the prior written approval of the Head Coach and the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Head Coach and Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

~~3.2.6 (SUMMER CAMP—OPERATED BY UNIVERSITY (COLLEGE)) 5~~  
 \_\_\_\_\_ Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the

University shall pay Coach ~~\_(amount)\_~~ per year as supplemental compensation during each year of his employment as head ~~(Sport)~~ coach at the ~~University (College)~~. This amount shall be paid ~~\_(terms of payment)\_~~.

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

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

- i) ~~To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- j) ~~All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

3.2.76 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 Coach ~~recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally-related appearances as may be reasonably requested by the University (College). Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head (Sport) coach. In order to avoid entering into an agreement with a competitor of (Company Name), Coach shall submit all outside consulting agreements to the University (College)the 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.~~

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

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall perform all duties and responsibilities as assigned by the Head Coach, such duties and responsibilities may include, but are not limited to:

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 Board of Trustees, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that ~~Coach's assistant coaches, any other~~any 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~~Head Coach and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. 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 the following, as they may be amended from time-to-time: (a) Governing Policies and Procedures and Rule Manual of the University's Board of Trustees; (b) the University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Conference.

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

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

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

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

~~4.7.4 Other Coaching Opportunities.~~ Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Head Coach and the Director. Such approval shall not unreasonably be withheld. Without first giving ten (10) days

prior written notice to the Head Coach and the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules, or regulations of the University, the University's Board of Trustees, the Conference, or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, 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 Board of Trustees, 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 Board of Trustees, 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 Head Coach, Director, or the Head Coach's or the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the 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 Coach was employed.

## 5.2 Termination of Coach due to Resignation or Termination of Head Coach

In the event of the resignation or termination of the Head Coach, Coach'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. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

## 5.3 Termination of Coach for Convenience of University.

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

5.3.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the “base salary” set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform the University within ten (10) business days of obtaining other employment and to advise the 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 the University shall constitute a material breach of this Agreement and the University’s obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach’s services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to the University all compensation paid by the University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

5.3-4 In the event of non-renewal or termination of Coach’s employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.4 Termination by Coach for Convenience.

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

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

5.4.3 If 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 Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, the following sums: if the termination occurs between March 1, 2015 and February 29, 2016, the sum of seventy-five thousand dollars (\$75,000) or if the termination occurs between March 1, 2016 and February 28, 2017, the sum of fifty thousand dollars (\$50,000). 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. Provided, however, if Coach terminates this Agreement following the death or disability of the Head Coach, such termination will not be considered termination by Coach for convenience, and therefore no liquidated damages shall be owed by Coach to the University.

5.4.4 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the 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 the University shall constitute adequate and reasonable compensation to the 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.

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

5.5 Termination Due to Disability or Death of Coach.

5.5.1 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~~Position, or dies.

5.5.2 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 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 Coach's estate or beneficiaries hereunder.

5.5.3 If this Agreement is terminated because 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 Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which Coach is entitled by virtue of employment with the University.

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

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

**ARTICLE 6**

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this Agreement shall be subject to: the approval of the University's Board of Trustees, the ~~Chief executive officer~~Director, and the Head Coach; 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, 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~~Head 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 state district court in Ada County, Boise, Idaho.

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or

certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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

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

Coach:                               Marcel Yates  
  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. Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of Coach's official University duties.

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

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

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

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

UNIVERSITY

COACH

\_\_\_\_\_  
Mark Coyle, Director of Athletics      Date

\_\_\_\_\_  
Marcel Yates      Date

\_\_\_\_\_  
Dr. Robert Kustra, President      Date

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

**BOISE STATE UNIVERSITY**

Football APR History and National Percentile Rank

<b>SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES</b>				
	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
<b>Football</b>	984	985	980	973
<b><i>National % Rank by Sport</i></b>	<b><i>90-100</i></b>	<b><i>90-100</i></b>	<b><i>90-100</i></b>	<b><i>90-100</i></b>

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

<b>MULTI-YEAR (4-Year Rolling Average)</b>				
<b>Football</b>	989	993	988	981

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

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 18, 2015**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Multi-year employment agreement with Allison Gibson, Head Women's Soccer Coach.

**REFERENCE**

January 2006	The Idaho State Board of Education (Board) approved an employment agreement with Allison Gibson, Head Women's Soccer Coach
January 2009	The Board approved a new 3-year employment agreement with Coach Gibson
February 2013	The Board approved a new 3-year, employment agreement with Coach Gibson

**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND/DISCUSSION**

Idaho State University (ISU) is requesting approval for a new three-year employment agreement for Allison Gibson, Head Soccer Coach (her current contract expires on January 19, 2016). The employment agreement contains the duties, responsibilities and conditions of employment. A model contract matrix of the employment agreement that identifies departures from the Board approved model contract form and provides justification for these changes is included as Attachment 3.

**Big Sky Conference Head Soccer Coaches' Salaries (as of January, 2015)**

Northern Arizona University	\$74,263
Montana State University	\$68,553
University of Montana	\$64,033
<b>Idaho State University</b>	<b>\$65,894</b>
Weber State University	\$63,522
Sacramento State University	\$60,000
University of North Dakota	\$58,916
Portland State University	\$54,000
Eastern Washington University	\$53,000
University of Northern Colorado	\$49,638
Southern Utah University	\$45,000
University of Idaho	\$40,019

**IMPACT**

The extended term of the employment agreement runs through January 20, 2019.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 18, 2015**

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The annual base salary is \$65,894, a \$5615.60 increase over the previous contract.

Coach is entitled to receive the following incentive/supplemental compensation:

1. Conference champions or co-champion = \$2,460.
2. NCAA tournament berth = \$2,460.
3. Academic achievement and behavior of team based on APR national score:

970-979	\$700
980-989	\$800
990-999	\$900
1,000	\$1,000
4. Academic achievement for two-semester team GPA in excess of 3.20 = \$1,500.
5. NCAA Women's Soccer Tournament victories:

Round 1	64 Teams	1 <sup>st</sup> win	\$3,000
Round 2	32 Teams	2 <sup>nd</sup> win	\$6,000
Round 3	16 Teams	3 <sup>rd</sup> win	\$9,000
Round 4	8 Teams	4 <sup>th</sup> win	\$12,000
Round 5	4 Teams	5 <sup>th</sup> win	\$15,000
Round 6	2 Teams	6 <sup>th</sup> win	\$18,000

Maximum possible bonus \$63,000.00.

6. Conference Coach of the Year = \$2,460.
7. To ensure Coach's participation in annual women's soccer summer camp, Coach may take as supplemental compensation all revenues net of ISU's expenses, or elect to add net revenues to program budget.

Maximum potential annual compensation (base salary and supplemental compensation not including summer camp revenues) is \$136,840.40. The position is funded by state appropriated funds.

**ATTACHMENTS**

Attachment 1	Employment Agreement	Page 5
Attachment 2	Employment Agreement - Redline 2013 to 2015	Page 17
Attachment 3	Employment Agreement - Redline to Model Contract	Page 31
Attachment 4	Soccer APR Scores	Page 47

**STAFF AND COMMENTS AND RECOMMENDATIONS**

The maximum academic incentive pay is \$1,000, which exceeds the athletic incentive pay for a conference championship. The Board has historically looked

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 18, 2015**

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APR rating for ISU women's soccer has exceeded 970 for three of the last four years.

If the coach terminates early without cause, she would be required to pay liquidated damages as follows:

Year 1 (January 21, 2016 – January 25, 2017) = \$25,000

Year 2 (January 26, 2017 – January 25, 2018) = \$20,000

Year 3 (January 26, 2018 – end of 2018 season) = \$10,000

The proposed employment agreement is in substantial conformance with the Board's model contract.

The Athletic Committee will provide its recommendation to the Board at the June Board meeting.

**BOARD ACTION**

I move to approve the request by Idaho State University to extend the multi-year employment agreement with Allison Gibson, Head Women's Soccer Coach, for a term commencing January 19, 2016 and terminating January 19, 2019 at a base salary of \$65,894 and supplemental compensation provisions in substantial conformance with the terms of the agreement set forth in Attachment 1.

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

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and Allison Gibson (Coach).

**ARTICLE 1**

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.8 shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of three ( 3 ) years, commencing on January 21, 2016 and terminating, without further notice to Coach, on January 20, 2019 unless sooner terminated in accordance with other provisions of this Agreement.

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

**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 \$65,894.00 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 regular season conference champion or co-champion, and if Coach continues to be employed as University's head Women’s Soccer coach as of the ensuing January 5th, 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 wins the Big Sky conference tournament or obtains an NCAA Women’s Soccer Tournament berth, and if Coach continues to be employed as University's head Women’s Soccer coach as of the ensuing January 5th, 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.

3.2.3. Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$1,000 based on the academic achievement and behavior of Team members, if Coach continues to be employed as University's head Women’s Soccer coach as of the ensuing January 5th. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the University’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 one-year APR score based on attainment of the following levels:

Team APR Ranking	Maximum Incentive Pay
970-979	\$ 700.00
980-989	\$ 800.00

**BUSINESS AFFAIRS AND HUMAN RESOURCES**

**JUNE 18, 2015**

**ATTACHMENT 1**

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990-999	\$ 900.00
1,000	\$ 1,000.00

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 Team achieves a single-year (two semesters) combined average GPA of 3.20 or higher, and if Coach continues to be employed as University head Women's Soccer coach as of the ensuing January 5th, Coach shall be eligible to receive supplemental compensation in the amount of \$1,500. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5 Each year the Team advances in the NCAA Women's Soccer Tournament, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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.

Round 1	64 Teams	1 <sup>st</sup> win	\$3,000.00
Round 2	32 Teams	2 <sup>nd</sup> win	\$6,000.00
Round 3	16 Teams	3 <sup>rd</sup> win	\$9,000.00
Round 4	8 Teams	4 <sup>th</sup> win	\$12,000.00
Round 5	4 Teams	5 <sup>th</sup> win	\$15,000.00
Round 6	2 Teams	6 <sup>th</sup> win	\$18,000.00

Possible national championship winner computation bonus total: \$63,000.00

3.2.6 Each year the Coach is named as the Conference Coach of the Year, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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.

3.2.7 Coach agrees that the University has the exclusive right to operate youth Women's Soccer camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's women's basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer women's soccer camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of her employment as head Women's Soccer coach at the University, or, at Coach's option, to be exercised no later than May 1 of each year, direct

those net revenues as an enhancement to the Women's Soccer program budget at the University. This amount shall be paid within 30 days after all camp bills have been paid.

3.2.8 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has entered or may enter into agreements with suppliers to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with the supplier concerning product design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the supplier, or give a lecture at an event sponsored in whole or in part by the supplier, 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 her duties and obligations as head Women's Soccer coach. In order to avoid entering into an agreement with a competitor of the supplier, 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 those produced by the University's supplier, 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 Trustees of the Idaho State University Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) the ISU Policies and 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 her health insurance plan and group life insurance as if she 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 her by University after the date she obtains other employment, to which she is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to her 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 her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

5.3.2 The Coach, for her 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 her convenience she 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 25, 2017, the sum of \$25,000.00; (b) if the Agreement is terminated between January 26, 2017 and January 25, 2018 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 26, 2018 and the end of the 2018 soccer season, the sum of \$10,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both 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, she shall forfeit to the extent permitted by law her 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 she 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 Idaho State University Governing Policies and Procedures and Rule Manual, and the ISU Policies and Procedures Manual.

5.8 Coach agrees that in the event of a termination of this Agreement pursuant to this Article 5, the University may, at its sole option, require Coach to take any or all of her accrued unused vacation days, if any, prior to the effective date of the termination.

## 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 she 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 8310

Pocatello, ID 83209-8310

the Coach: Allison Gibson  
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 she 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

\_\_\_\_\_  
Allison Gibson    Date

~~(MODEL ATHLETICS CONTRACT)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and Allison Gibson (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.68 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three ( 3 ) years, commencing on January 21, ~~2013~~2016 and terminating, without further notice to Coach, on January ~~21, 2016~~20, 2019 unless sooner terminated in accordance with other provisions of this Agreement.

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

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 \$~~60,278~~65,894.00 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 regular season conference champion or co-champion, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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 ~~either~~ wins the Big Sky ~~Conference~~conference tournament or obtains an NCAA Women's Soccer Tournament berth, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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.

3.2.3. Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$~~51,000-00~~ based on the academic achievement and behavior of Team members, if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director: and approved by the University'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 ~~four~~one-year APR national rankings~~score~~ based on attainment of the following levels:

Team APR Ranking _____	_____	Maximum Incentive
Pay		
50%-59%	\$	3,000.00
60%-69%	\$	3,500.00
70%-79%	\$	4,000.00
80%-89%	\$	4,500.00
90%-100%	\$	5,000.00
970-979	\$	700.00
980-989	\$	800.00
990-999	\$	900.00
1,000	\$	1,000.00

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

3.2.4 Each year Team achieves a single-year (two semesters) combined average GPA of 3.20 or higher, and if Coach continues to be employed as University head Women's Soccer coach as of the ensuing January 5th, Coach shall be eligible to receive supplemental compensation in the amount of \$1,500. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5 Each year the Team advances in the NCAA Women's Soccer Tournament, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January ~~1st~~5th, 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.

Round 1	64 Teams	1 <sup>st</sup> win	\$3,000.00
Round 2	32 Teams	2 <sup>nd</sup> win	\$6,000.00
Round 3	16 Teams	3 <sup>rd</sup> win	\$9,000.00
Round 4	8 Teams	4 <sup>th</sup> win	\$12,000.00
Round 5	4 Teams	5 <sup>th</sup> win	\$15,000.00
Round 6	2 Teams	6 <sup>th</sup> win	\$18,000.00

Possible national championship winner computation bonus total: \$63,000.00

3.2.56 Each year the Coach is named as the Conference Coach of the Year, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY)~~ 7 Coach agrees that the University has the exclusive right to operate youth Women's Soccer camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's women's basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer women's soccer camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of her employment as head Women's Soccer coach at the University, or, at Coach's option, to be exercised no later than May 1 of each year, direct those net revenues as an enhancement to the Women's Soccer program budget at the University. This amount shall be paid within 30 days after all camp bills have been paid.

3.2.78 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 or may enter into an agreement/agreements with Nike suppliers 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~~ the supplier concerning ~~a Nike product's~~ product design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Nike the supplier, or give a lecture at an event sponsored in whole or in part by Nike the supplier, 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 her duties and obligations as head Women's Soccer coach. In order to avoid entering into an agreement with a competitor of Nike the supplier, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including Nike those produced by the University's supplier, 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 Trustees of the Idaho State University Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) the ISU Policies and 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 her health insurance plan and group life insurance as if she 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 her by University after the date she obtains other employment, to which she is not entitled under this provision.

5.2.3 The parties have both been represented by or had the opportunity to consult with legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to her 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 her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

5.3.2 The Coach, for her 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 her convenience she 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 25, ~~2014~~2017, the sum of \$25,000.00; (b) if the Agreement is terminated between January 26, ~~2014~~2017 and January 25, ~~2015~~2018 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 26, ~~2015~~2018 and ~~January 25, 2016 inclusive~~the end of the 2018 soccer season, the sum of \$10,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both 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, she shall forfeit to the extent permitted by law her 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 she 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 Idaho State University Governing Policies and Procedures and Rule Manual, and the ISU Policies and Procedures Manual.

5.8 Coach agrees that in the event of a termination of this Agreement pursuant to this Article 5, the University may, at its sole option, require Coach to take any or all of her accrued unused vacation days, if any, prior to the effective date of the termination.

**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 she 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 8310  
Pocatello, ID 83209-8310

the Coach:

Allison Gibson  
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 she 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

\_\_\_\_\_  
Allison Gibson

\_\_\_\_\_  
Date

~~Approved by the Board of Trustees on the 5th day of March, 2013.~~

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~~(MODEL ATHLETICS CONTRACT)~~

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between \_\_\_\_\_~~(Idaho State~~ University (~~College~~);University) and \_\_\_\_\_Allison Gibson (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)'s~~University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~(Depending on supplemental pay provisions used)~~ 3.2.8 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ (~~—three (3)~~) years, commencing on \_\_\_\_\_January 21, 2016 and terminating, without further notice to Coach, on \_\_\_\_\_January 20, 2019 unless sooner terminated in accordance with other provisions of this Agreement.

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

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~\_\_\_\_\_~~ \$65,894.00 per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and ~~Chief executive officer~~ President and approved by the ~~University (College)'s~~ University's Board of ~~(Regents or Trustees)~~ \_\_\_\_\_;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)'s~~ University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the regular season conference champion or co-champion ~~and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs)~~, and if Coach continues to be employed as ~~University (College)'s~~ University's head ~~(Sport) Women's Soccer~~ coach as of the ensuing ~~July 1st~~ January 5th, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~(amount or computation) of two week's pay (2/52 x Annual Salary) of~~ Coach's Annual Salary during the fiscal year in which the championship ~~and (bowl or other post season) eligibility are~~ is achieved. The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.2~~

~~3.2.2.~~ Each year the Team ~~is ranked in~~ wins the ~~top 25 in the (national rankings of sport's division) Big Sky conference tournament or obtains an NCAA Women's Soccer Tournament berth~~, and if Coach continues to be employed as ~~University (College)'s~~ University's head ~~(Sport) Women's Soccer~~ coach as of the ensuing July

~~1st January 5th~~, the University ~~(College)~~ shall pay ~~to~~ Coach supplemental compensation in an amount equal to ~~(amount or computation)~~ of Coach's ~~two week's pay (2/52 x Annual Salary in effect on)~~ of Coach's Annual Salary during the fiscal year in which the ~~date of the final poll~~ ~~post-season participation~~ are achieved. The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.3. 3.2.3~~—Each year Coach shall be eligible to receive supplemental compensation in an amount up to ~~(amount or computation)~~ \$1,000 based on the academic achievement and behavior of Team members, ~~if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th~~. 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~~ President in consultation with the Director, ~~and approved by the University's Board of Trustees~~. The determination shall be based on the following factors: the ~~Academic Progress Rate set by the Board, grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students;~~ the conduct of Team members on the University ~~(College)~~ campus, at authorized University ~~(College)~~ activities, in the community, and elsewhere, ~~and the Team's one-year APR score based on attainment of the following levels:~~

<u>Team APR Ranking</u>	<u>Maximum Incentive Pay</u>
<u>970-979</u>	<u>\$ 700.00</u>
<u>980-989</u>	<u>\$ 800.00</u>
<u>990-999</u>	<u>\$ 900.00</u>
<u>1,000</u>	<u>\$ 1,000.00</u>

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

~~3.2.4~~—~~Each year Team achieves a single-year (two semesters) combined average GPA of 3.20 or higher, and if Coach continues to be employed as University head Women's Soccer coach as of the ensuing January 5th, 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 amount of \$1,500. The determination of ~~whether Coach will receive~~ University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation ~~and the timing of the payment(s) shall be at the discretion of the Chief executive officer in consultation with the Director.~~

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

~~3.2.6 **(SUMMER CAMP—OPERATED BY UNIVERSITY (COLLEGE))** Coach agrees that the University (College)~~

~~3.2.5 Each year the Team advances in the NCAA Women's Soccer Tournament, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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.~~

<u>Round 1</u>	<u>64 Teams</u>	<u>1<sup>st</sup> win</u>	<u>\$3,000.00</u>
<u>Round 2</u>	<u>32 Teams</u>	<u>2<sup>nd</sup> win</u>	<u>\$6,000.00</u>
<u>Round 3</u>	<u>16 Teams</u>	<u>3<sup>rd</sup> win</u>	<u>\$9,000.00</u>
<u>Round 4</u>	<u>8 Teams</u>	<u>4<sup>th</sup> win</u>	<u>\$12,000.00</u>
<u>Round 5</u>	<u>4 Teams</u>	<u>5<sup>th</sup> win</u>	<u>\$15,000.00</u>
<u>Round 6</u>	<u>2 Teams</u>	<u>6<sup>th</sup> win</u>	<u>\$18,000.00</u>

~~Possible national championship winner computation bonus total: \$63,000.00~~

~~3.2.6 Each year the Coach is named as the Conference Coach of the Year, and if Coach continues to be employed as University's head Women's Soccer coach as of the ensuing January 5th, 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.~~

3.2.7 ~~Coach agrees that the University~~ has the exclusive right to operate youth ~~(Sport) Women's Soccer~~ camps on its campus using University ~~(College)~~ facilities. The University ~~(College)~~ shall allow Coach the opportunity to earn supplemental compensation by assisting with the ~~University (College)'s~~ ~~University's~~ camps in Coach's capacity as a University ~~(College)~~ employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the ~~University (College)'s football~~ ~~University's women's basketball~~ camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the ~~University (College)'s~~ ~~University's~~ summer ~~football~~ ~~women's soccer~~ camps, ~~the University (College)~~ shall pay Coach ~~(amount)~~ ~~any net revenues resulting from the camp~~ per year as supplemental compensation during each year of ~~his~~ ~~her~~ employment as head ~~(Sport) Women's Soccer~~ coach at the University ~~(College)~~, ~~or, at Coach's option, to be exercised no later than May 1 of each year, direct those net revenues as an enhancement to the Women's Soccer program budget at the University.~~ This amount shall be paid ~~(terms of payment)~~ ~~within 30 days after all camp bills have been paid.~~

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

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

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

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

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

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

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

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University ~~(College)~~,<sup>2</sup> the ~~University (College)'s~~ University's governing board, the conference, and the NCAA ~~(or NAIA)~~;<sup>2</sup> supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University (College)'s~~ 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 ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of ~~Regents Trustees~~ of the ~~Idaho State University of Idaho~~ Governing Policies and Procedures and Rule Manual; (b) ~~University (College)'s~~ University's Handbook; (c) ~~University (College)'s Administrative~~ the ISU Policies and Procedures Manual; (d) the policies of the Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~—(Sport) conference~~ Big Sky Conference of which the University ~~(College)~~ is a member.

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

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

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

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

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

**ARTICLE 5**

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

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

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

University ~~(College)~~, the University (College)'s University's governing board, the conference, or the NCAA ~~(NAIA)~~;

- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University (College)'s University's governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University (College)'s University's governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

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

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

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

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his/her convenience heshe shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: \_\_\_\_\_; (a) if the Agreement is terminated on or before January 25, 2017, the sum of \$25,000.00; (b) if the Agreement is terminated between January 26, 2017 and January 25, 2018 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 26, 2018 and the end of the 2018 soccer season, the sum of \$10,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

5.8 Coach agrees that in the event of a termination of this Agreement pursuant to this Article 5, the University may, at its sole option, require Coach to take any or all of her accrued unused vacation days, if any, prior to the effective date of the termination.

ARTICLE 6

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

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

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

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

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

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

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

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the

reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

the University ~~(College)~~: \_\_\_\_\_ Director of Athletics

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Jeffrey K. Tingey  
921 S. 8<sup>th</sup> Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: \_\_\_\_\_ ~~Chief executive officer~~ President  
\_\_\_\_\_  
\_\_\_\_\_  
Arthur Vailas  
921 S. 8<sup>th</sup> Ave. Stop 8310

\_\_\_\_\_  
Pocatello, ID 83209-8310

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

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY (COLLEGE)  
COACH

\_\_\_\_\_, ~~Chief executive officer~~ Arthur C. Vailas, President Date \_\_\_\_\_  
\_\_\_\_\_Allison Gibson Date \_\_\_\_\_

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

**IDAHO STATE UNIVERSITY**

Women's Soccer APR History and National Percentile Rank

**SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES**

	2009-10	2010-11	2011-12	2012-13
<b>Women's Soccer</b>	976	979	968	1000
<i>National % Rank by Sport</i>	<i>30-40</i>	<i>10-20</i>	<i>20-30</i>	<i>30-40</i>

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

**MULTI-YEAR (4-Year Rolling Average)**

<b>Women's Soccer</b>	975	967	972	981
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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 18, 2015**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Multi-year contract for Women's Volleyball Team Head Coach.

**REFERENCE**

August 2005	The Idaho State Board of Education (Board) approved an employment agreement with Debbie Buchanan, Head Women's Volleyball Coach
April 2010	The Board approved a new 5-year employment agreement with Coach Buchanan

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**DISCUSSION**

The University of Idaho (UI) requests Regents' approval to extend the employment of the Women's Volleyball Team Head Coach, Debbie Buchanan. Attachment 1 to these materials shows the specific changes in terms from the current contract.

The UI is submitting the attached multi-year contract (Attachment 2) to the Regents for approval. The primary compensation terms of the agreement are set forth below. The entire contract and a redlined version showing changes from the Board model contract are contained in Attachments 2 and 3 respectively.

Coach's current contract approved on April 22, 2010 has an expiration date of July 31, 2015 and the proposed contract will extend for five additional years. Attachment 4 sets out the accomplishments of Coach Buchanan in support of an extended term of the contract.

**IMPACT**

The extended term of the employment contract runs through July 31, 2020.

The annual base salary is \$88,129.60 a \$5,096 increase over the previous contract. Coach is eligible for university-wide employee compensation increases.

Annual media payments are \$15,000.

Coach is entitled to receive the following incentive/supplemental compensation:

1. Conference champions or co-champion or team becomes eligible for the NCAA tournament – 1/13<sup>th</sup> of annual salary.
2. Team ranked in the top 25 in any published national final poll – 1/13<sup>th</sup> of annual salary.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 18, 2015**

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3. Conference Coach of the Year = \$4,000.
4. Academic achievement and behavior of team based on APR national score exceeding 960 - \$1,500. Additionally, if the team four (4) year APR is in the 95<sup>th</sup> percentile - \$5,000.

Maximum potential annual compensation (base salary, media payment and estimated maximum potential) is \$127,188.

Coach may participate in youth volleyball camps as follows:

- Remaining income from any university operated camp, less \$500, after all claims, insurance, and expenses of camp have been paid, OR
- In the event university elects not to operate a camp, coach may do so within Board guidelines for such camps.

**ATTACHMENTS**

Attachment 1 Employment Contract – clean	Page 5
Attachment 2 Material revisions from 2010 contract	Page 19
Attachment 3 Employment Contract comparison to Model Contract	Page 23
Attachment 4 Coach Buchanan accomplishment summary	Page 41
Attachment 5 APR Data	Page 42

**STAFF COMMENTS AND RECOMMENDATIONS**

The academic incentive payment is \$1,500, and an additional \$5,000 can be earned if the team four (4) year APR is in the 95<sup>th</sup> percentile. These combined amounts still fall below the athletic incentive pay for a conference championship. The Board has historically looked favorably on academic incentives in excess of a conference championship. It should also be noted that for the last five (5) years the annual APR rating has exceeded 960, so the academic achievement incentive is not much of a stretch goal for the coach.

If the coach terminates early without cause, she would be required to pay liquidated damages as follows:

- Year 1 (August 1, 2015 – August 1, 2016) = \$25,000
- Year 2 (August 2, 2016 – August 1, 2017) = \$20,000
- Year 3 (August 2, 2017 – August 1, 2018) = \$15,000
- Year 4 (August 2, 2018 – August 1, 2019) = \$10,000

The proposed employment agreement is in substantial conformance with the Board's model contract.

The Athletic Committee will provide its recommendation to the Board at the June Board meeting.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**JUNE 18, 2015**

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**BOARD ACTION**

I move to approve the University of Idaho's multi-year employment contract with Debbie Buchanan, Women's Basketball Team Head Coach for a term effective August 1, 2015 and extending through July 31, 2020, in substantial conformance to the form submitted to the Board in Attachment 2.

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

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**EMPLOYMENT AGREEMENT (Review Draft)**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Debbie Buchanan (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 volleyball team. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

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

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of five ( 5 ) years, commencing on August 1, 2015 and terminating, without further notice to Coach, on July 31, 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 Regents. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

**ARTICLE 3**

3.1 Regular Compensation.

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

- a) An annual salary of \$88,129.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, except that in accordance with RGP II.H.6.b.ii, University and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director; 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 also becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary during the fiscal year in which the championship and NCAA tournament eligibility are 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 is ranked in the top 25 in any published national final poll of intercollegiate volleyball teams and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary in effect on the date of the final poll. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3 Coach shall be eligible to receive supplemental compensation each year based on the academic achievement and behavior of Team members. If the Team's annual Academic Progress Rate ("APR") exceeds 960, and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$1,500. If the Team's cumulative four year APR is in the 95th percentile of national APR calculations for women's volleyball and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. Any such supplemental compensation paid to Coach shall be accompanied with a justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of Regents as a document available to the

public under the Idaho Public Records Act. The determination shall also be based on the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere.

3.2.4 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head women's volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$4,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.5 The Coach shall receive the sum of \$15,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Each year, one-half of this sum shall be paid prior to the first regular season volleyball game, and one-half shall be paid no later than two weeks after the last regular season volleyball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and is contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to her duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide her services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Coach agrees that the University has the exclusive right to operate youth volleyball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth volleyball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's youth volleyball camps, the University shall pay Coach the remaining income from the youth volleyball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth volleyball camps for a particular period of time during the term of this

Agreement, then, during such time period, Coach shall be permitted to operate youth volleyball camps on the University's campus and using its facilities under the following terms and conditions:

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

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

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

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

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

#### ARTICLE 4

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

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

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

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

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

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

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

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

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not 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, including but not limited to the University's Faculty-Staff Handbook, Policies and Procedures of the Regents of the University, and the University's Administrative Procedures Manual.

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

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

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

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

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

## 5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall 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 deductions according to law. In addition, Coach will be entitled to continue her health insurance plan and group life insurance as if she remained a University employee until the term of this Agreement ends or until Coach obtains any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair

value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to her by University after the date she obtains other employment, to which she is not entitled under this provision.

5.2.3 University has been represented by legal counsel, and coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to her 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 her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

5.3.2 The Coach, for her 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 her convenience she 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 August 1, 2016, the sum of \$25,000.00; (b) if the Agreement is terminated between August 2, 2016 and August 1, 2017 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between August 2, 2017 and August 1, 2018 inclusive, the sum of \$15,000.00; (d) if the Agreement is terminated between August 2, 2018 and August 1, 2019 inclusive, the sum of \$10,000; (e) if the Agreement is terminated between August 2, 2019 and July 31, 2020 inclusive, the sum of \$0. The applicable sum shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 University has been represented by legal counsel, and Coach has either been

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

5.3.5 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, she shall forfeit her right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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 she is entitled by virtue of employment with the University.

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

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

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

#### ARTICLE 6

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

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

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

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

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

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

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

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

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

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

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

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

the Coach:                              Debbie Buchanan  
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 her official University duties.

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

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

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

UNIVERSITY

COACH

\_\_\_\_\_  
Chuck Staben President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Debbie Buchanan,

\_\_\_\_\_  
Date

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

Buchanan Renewal Contract  
Material Changes in Terms from 2010 Approved Contract

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five ( 5 ) years, commencing on August 1, ~~2010~~2015 and terminating, without further notice to Coach, on July 31, ~~2015~~,2020, unless sooner terminated in accordance with other provisions of this Agreement.

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 ~~\$83033.60~~88,129.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, except that in accordance with RGP ILH.6.b.ii, University and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director; and

## ARTICLE 3

3.2.3 ~~Each year~~ Coach shall be eligible to receive supplemental compensation each year based on the academic achievement and behavior of Team members ~~if the Team's cumulative APR ranks nationally within the applicable sport above the 50th percentile as follows:~~

~~National rank within sport~~

~~50th – 60th % = \$2,000~~

~~60th – 70th % = \$3,000~~

~~70th – 80th % = \$4,000~~

~~80th % or above = \$5,000. If the Team's annual Academic Progress Rate ("APR") exceeds 960, and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$1,500. If the Team's cumulative four year APR is in the 95th percentile of national APR calculations for women's volleyball and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. Any such supplemental compensation paid to Coach shall be accompanied with a justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act. The determination shall also be based on the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere.~~

## ARTICLE 5

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 her convenience she 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 August 1, ~~2011, 2016~~, the sum of ~~\$5,000.00~~ 25,000.00; (b) if the Agreement is terminated between August 2, ~~2011~~ 2016 and August 1, ~~2012~~ 2017 inclusive, the sum of ~~\$4,000.00~~ 20,000.00; (c) if the Agreement is terminated between August 2, ~~2012~~ 2017 and August 1, ~~2013~~ 2018 inclusive, the sum of ~~\$3,000.00~~ 15,000.00; (d) if the Agreement is terminated between August 2, ~~2013~~ 2018 and August 1, ~~2014~~ 2019 inclusive, the sum of ~~\$2,000.~~ 10,000.; (e) ~~if the Agreement is terminated between August 2, 2019 and July 31, 2020 inclusive, the sum of~~

§0. The applicable sum 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.

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~~(MODEL ATHLETICS CONTRACT 2014-06)~~

EMPLOYMENT AGREEMENT (Review Draft)

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

ARTICLE 1

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

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~\_\_\_\_\_~~ five (5) years, commencing on ~~\_\_\_\_\_~~ August 1, 2015 and terminating, without further notice to Coach, on ~~\_\_\_\_\_~~ July 31, 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 ~~(College)~~ and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University ~~(College)~~'s Board of ~~(Regents or Trustees)~~. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University ~~(College)~~.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~\_\_\_\_\_~~ 88,129.60 per year, payable in biweekly installments in accordance with normal University ~~(College) procedures, and such salary increases as may be determined appropriate~~ procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President ~~and approved by the University (College)'s Board of (Regents or Trustees) \_\_\_\_\_~~;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees, except that in accordance with RGP II.H.6.b.ii, University and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director; and
- c) The opportunity to receive such employee benefits as the University ~~(College)~~'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion and also becomes eligible for ~~a (bowl game) the NCAA tournament~~ pursuant to NCAA Division I guidelines ~~or post-season tournament or post-season playoffs~~, and if Coach continues to be employed as University ~~(College)~~'s head ~~(Sport) volleyball~~ coach as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~(amount or computation) \_\_\_\_\_~~ one-thirteenth (1/13) of Coach's Annual Salary during the fiscal year in which the championship and ~~(bowl or other post-season) NCAA tournament~~ 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 (any published national rankings, such as final ESPN/USA Today coaches poll of Division IA football; intercollegiate volleyball teams)~~, and if Coach continues to be employed as University ~~(College)~~'s head ~~(Sport) volleyball~~ coach as of the ensuing July 1st, the University ~~(College)~~ shall pay Coach supplemental compensation in an amount equal to ~~(amount or computation) one-thirteenth (1/13)~~ 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) each year~~ based on the academic achievement and behavior of Team members. ~~The determination of whether Coach will receive such~~ If the Team's annual Academic Progress Rate ("APR") exceeds 960, and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. ~~of \$1,500. If the Team's cumulative four year APR is in the 95th percentile of national APR calculations for women's volleyball and if Coach continues to be employed as University's head volleyball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. 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. The determination shall also be based on the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere.~~

3.2.4 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head women's volleyball coach as of the ensuing July 1st, Coach shall be eligible to receive supplemental compensation ~~in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive~~ of \$4,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation ~~and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director.~~

3.2.5 The Coach shall receive the sum of ~~-(amount or computation)-~~ \$15,000 from the University ~~(College)~~ or the University ~~(College)~~'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). ~~Coach~~ Each year, one-half of this sum shall be paid prior to the first regular season volleyball game, and one-half shall be paid no later than two weeks after the last regular season volleyball game or post season match, whichever occurs later. Coach's right to receive the second half of such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. ~~This sum shall be paid (terms or conditions of payment) \_\_\_\_\_.~~ and is contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to ~~his~~ her duties as an employee of University ~~(College)~~ are the property of the University ~~(College)~~. The University ~~(College)~~ shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University ~~(College)~~ in order for the Programs to be successful and agrees to provide ~~his~~ her services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University ~~(College)~~'s designated media outlets.

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

income from the youth volleyball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

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

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

and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.

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

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

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

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

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

#### ARTICLE 4

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

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

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

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

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

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

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

~~4.34.3.~~ NCAA ~~(or NAIA)~~ Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the University ~~(College)~~'s President for all athletically related income and benefits from sources outside the University ~~(College)~~ and shall ~~report~~ provide a written detailed account of the source and amount of all such income and benefits to the University ~~(College)~~'s President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University ~~(College)~~-work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. Sources of such income include, but are not limited to, the following:

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

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

~~(College)~~, the University ~~(College)~~'s governing board, the conference, or the NCAA ~~(or NAIA)~~.

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

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

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

## ARTICLE 5

5.1 Termination of Coach for Cause. The University ~~(College)~~ may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations, including but not limited to the University's Faculty-Staff Handbook, Policies and Procedures of the Regents of the University, and the University's Administrative Procedures Manual.

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

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

University ~~(College)~~'s governing board, the conference or the NCAA-~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;

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

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

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

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

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

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

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

5.2.3 ~~The parties have both~~ University has been represented by legal counsel, and coach has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations ~~and~~. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University ~~(College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any  
time, all obligations of the University-~~(College)~~ shall cease as of the effective date of the  
termination. If the Coach terminates this Agreement for ~~his~~her convenience ~~he~~she shall  
pay to the University-~~(College)~~, as liquidated damages and not a penalty, ~~the following~~  
~~sum: \_\_\_\_\_~~. ~~The liquidated damages for the breach of this~~  
~~Agreement the following sum: (a) if the Agreement is terminated on or before August 1,~~  
~~2016, the sum of \$25,000.00; (b) if the Agreement is terminated between August 2, 2016~~  
~~and August 1, 2017 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated~~  
~~between August 2, 2017 and August 1, 2018 inclusive, the sum of \$15,000.00; (d) if the~~  
~~Agreement is terminated between August 2, 2018 and August 1, 2019 inclusive, the sum~~  
~~of \$10,000; (e) if the Agreement is terminated between August 2, 2019 and July 31, 2020~~  
~~inclusive, the sum of \$0. The applicable sum shall be due and payable within twenty (20)~~  
days of the effective date of the termination, and any unpaid amount shall bear simple  
interest at a rate eight (8) percent per annum until paid.

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

Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University ~~(College)~~.

5.3.5 Except as ~~provide~~provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, ~~heshe~~ shall forfeit ~~to the extent permitted by law his~~her right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

~~5.75.6~~ No Liability. The University ~~(College)~~ shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

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

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

## ARTICLE 6

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

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

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

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

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

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

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

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

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

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

the University ~~(College)~~:

Director of Athletics

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

with a copy to:

President

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

the Coach:

Debbie Buchanan

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

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

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

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

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

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

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

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

UNIVERSITY-~~(COLLEGE)~~

COACH

\_\_\_\_\_  
Chuck Staben President Date

\_\_\_\_\_  
Debbie Buchanan Date

Approved by the Board of ~~-(Regents or Trustees)-~~ on the \_\_\_\_ day of \_\_\_\_\_  
, 2010.2015.

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**Debbie Buchanan**  
**Accomplishments as University of Idaho Women's Volleyball Head Coach**

Coaching Accolades

1. Longest tenured volleyball coach in UI history – starting 16<sup>th</sup> season.
2. All-time winningest UI volleyball coach – 230-213.
3. 2011 WAC Coach of the Year.
4. 2011 North Hall of Fame Idaho College Coach of the Year.
5. All of her teams have finished above .500 for conference games since 2002.
6. She has a .667 home record in her career.
7. Multi-year APR rate of 965.

Student-athlete recognition

1. One All American.
2. 2 All Region selections.
3. 35 All-Conference honors.
4. 12 all freshman selections.
5. 21 conference players of the week.
6. American Volleyball Coaches Association recognition as team with above 3.3 GPA for last three years 2012, 13, 14.

University of Idaho – Women’s Volleyball APR

	2009-10	2010-11	2011-12	2012-13	2013-14
Single Year Rate	1000	1000	960	926	979
Multi Year Rate	974	1000	990	970	965
Percentile within sport	30 <sup>th</sup> -40 <sup>th</sup>	90th-100th	60th-70th	10th-20th	Not Available
National Average	978	980	980	982	Not Available