

BUSINESS AFFAIRS AND HUMAN RESOURCES COMMITTEE
JUNE 23, 2015

BOISE STATE UNIVERSITY

SUBJECT

Contract for Athletic Director

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a contract for a new Athletic Director. The current Athletic Director, Mark Coyle, announced his resignation on June 19, 2015 to be effective July 2, 2015. To maintain stability and continuity in the program, the University has recruited Curt Apsey to be the new Athletic Director.

Curt Apsey spent 16 years in the Athletics Department at Boise State as the senior associate athletic director. His responsibilities included management of external fundraising, media relations/sports information, ticketing, and marketing/promotions as well as providing direct supervision of football, women's soccer and men's and women's golf. He headed the capital campaign in athletics that resulted in improved and expanded facilities such as the Caven-Williams Indoor Sports Complex, the Arguinchona Basketball Complex, the Stueckle Sky Center and the Bleymaier Football Center. Curt was appointed interim athletic director from September 2011 until January 2012. He returned to his role as the senior associate athletic director in January 2012, where he remained until he was named athletic director at Carroll College in October 2014. Prior to joining Boise State, he served as an assistant AD with both CSU San Bernardino and CSU Bakersfield. He holds a bachelor's degree from California Polytechnic, where he also played and coached soccer.

The term of the proposed agreement is for five years. The salary and incentive pay amounts are the same as in Mark Coyle's contract. The base salary is \$331,500.

Incentives are as follows:

Academic incentive pay is based on Department-wide annual APR scores and may be earned as follows:

APR Score	Incentive Pay
970-979	\$10,000
980-989	\$15,000
990-999	\$20,000
1000	\$25,000

Athletic incentive pay shall be based on:

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National Association of Directors of Collegiate Athletics (NACDA)
Director's Cup National Sports Award final year end rankings:

<u>Department Rank</u>	<u>Incentive Pay</u>
Top 25	\$15,000
Top 40	\$10,000
Top 60	\$5,000

For Football Bowl Game Appearances:

CPF New Year's Six Game	\$30,000
Non CPF bowl game	\$20,000

Additional Incentive Compensation: The following are cumulative. However, the total annual payment of the following has an annual maximum cap of \$50,000.

- (a) If the single semester grade point average for the student-athletes collectively in a given semester is 3.0 or higher, the Athletic Director shall receive \$7,500 per semester, not to exceed \$15,000 per academic year. This payment may be earned for the fall and spring semesters only.
- (b) If the Football team wins or ties for the conference divisional championship, the Athletic Director shall receive \$7,500.
- (c) If the Football teams wins a conference football championship game, the Athletic Director shall receive \$10,000
- (d) If the men's basketball team either reaches 18 regular season wins or reaches postseason play, the Athletic Director shall receive \$10,000.
- (e) If the women's soccer team, the women's volleyball team, the women's basketball team, the women's gymnastics team, or the women's softball team reaches postseason play, the Athletic Director shall receive \$7,500. The maximum payment per year is \$7,500 whether one or all five teams reach postseason competition.

In the event the Mr. Apsey terminates the agreement for convenience the following liquidated damages shall be due:

- If the agreement is terminated prior to June 30, 2017, the sum of \$200,000;
- If the agreement is terminated after to July 1, 2017, but prior to June 30 2018, the sum of \$100,000; and
- If the agreement is terminated after to July 1, 2018, there will be no liquidated damages due.

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IMPACT

The contract is similar to the standard issued by Boise State University for its Athletic Directors and has the same base and incentive pay terms.

ATTACHMENTS

Attachment 1 – Proposed Contract (Clean	Page 5
Attachment 2 – Proposed Contract (Redline)	Page 19

STAFF COMMENTS AND RECOMMENDATIONS

Staff makes no recommendation pending review by the Athletics Committee.

BOARD ACTION

A motion to approve the request by Boise State University to enter into a five (5) years employment agreement with Curt Apsey, Athletic Director, commencing on August 1, 2015 and terminating on July 31, 2020, at a salary of \$331,500 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 (this “Agreement”) is entered into by and between Boise State University (the “University”), and Curt Apsey (“Athletic Director”) on the 1st day of August, 2015.

ARTICLE 1

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

1.2 Reporting Relationship. Athletic Director shall report and be responsible directly to the University’s President (the “President”). Athletic Director shall abide by the instructions of the President and shall confer with the President as necessary on administrative and technical matters.

1.3 Duties. Athletic Director shall manage and supervise the Program and shall perform such other duties as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, upon written approval by Athletic Director, to reassign Athletic Director to duties at the University other than as Athletic Director, provided that Athletic Director’s compensation and benefits shall not be affected by such reassignment, except that the opportunity to earn supplemental compensation and incentives as provided in section 3.1.3 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 either party, on July 31, 2020 (the “Term”) unless terminated sooner 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 Athletic Director, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the State Board of Education acting as the Board of Trustees of Boise State University. This Agreement in no way grants to Athletic Director a claim to tenure in employment, nor shall Athletic Director’s service pursuant to this Agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Compensation.

3.1.1 In consideration of Athletic Director’s services and satisfactory performance of this Agreement, the University shall provide to Athletic Director compensation as set forth herein. Accompanying such compensation shall be:

- a) Athletic Director shall receive such employee benefits as the University provides generally to non-faculty professional staff employees; and
- b) Athletic Director shall receive such employee benefits as the University’s Department of Athletics (the “Department”) provides generally to its employees of a comparable level. Athletic Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.1.2 Base Salary: The University shall pay Athletic Director a Base Salary of \$331,500 per year (prorated for partial years) of this Agreement. Additionally, the Base Salary may increase annually (not to exceed 10% annually) at the sole discretion of the President after determination by the President that the annual goals the President sets for Athletic Director are successfully achieved. Provided, however, that any such increases shall be subject to the approval of the University’s Board of Trustees.

3.1.3. In addition to the Base Salary, the University shall pay Athletic Director Incentive Compensation as set forth below. Such payments shall be made within forty-five (45) days of the occurrence of the event (or in the case of the grade point average, after all finalized grades are posted) where the incentive criteria was met and Athletic Director must remain continuously employed through the payment date to receive such payments.

- (a) For Overall Department Athletic Performance: For the National Association of Directors of Collegiate Athletics (NACDA) Director’s Cup National Sports Award final year end rankings:

<u>Department Rank</u>	<u>Incentive Pay</u>
Top 25	\$15,000
Top 40	\$10,000
Top 60	\$5,000

- (b) For Academic Performance: As long as the annual departmental average National Collegiate Athletic Association (“NCAA”) Academic Progress Rate (“APR”) scores meet the following levels, the following applicable incentive payments will be paid by the University:

<u>Department APR Score</u>	<u>Incentive pay</u>
970-979	\$10,000
980-989	\$15,000
990-999	\$20,000
1000	\$25,000

- (c) For Football Bowl Game Appearances: If the University men’s football team plays in an NCAA approved post-season bowl game, the following incentive payments will be made by the University:

College Football Playoff (CFP) New Year’s Six game = \$30,000
 Non CFP bowl game = \$20,000

- (d) Additional Incentive Compensation

1. If the single semester grade point average for the student-athletes collectively in a given semester is 3.0 or higher, Athletic Director shall receive \$7,500 per semester, not to exceed \$15,000 per academic year. This payment may be earned for the fall and spring semesters only, summer or intersession times are not considered except when intersession classes are transcribed as part of the fall or spring semester.
2. If the Football team wins or ties for the conference divisional championship, Athletic Director shall receive \$7,500.
3. If the Football teams wins a conference football championship game, Athletic Director shall receive \$10,000
4. If the men’s basketball team either reaches 18 regular season wins or reaches postseason play, Athletic Director shall receive \$10,000.
5. If the women’s soccer team, the women’s volleyball team, the women’s basketball team, the women’s gymnastics team, or the women’s softball team reaches postseason play, Athletic Director shall receive \$7,500. The maximum payment per year is \$7,500 whether one or all five teams reach postseason competition.

- (e) Each of the above incentives are intended to reward the achievement of each individual occurrence and are cumulative, provided that the cumulative total of payments made pursuant to section 3.1.3(d).1 through 3.1.3(d).5 shall in no event exceed \$50,000 annually.

3.1.4 The University annually shall provide or make arrangements through the athletic department trade-out program one (1) full-size automobile for business and personal use by Athletic Director or members of his immediate family. Athletic Director shall supply gasoline for personal use. All other costs of operating the vehicles shall be paid by the University.

3.1.5 The University shall provide Athletic Director with one full country club membership and one social country club membership at all times during the Term of this Agreement.

3.2 Media. Agreements requiring Athletic Director to participate in media programs related to his 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 products and all parties desiring public appearances by Athletic Director. Athletic Director agrees to cooperate with the University in order for the programs to be successful and agrees to provide his services to and perform on the programs and to cooperate in their production, broadcasting and telecasting. It is understood that neither Athletic Director nor any assistant Department employees shall appear without prior written approval of the President on any competing radio or television program (including but not limited to a 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 President, Athletic Director shall not appear in any commercial endorsements.

3.2.1 Athletic Director 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 Athletic Director, during official practices and games and during times when Athletic Director or any part of the Program is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of the University.

3.3 All payments provided for in this Agreement shall be paid through the University's normal bi-weekly payroll with the applicable withholdings as required by law and applicable deductions as directed by Athletic Director.

ARTICLE 4

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

4.1.1 Devote Athletic Director's full time and best efforts to the performance of Athletic Director's duties under this Agreement and effectively manage the Athletic Department while performing the duties and responsibilities customarily associated with the position of an athletic director at a Division 1FBS level university;

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to 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 all Program participants to perform to their highest academic potential and to graduate in a timely manner;

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, conferences in which the University is a member, and the NCAA; supervise and take appropriate steps to ensure that the Department's employees know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's Director of NCAA Compliance if Athletic Director has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Athletic Director shall cooperate fully with the University and the Department at all times. The applicable laws, policies, rules, and regulations include: (a) State Board of Education (Board of Trustees) Governing Policies and Procedures and Rule Manual; (b) the University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the conferences of which the University is a member;

4.1.5. Supervise and manage the Department to insure, to the maximum extent possible, that all staff follow applicable University policies, State Board of Education policies, NCAA, and applicable conference rules and regulations at all times;

4.1.6 Manage Departmental fiscal areas consistent with State Board of Education policies and the policies of the University; and,

4.1.7 Take reasonable steps to maintain student athlete graduations within six (6) years at a rate equal to or better than the general University student body.

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

4.3 NCAA Rules. In accordance with NCAA rules, Athletic Director shall obtain prior written approval from the 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 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 the University. In no event shall Athletic Director accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's Board of Trustees, the conferences in which the University is a member, or the NCAA.

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

4.5 Scheduling. Athletic Director shall make decisions with respect to the scheduling of competitions for sports in the Program.

4.6 Other Athletic Director Opportunities. Athletic Director shall not, under any circumstances, interview or negotiate for employment as an Athletic Director at any other institution of higher education requiring performance of duties prior to the expiration of this Agreement without the prior approval of the President. Such approval shall not unreasonably be withheld and shall not be considered a waiver of Athletic Director's obligations hereunder, including but not limited to the notice, payment and other obligations of sections 5.3.2 and 5.3.3.

ARTICLE 5

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

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

- a) A deliberate or material violation of Athletic Director's duties under this Agreement or the refusal or unwillingness of Athletic Director to perform such duties in good faith and to the best of Athletic Director's abilities;
- b) The failure of Athletic Director 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 material violation by Athletic Director of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, including but not limited to any such violation by Athletic Director which may have occurred during the employment of Athletic Director at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Athletic Director from duty without the University's consent;
- e) Any conduct of Athletic Director that constitutes moral turpitude or that, in the reasonable and good faith determination of the President, would be prejudicial to the best interests of the University or the Program;
- f) The failure of Athletic Director to represent the University and the Program positively in public and private forums;
- g) The failure of Athletic Director to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, the conference, or the NCAA;
- h) The failure of Athletic Director to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, by one of Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program;
or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, by one of Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program if Athletic Director knew or reasonably should have known of the violation and could have prevented it by ordinary supervision.

5.1.2 Suspension, reassignment or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the President or his designee (to be designated in writing) shall provide Athletic Director with written notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Athletic Director shall then have a reasonable opportunity to respond. After Athletic Director

responds or fails to respond, the University shall notify, in writing, Athletic Director whether, and if so when, the action will be effective.

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

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

5.2 Termination of Athletic Director for Convenience of University.

5.2.1 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 Athletic Director.

5.2.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay Athletic Director, as liquidated damages and not a penalty, only the remaining, unpaid Base Salary (plus any increases) set forth in section 3.1.2, reduced by all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends. Provided, however, in the event Athletic Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Athletic Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.2 (before deductions required by law) by the gross compensation paid to Athletic Director under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Athletic Director will be entitled to continue his health insurance plan and group life insurance (but no other 3.1.1 compensation) as if he remained a University employee until the Term of this Agreement ends or until Athletic Director obtains employment or any other employment providing Athletic Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Athletic Director shall not be entitled to any other form or amount of 3.1.3 (unless earned and vested prior to date of notice of termination), 3.1.4, or 3.1.5 compensation after the University's date of notice of termination pursuant to 5.2.1. Athletic Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Athletic Director 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

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. Athletic Director agrees not to accept employment for compensation at less than the fair value of Athletic Director's services, as determined by all circumstances existing at the time of employment. Athletic Director further agrees to repay to the University all compensation paid to him by the University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 The parties have both been represented by legal counsel, or had the opportunity to do so, in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that Athletic Director may lose certain benefits, supplemental compensation, or outside compensation relating to his 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 Athletic Director shall constitute adequate and reasonable compensation to Athletic Director for the damages and injury suffered by Athletic Director because of such termination by the University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Athletic Director for Convenience.

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

5.3.2 Athletic Director, for his own convenience, may terminate this Agreement during its Term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University. If Athletic Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. However, any amounts due or earned (whether monetary or other benefits) by Athletic Director as of the date of termination shall still be paid to Athletic Director by the University.

5.3.3 If Athletic Director terminates this Agreement for his convenience he shall pay to the University, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as Athletic Director through July 31, 2020, and as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before June 30, 2017, the sum of Two Hundred Thousand Dollars (\$200,000); (b) if the Agreement is terminated between July 1, 2017 and June 30, 2018 inclusive, the sum of One Hundred Thousand Dollars (\$100,000); and (c) there shall be no liquidated damages if the Agreement is terminated any time after June 30, 2018. The liquidated damages shall be due and payable within sixty (60) days of

the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight percent (8%) per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations, or had the opportunity to do so, 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 Athletic Director, in addition to potentially increased compensation costs if Athletic Director terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Athletic Director 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 Athletic Director. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Athletic Director terminates this Agreement because of a material breach by the University.

5.3.5 If Athletic Director terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all compensation and other payments not earned by him as of the time of termination.

5.4 Termination due to Disability or Death of Athletic Director.

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Athletic Director: becomes totally or permanently disabled as defined by the University's disability insurance carrier; becomes, in the sole judgment of the President, based upon the written opinion of a licensed physician competent to provide such an opinion, unable to perform the essential functions of the position of Athletic Director for a period of at least ninety (90) consecutive days; or dies.

5.4.2 If this Agreement is terminated because of Athletic Director's death, Athletic Director's salary and all other benefits shall terminate as of the last day worked, except that Athletic Director's personal representative or other designated beneficiary shall be paid all compensation earned and due (including any Incentive Compensation earned under section 3.1.3, but not yet paid, as of the effective date of termination) 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 Athletic Director's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because Athletic Director becomes totally or permanently disabled or becomes unable to perform the essential functions of the position of Athletic Director for a period of at least ninety (90) consecutive days, both as more fully described in section 5.4.1, all salary and other benefits shall terminate, except that Athletic Director shall be entitled to receive any compensation due (including any Incentive Compensation earned under section 3.1.3, but not yet paid, as of the effective date of termination) or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.4.4 Nothing herein shall be deemed to be a waiver by Athletic Director of any rights under the Americans with Disabilities Act or any subsequent amendment.

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

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

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

ARTICLE 6

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

6.2 University Property. All personal property (excluding vehicle(s) provided through the trade-out 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 Athletic Director by the University or developed by Athletic Director on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Athletic Director's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the Term of this Agreement or its earlier termination as provided herein, Athletic Director shall immediately cause any such personal property, materials, and articles of information in Athletic Director's possession or control to be delivered to the President.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without 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 Ada County courts of the state of Idaho.

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

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

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

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

the University: President
Boise State University
1910 University Drive
Boise, Idaho 83725

with a copy to: General Counsel
Boise State University
1910 University Drive
Boise, Idaho 83725

Athletic Director: Curt Apsey

Last known address on file with
University’s Human Resource Services

with a copy to:

Bennett H. Speyer, Esquire
1000 Jackson Street
Toledo, Ohio 43604

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. Athletic Director shall not, without the University’s prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

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

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

6.16 Opportunity to Consult with Attorney. Athletic Director acknowledges that he has had the opportunity to consult with 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.

UNIVERSITY

ATHLETIC DIRECTOR

Robert Kustra, President

Date

Curt Apsey

Date

Approved by the Board of Trustees on the ____ day of June, 2015.

EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is entered into by and between Boise State University (the "University"), and ~~Mark Coyle~~Curt Apsey ("Athletic Director") on the 1st day of ~~September 2013~~August, 2015.

ARTICLE 1

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

1.2 Reporting Relationship. Athletic Director shall report and be responsible directly to the University's President- ~~(the "President")~~. Athletic Director shall abide by the instructions of the President and shall confer with the President as necessary on ~~all~~ administrative and technical matters.

1.3 Duties. Athletic Director shall manage and supervise the Program and shall perform such other duties ~~in the University's athletic program~~ as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, upon written approval by Athletic Director, to reassign Athletic Director to duties at the University other than as Athletic Director, provided that Athletic Director's compensation and benefits shall not be affected by such reassignment, except that the opportunity to earn supplemental compensation and incentives as provided in section 3.1.3 shall cease.

ARTICLE 2

2.1 Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on ~~September~~August 1, ~~2013~~2015 and terminating, without further notice to either party, on ~~August~~July 31, ~~2018~~2020 (the "Term") unless terminated sooner 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 Athletic Director, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of ~~University's~~the State Board of Education acting as the Board of Trustees- of Boise State University. This Agreement in no way grants to ~~the~~ Athletic Director a claim to tenure in employment, nor shall Athletic Director's service pursuant to this ~~agreement~~Agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Compensation.

3.1.1 In consideration of Athletic Director’s services and satisfactory performance of this Agreement, the University shall provide to Athletic Director compensation as set forth herein. Accompanying such compensation shall be:

- a) Athletic Director shall receive such employee benefits as the University provides generally to non-faculty professional staff employees; and
- b) Athletic Director shall receive such employee benefits as the University’s Department of Athletics (the “Department”) provides generally to its employees of a comparable level. Athletic Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.1.2 Base Salary: The University shall pay Athletic Director a Base Salary of \$331,500 per year (prorated for partial years) of this Agreement. Additionally, the Base Salary may increase annually (not to exceed 10% annually) at the sole discretion of the President after determination by the President that the annual goals the President sets for ~~the~~ Athletic Director are successfully achieved. Provided, however, that any such increases shall be subject to the approval of the State University’s Board of Education Trustees.

3.1.3. In addition to the Base Salary, the University shall pay Athletic Director Incentive Compensation as set forth below. Such payments shall be made ~~-within~~ forty-five (45) days of the occurrence of the event (or in the case of the grade point average, after all finalized grades are posted) where the incentive criteria was met and Athletic Director must remain continuously employed through the payment date to receive such payments.

- (a) For Overall Department Athletic Performance: For the National Association of Directors of Collegiate Athletics (NACDA) Director’s Cup National Sports Award final year end rankings:

<u>Department Rank</u>	<u>Incentive Pay</u>
Top 25	\$15,000
Top 40	\$10,000
Top 60	\$5,000

- (b) For Academic Performance: As long as the annual departmental average National Collegiate Athletic Association (“NCAA”) Academic Progress Rate (“APR”) scores meet the following levels, the following applicable incentive payments will be paid by the University:

<u>Department APR Score</u>	<u>Incentive pay</u>
970-979	\$10,000
980-989	\$15,000
990-999	\$20,000
1000	\$25,000

- (c) For Football Bowl Game Appearances: If the University men’s football team plays in an NCAA approved post-season bowl game, the following incentive payments will be made by the University:

~~Bowl Championship Series (BCS) game~~
~~(or official name chosen for the successor games for the implementation of the~~ College Football Playoff System) ~~—(CFP)~~
~~New Year’s Six game = \$30,000~~
 Non ~~BCS~~CFP bowl ~~(College Playoff System)~~ game = \$20,000

- (d) Additional Incentive Compensation

1. If the single semester grade point average for the student-athletes collectively in a given semester is 3.0 or higher, ~~the~~ Athletic Director shall receive \$7,500 per semester, not to exceed \$15,000 per academic year. This payment may be earned for the fall and spring semesters only, summer or intersession times are not considered except when intersession classes are transcribed as part of the fall or spring semester.
 2. If the Football team wins or ties for the conference divisional championship, ~~the~~ Athletic Director shall receive \$7,500.
 3. If the Football teams wins a conference football championship game, ~~the~~ Athletic Director shall receive \$10,000
 4. If the men’s basketball team either reaches 18 regular season wins or reaches postseason play, ~~the~~ Athletic Director shall receive \$10,000.
 5. If the women’s soccer team, the women’s volleyball team, the women’s basketball team, the women’s gymnastics team, or the women’s softball team reaches postseason play, ~~the~~ Athletic Director shall receive \$7,500. The maximum payment per year is \$7,500 whether one or all five teams reach postseason competition.
- (e) Each of the above incentives are intended to reward the achievement of each individual occurrence and are cumulative, provided that the cumulative total of payments made pursuant to section 3.1.3(d).1 through 3.1.3(d).5 shall in no event exceed \$50,000 annually.

3.1.4 The University annually shall provide or make arrangements through the athletic department trade-out program one (1) full-size automobile for business and personal use by Athletic Director or members of his immediate family. Athletic Director shall supply gasoline for personal use. All other costs of operating the vehicles shall be paid by the University.

3.1.5 The University shall provide Athletic Director with ~~two~~one full country club ~~memberships~~membership and one social country club membership at all times during the ~~term~~Term of this ~~contract~~Agreement.

3.2 Media. Agreements requiring ~~the~~ Athletic Director to participate in media programs related to his 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 products and all parties desiring public appearances by ~~the~~ Athletic Director. Athletic Director agrees to cooperate with the University in order for the programs to be successful and agrees to provide his services to and perform on the programs and to cooperate in their production, broadcasting and telecasting. It is understood that neither Athletic Director nor any assistant ~~department~~Department employees shall appear without prior written approval of the President on any competing radio or television program (including but not limited to a 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 President, Athletic Director shall not appear in any commercial endorsements.

3.2.1 Athletic Director 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 Athletic Director, during official practices and games and during times when Athletic Director or any part of the Program is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of the University.

~~3.3 Longevity/Stay Incentive. In addition to the Base Salary, the University will pay to Athletic Director a one-time longevity/stay incentive in the sum of \$125,000 if Athletic Director stays continuously employed by the University until December 31, 2016 without being in material breach. Such payment will be made on January 20, 2017.~~

~~3.4-3.3~~ All payments provided for in this Agreement shall be paid through the University's normal bi-weekly payroll with the applicable withholdings as required by law and applicable deductions as directed by Athletic Director.

ARTICLE 4

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

4.1.1 Devote Athletic Director's full time and best efforts to the performance of Athletic Director's duties under this Agreement and effectively manage the Athletic Department while performing the duties and responsibilities customarily associated with the position of an athletic director at a Division I/FBS level university;

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to 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 all Program participants to perform to their highest academic potential and to graduate in a timely manner;

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~~ Board of Trustees, conferences in which the University is a member, and the NCAA; supervise and take appropriate steps to ensure that the Department's employees know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's Director of NCAA Compliance if Athletic Director has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Athletic Director shall cooperate fully with the University and the Department at all times. The applicable laws, policies, rules, and regulations include: (a) State Board of Education ~~and (Board of Regents of the University of Idaho Trustees)~~ Governing Policies and Procedures and Rule Manual; (b) the University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the ~~conference~~ conferences of which the University is a member;

4.1.5. Supervise and manage the ~~athletic department~~ Department to insure, to the maximum extent possible, that all staff follow applicable University policies, State Board of Education policies, NCAA, and applicable conference rules and regulations at all times;

4.1.6 Manage ~~departmental~~ Departmental fiscal areas consistent with State Board of Education policies and the policies of the University; and,

4.1.7 Take reasonable steps to maintain student athlete graduations within six (6) years at a rate equal to or better than the general University student body.

4.2 Outside Activities. Athletic Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Athletic Director from devoting

Athletic Director's full time and best efforts to the performance of Athletic Director's duties under this Agreement, that would otherwise detract from those duties in any manner, or that in the opinion of the University, would reflect adversely upon the University or ~~its athletic program~~ the Program. Any outside business or professional activities must be disclosed and reported to the President. Subject to the terms and conditions of this Agreement, Athletic Director may, with the prior written approval of the President, enter into separate arrangements for outside activities and endorsements which are consistent with Athletic Director's obligations under this Agreement. Athletic Director may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the President.

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

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

4.5 Scheduling. Athletic Director shall make decisions with respect to the scheduling of competitions for sports in the Program.

4.6 Other Athletic Director Opportunities. Athletic Director shall not, under any circumstances, interview ~~for, or~~ negotiate for, ~~or accept~~ employment as an Athletic Director at any other institution of higher education requiring performance of duties prior to the expiration of this Agreement without the prior approval of the President. Such approval shall not unreasonably be withheld and shall not be considered a waiver of ~~the~~ Athletic Director's obligations hereunder, including but not limited to the notice, payment and other obligations of sections 5.3.2 and 5.3.3.

ARTICLE 5

5.1 Termination of Athletic Director for Cause. The University may, with good and adequate cause, as those terms are defined in applicable policies, rules and regulations, ~~;~~ suspend Athletic Director from some or all of Athletic Director's duties, temporarily or permanently, and

with or without pay; reassign Athletic Director to other duties; or terminate this Agreement at any time.

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

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

employees for whom Athletic Director is administratively responsible, or a member of any team in the Program; or

- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's ~~governing board~~ Board of Trustees, its conferences, or the NCAA, by one of ~~the~~ Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program if Athletic Director knew or reasonably should have known of the violation and could have prevented it by ordinary supervision.

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

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

5.1.4 If found by the NCAA to be in violation of NCAA regulations, Athletic Director shall, in addition to the provisions of ~~Section~~ 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 Athletic Director was employed.

5.2 Termination of Athletic Director for Convenience of University.

5.2.1 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 Athletic Director.

5.2.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay Athletic Director, as liquidated damages and not a penalty, only the remaining, unpaid Base Salary (plus any increases) set forth in section 3.1.2 ~~and the payment provided for in section 3.3, excluding, reduced by~~ all deductions required by law, on the regular paydays of the University until the ~~term~~ Term of this Agreement ends ~~or~~

~~until Athletic Director obtains reasonably comparable employment, whichever occurs first.~~ Provided, however, in the event Athletic Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Athletic Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.2 (before deductions required by law) by the gross compensation paid to Athletic Director under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Athletic Director will be entitled to continue his health insurance plan and group life insurance (but no other 3.1.1 compensation) as if he remained a University employee until the ~~term~~Term of this Agreement ends or until Athletic Director obtains employment or any other employment providing Athletic Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Athletic Director shall not be entitled to any other form or amount of 3.1.3 (unless earned and vested prior to date of notice of termination), 3.1.4, or 3.1.5 compensation after the University's date of notice of termination pursuant to 5.2.1. Athletic Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Athletic Director 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 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. Athletic Director agrees not to accept employment for compensation at less than the fair value of Athletic Director's services, as determined by all circumstances existing at the time of employment. Athletic Director further agrees to repay to the University all compensation paid to him by the University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 The parties have both been represented by legal counsel, or had the opportunity to do so, in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that ~~the~~ Athletic Director may lose certain benefits, supplemental compensation, or outside compensation relating to his 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 Athletic Director shall constitute adequate and reasonable compensation to Athletic Director for the damages and injury suffered by Athletic Director because of such termination by the University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Athletic Director for Convenience.

5.3.1 ~~The~~ Athletic Director recognizes that his promise to work for the University for the entire ~~term~~Term of this Agreement is of the essence of this Agreement. ~~The~~ Athletic Director also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to

resign or otherwise terminate his employment with the University before the end of the ~~contract term~~Term of this Agreement.

5.3.2 ~~The~~ Athletic Director, for his own convenience, may terminate this Agreement during its ~~term~~Term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University. If ~~the~~ Athletic Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. However, any amounts due or earned (whether monetary or other benefits) by Athletic Director as of the date of termination shall still be paid to Athletic Director by the University.

5.3.3 If ~~the~~ Athletic Director terminates this Agreement for his convenience he shall pay to the University, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as Athletic Director through July 31, 2020, and 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 ~~December 31, 2014~~June 30, 2017, the sum of ~~One Two~~ Hundred ~~Fifty~~ Thousand Dollars (\$~~150~~200,000); (b) if the Agreement is terminated between ~~January~~July 1, ~~2015~~2017 and ~~December 31, 2015~~June 30, 2018 inclusive, the sum of ~~Seventy Five~~One Hundred Thousand Dollars (\$~~75~~100,000); and (c) there shall be no liquidated damages if the Agreement is terminated any time after ~~December 31, 2015~~June 30, 2018. The liquidated damages shall be due and payable within ~~twenty (20)~~sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight percent (8%) per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations, or had the opportunity to do so, 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 Athletic Director, in addition to potentially increased compensation costs if Athletic Director terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Athletic Director 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 Athletic Director. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Athletic Director terminates this Agreement because of a material breach by the University.

5.3.5 If Athletic Director terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all compensation and other payments not earned by him as of the time of termination.

5.4 Termination due to Disability or Death of Athletic Director.

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Athletic Director: becomes totally or permanently disabled as defined by the University's disability insurance carrier; ~~becomes,~~ in the sole judgment of the

President, based upon the written opinion of a licensed physician competent to provide such an opinion, unable to perform the essential functions of the position of Athletic Director, for a period of at least ninety (90) consecutive days; or dies.

5.4.2 If this Agreement is terminated because of Athletic Director's death, Athletic Director's salary and all other benefits shall terminate as of the last day worked, except that ~~the~~ Athletic Director's personal representative or other designated beneficiary shall be paid all compensation earned and due (including any Incentive Compensation earned under section 3.1.3, but not yet paid, as of the effective date of termination) 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~~ Athletic Director's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because ~~the~~ Athletic Director becomes totally or permanently disabled ~~as defined by the University's disability insurance carrier,~~ or becomes unable to perform the essential functions of the position of ~~head~~ Athletic Director for a period of at least ninety (90) consecutive days, both as more fully described in section 5.4.1, all salary and other benefits shall terminate, except that ~~the~~ Athletic Director shall be entitled to receive any compensation due (including any ~~payments due~~ Incentive Compensation earned under ~~the supplemental pay of~~ section 43.1.3, but not yet paid, as of the ~~attached addendum~~ effective date of termination) or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.4.4 Nothing herein shall be deemed to be a waiver by Athletic Director of any rights under the Americans with Disabilities Act or any subsequent amendment.

5.5 Interference by Athletic Director. In the event of termination, suspension, or reassignment, Athletic Director agrees that ~~Athletic Director~~~~he~~ 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~~the Program.

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

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

ARTICLE 6

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

6.2 University Property. All personal property (excluding vehicle(s) provided through the trade-out 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 Athletic Director by the University or developed by Athletic Director on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Athletic Director's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the ~~term~~Term of this ~~agreement~~Agreement or its earlier termination as provided herein, Athletic Director shall immediately cause any such personal property, materials, and articles of information in Athletic Director's possession or control to be delivered to the President.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without 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 Ada County courts of the state of Idaho.

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

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

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

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

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

the University: President
Boise State University
1910 University Drive
Boise, Idaho 83725

with a copy to: General Counsel
Boise State University
1910 University Drive
Boise, Idaho 83725

~~the~~ Athletic Director: ~~Mark Coyle~~ Curt Apsey
Last known address on file with
University's Human Resource Services

with a copy to: ~~Gregg E. Thornton~~ Bennett H. Speyer, Esquire
~~Ward, Hoeker & Thornton, PLLC~~
~~333 West Vine~~ 1000 Jackson Street, Suite
1100
Lexington, Kentucky 40507 Toledo, Ohio 43604

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~~ Athletic Director shall not, without the University’s prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, ~~including the Employment Agreement dated and effective December 1, 2011 and the Addendum No. 1 to Employment Agreement dated June 24, 2013,~~ 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. ~~The~~ Athletic Director acknowledges that he has had the opportunity to consult with 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.

UNIVERSITY

ATHLETIC DIRECTOR

Robert Kustra, President

Date

~~Mark Coyle~~ Curt Apsey

Date

Approved by the Board of Trustees on the ~~15th~~ ____ day of ~~August, 2013~~ June, 2015.