

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>BOISE STATE UNIVERSITY</b>		
1	Multi-Year Employment Agreement – Men’s Basketball Head Coach - Rice	Motion to approve
<b>BOISE STATE UNIVERSITY</b>		
2	Multi-Year Employment Agreement – Women’s Swimming and Diving Head Coach - Kipp	Motion to approve
<b>BOISE STATE UNIVERSITY</b>		
3	Multi-Year Employment Agreement – Men’s Football Defensive Coordinator - Yates	Motion to approve
<b>BOISE STATE UNIVERSITY</b>		
4	Multi-Year Employment Agreement –Women’s Gymnastics Co-Head Coach - Resnick	Motion to approve
<b>BOISE STATE UNIVERSITY</b>		
5	Multi-Year Employment Agreement –Women’s Gymnastics Co-Head Coach - Bird	Motion to approve
<b>IDAHO STATE UNIVERSITY</b>		
6	Multi-Year Employment Agreement –Men & Women’s Cross-Country Head Coach - Houle	Motion to approve
<b>IDAHO STATE UNIVERSITY</b>		
7	Multi-Year Employment Agreement –Women’s Softball Head Coach - Letts	Motion to approve
<b>IDAHO STATE UNIVERSITY</b>		
8	Multi-Year Employment Agreement –Women’s Volleyball Head Coach - Reynolds	Motion to approve

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Five year employment contract for Men's Basketball Head Coach Leon Rice

**REFERENCE**

June 2010	Idaho State Board of Education (Board) approved an employment agreement with Leon Rice
June 2013	Board approved new five year employment agreement with Leon Rice
June 2014	Board approved new five year employment agreement with Leon Rice
November 2014	Board approved amendment to the agreement to adjust academic incentive pay only

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

In 2014, the Board approved a new five year employment contract with Leon Rice, Head Coach for Men's Basketball (MBB). This contract term is consistent with the contracts recently signed by Mountain West Conference coaches.

Coach Rice's impact on the Boise State University (BSU) basketball program has been immediate and substantial:

- 2nd NCAA Tournament Appearance in 3 years
- 25 wins in a season, tying the school record
- Set the best year-end Ratings Percentage Index (RPI) in school history, (RPI = 41)
- 2015 Mountain West Conference Champions (6th league title in school history)
- Named the 2014-2015 Mountain West Conference Men's Basketball coach of the year.
- Number 1 seed in the Mountain West Tournament – first time since 1999
- Ranked for the first time in school history in the AP Poll (top 25) and 27th in the USA Today Coach's Poll
- Set school record with 14 Conference game wins this season
- Led BSU to their third consecutive 20-plus win season
- At-large bid to the NCAA tournament
- In 2015, MBB will report a single year 1000 and a multi-year 951 NCAA APR, with a two year average of 981. Currently, a 981 two-year average ranks in the 80-90th percentile for all Division 1 MBB teams.

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Coach Rice's other accomplishments include:

- 2013-2014 total attendance for both the season and average per game was the highest it has been in the last ten years.
- The three highest cumulative GPA marks for MBB on record have been the last three semesters (fall 2013, spring 2014 and fall 2014).
- Fall 2014 semester GPA was the 4th highest semester GPA.

**IMPACT**

The contract amendment makes the following changes from the prior version:

- An increase in annual salary by \$10,530 for year 1, and a set dollar raise of \$25,000 annually (instead of the current 3% annual raise) in each of the subsequent four years.
- If the coach schedules a revenue-generating away game with a non-conference opponent, the University will retain only the first \$40,000 (plus expenses) instead of the first \$50,000.
- If the coach schedules a home game against an opponent in the Resource Five conferences, he will be paid a \$10,000 bonus. If he schedules a home game against an opponent who has an RPI in the top 125 (based on three year average), he will be paid a \$7,500 bonus. However, if an opponent is in a Resource Five conference and also has an RPI in the top 125, Coach will only be paid the \$10,000 bonus, not the additional \$7,500 bonus.

There is also a one-time signing bonus in the amount of \$45,000.

Year one maximum potential annual compensation (base salary and supplemental compensation not including incentives for Away Game Guarantee and Home Game Scheduling, or summer camps) would be \$758,000.

Liquidated damages for the coach terminating the contract early for his own convenience increase by \$10,000 annually.

No appropriated funds are included in compensation.

**ATTACHMENTS**

Attachment 1 – Proposed agreement 2015-2020	Page 5
Attachment 2 – Redline to current agreement	Page 21
Attachment 3 – Redline to Board model agreement	Page 37
Attachment 4 – 2010-2014 APR Summary	Page 61
Attachment 5 – Maximum compensation for coach	Page 62
Attachment 6 - Liquidated damages comparison chart	Page 63

**STAFF COMMENTS AND RECOMMENDATIONS**

The Away Game Guarantee provision of Mr. Rice's employment agreement was first added in the June 2013 Board approved five (5) year contract. At that same June 2013 meeting the Board also approved a contract for the University of Idaho's

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Men's Basketball Coach which also included an Away Game Guarantee. Since that time, however, the Board has expressed discomfort with this type of incentive. For example, at the December 2014 meeting Idaho State University (ISU) brought forward a multi-year employment agreement for its football coach which also included incentive pay for participating in money games. An excerpt of the minutes regarding that contract provision follows:

“Mr. Lewis expressed concern about provisions for money games in coaches’ contracts in general. Mr. Hill expressed the same concern. He questioned whether or not the Board would want to support provisions for money games where there is a percentage bonus awarded for “money games.” He expressed concern about providing incentives in the coaches contracts allowing for a percentage of the take on money games and felt it was not a good way to incentivize. He explained that often these money games are very challenging and stressful for the coaches, the teams, and also represents a high chance of having an additional loss on a record, not to mention the increase in physical roughness of the environment. He felt there are other ways to compensate a coach rather than receiving a bonus for these kinds of games.

Mr. Westerberg remarked in agreement with the comments of Mr. Lewis and would be in support of increasing the base salary for coaches instead.”

Ultimately, the Board voted to increase the ISU coach's base pay in lieu of a cut of the game guarantee revenue.

The “Home Game Scheduling” is yet another new type of supplemental compensation payment, but the concept is similar to that of money games. The coach is incented to play programs in the larger conferences.

Academic incentive pay is amended to include to more tiers: 90% - 94.9% (\$17,000) and 95% or above (\$20,000). These figures are material given that the incentive payment for conference tournament champion is \$15,000.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a new five year employment agreement with Leon Rice, Head Men's Basketball Coach, for a term commencing October 25, 2015 and terminating March 31, 2020 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 Boise State University (the University), and Leon Rice (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 Men's Basketball team (the Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment commencing on October 25, 2015 and terminating on March 31, 2020 unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of 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.

2.3. Conference Change Term Extension. If the conference affiliation of the University (currently the Mountain West Conference) changes during the term of this agreement and Coach's employment is not already terminated or suspended as otherwise provided herein, this Agreement shall automatically be extended by one (1) additional year to its then existing term; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension of the additional year as provided in this section 2.3 would have the effect of making the then existing term of this agreement longer than five (5) years, then this provision shall be null and void and of no effect.

2.4. Automatic Extensions. The term of this Agreement will be automatically extended by one (1) additional year commencing on April 1 and concluding on March 31 for each season in which the Team has at least eighteen (18) wins or advances to the NCAA Tournament; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension, as provided in this section 2.4, would have the effect of making the then existing term of this Agreement longer than five (5) years, then this provision shall be null and void and of no effect. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the National Invitation Tournament (“NIT”), or the NCAA Tournament, to the exclusion of all other pre-season exhibition games or post-season invitational tournaments.

**ARTICLE 3**

3.1. Regular Compensation.

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

- a) An annual salary of :  
October 25, 2015 to March 31, 2016 – \$276,434;  
April 1, 2016 to March 31, 2017 – \$650,000;  
April 1, 2017 to March 31, 2018 – \$675,000;  
April 1, 2018 to March 31, 2019 – \$700,000;  
April 1, 2019 to March 31, 2020 – \$725,000,  
all generally payable in biweekly installments in accordance with normal University procedures.
- b) A one-time bonus payment of \$45,000, which shall be paid after execution of this Agreement, but prior to November 22, 2016.
- c) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; 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:

- a) Regular Season Conference Champions \$5,000
- b) The greater of the following two:
  - Conference Tournament Finalist \$3,000
  - Conference Tournament Champions \$15,000
- c) NCAA Tournament game wins \$5,000 per game
- d) NIT appearances \$3,000 per game
- e) The greater of the following two:
  - Winning Record (more wins than losses) \$4,000
  - 20 Wins \$8,000
- f) At-large selection to the NCAA Tournament \$5,000

**3.2.2. Academic Achievement**

- a) Coach shall qualify for supplemental pay annually if the one-year Academic Progress Rate (“APR”, meaning the measurement as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs) for that year meets the following levels in the National Ranking within men’s basketball (four-year rate):
  - i. 50% to 59.9% \$5,000
  - ii. 60% to 69.9% \$8,000
  - iii. 70% to 79.9% \$12,000
  - iv. 80% to 89.9% \$15,000
  - v. 90% to 94.9% \$17,000
  - vi. 95% or above \$20,000

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

- a) Payment Date for Academic Achievement Supplemental Compensation and for Athletic Achievement Supplemental Compensation shall be made July 1<sup>st</sup> of each year following the completion of the season in which it is earned.
- b) In order to receive the 3.2.1 supplemental compensation, the basketball team’s retention rate must be at least 50 percent for the academic year in which the supplemental pay is

earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4. Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate men's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President to request from, and subject to approval at the sole discretion of, the University's Board of Trustees.

3.2.5. Compensation for Media. Coach may receive a portion of the section 3.1.1(a) compensation from the University, the University's designated media outlet(s), or from public appearance fees or a combination thereof (at the discretion of the University and the Media outlets), each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). This sum may be paid either through the University bi-weekly payroll or may be paid monthly directly from the media outlets. The Coach will be advised annually, or at other times as needed, as to the source of payment. Coach acknowledges that the differing sources of payment may change the nature of the benefits attached to such payments and the University and Coach shall mutually agree on such changes if there is an alteration to the source of payment. Agreements requiring the Coach to participate in 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 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 his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6. 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.

3.2.7. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not, without University approval, 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.

3.2.8. Away Game Guarantee. In the event the University schedules an away contest with a non-conference opponent for which a game guarantee is paid to the University by the host institution, the payment shall be distributed as follows: (a) the first \$40,000 of the game guarantee will be retained by the Department; (b) any amount of the game guarantee exceeding \$40,000, less expenses associated with the contest, will be distributed to Coach and assistant coaches at the recommendation of Coach, subject to the Director's final approval.

3.2.9. Home Game Scheduling. In the event the University schedules a home game against a team from one of the five following conferences, Coach will be paid a \$10,000 bonus: Big Ten, ACC, Big 12, SEC or Pac-12. In the event the University schedules a home game against an opponent who has an RPI in the top 125 (based on three year average), Coach will be paid a \$7,500 bonus. If an opponent is in an eligible conference (Big Ten, ACC, Big 12, SEC or Pac-12) and also has an RPI in the top 125, Coach will only be paid the \$10,000 bonus, not also the \$7,500 bonus. Payment of any such bonus will be made within 45 days after the completion of the contest.

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 salary provided pursuant to section 3.1.1 that is also paid through the University, 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 NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) the University's Policy Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the athletic 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.

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

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

**ARTICLE 5**

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

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

- a) A repetitive 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 cure any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) (i) A repetitive or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board or the conference, or (ii) the finding by the NCAA of a repetitive or major violation of the rules or policies of the NCAA, including but not limited to any major violation which may have occurred during the employment of Coach at another NCAA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes a grave violation of the moral sentiment or accepted moral standards of society or that would, in the University's reasonable 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 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 when the Coach had actual knowledge of, or in the proper and faithful performance of his duties should have known of, such violation; or
- i) A major violation of any applicable law or the policies, rules or regulations of the University or the University's governing board, or the finding by the conference or the NCAA of a major violation of the rules or policies of 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, in the proper and faithful performance of his duties, should have known of the violation and could have prevented it by ordinary supervision.

5.1.2. Suspension or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension 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 the University terminates this Agreement for its own convenience, the University shall be obligated to pay to Coach the 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 "Similar or Related Employment" (as defined in this section 5.2.2), whichever occurs first, provided however, in the event Coach obtains Similar or Related 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 Similar or Related 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 Similar or Related 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 business days of obtaining any 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 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. For purposes of this Section 5.2.2, "Similar or Related Employment" means employment in basketball, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with the National Basketball Association (NBA) or one of its affiliates, or (c) in sports related media.

5.2.3. The parties 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 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 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. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

5.3. Termination by Coach for Convenience.

5.3.1. Coach recognizes that his 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 his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

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

5.3.3. If 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 his convenience and pursues employment as, or performs the services or duties regularly associated with, a head coach in NCAA Division 1 collegiate basketball, professional basketball in any capacity, or sports media in any capacity, he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement if the Agreement is terminated on or before expiration of the term, including any extensions thereof, the following sums:

On or before March 31, 2016: \$200,000  
April 1, 2016, through March 31, 2017: \$210,000  
April 1, 2017, through March 31, 2018: \$220,000  
April 1, 2018, through March 31, 2019: \$230,000  
April 1, 2019, through the natural termination of this Agreement, including any extension resulting from the automatic extension provided for in Section 2.4:  
\$240,000.

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 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. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

5.3.5. Except as provide elsewhere in this Agreement, if Coach terminates

this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments and all accumulated leave.

5.4. Termination due to Disability or Death of Coach.

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

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

5.4.3. If this Agreement is terminated because 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 he is entitled by virtue of employment with the University.

5.5. Interference by Coach. In the event of termination or suspension, 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 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 Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and University Policies.

5.8. Use of Annual Leave. 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.

**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 policies regarding furloughs and financial exigency.

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

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 the Coach. Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

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

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

with a copy to:                      President  
   1910 University Drive  
   Boise, ID 83725-100

Coach:                                      Leon Rice  
   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 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 effective July 1, 2014 as it was amended effective November 1, 2014, 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 Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney, and has not relied upon the advice of any legal counsel acting on behalf of the University. 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

\_\_\_\_\_  
Curt Apsey, Director of Athletics      Date

\_\_\_\_\_  
Leon Rice      Date

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

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

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State University ([the University](#)), and Leon Rice (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 Men's Basketball team ([the Team](#)). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment commencing on ~~July 1~~[October 25](#), 2014~~5~~ and terminating on March 31, 20~~19~~[20](#) unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of [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 ~~a~~[A](#)greement count in any way toward tenure at the University.

2.3. Conference Change Term Extension. If the conference affiliation of the University (currently the Mountain West Conference) changes during the term of this agreement and Coach's employment is not already terminated or suspended as otherwise provided herein, this Agreement shall automatically be extended by one (1) additional year to its then existing term; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension of the additional year as provided in this section 2.3 would have the effect of making the then existing term of this agreement longer than five (5) years, then this provision shall be null and void and of no effect.

2.4. Automatic Extensions. The term of this Agreement will be automatically extended by one (1) additional year commencing on April 1 and concluding on March 31 for each season in which the Team has at least eighteen (18) wins or advances to the NCAA Tournament; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension, as provided in this section 2.4, would have the effect of making the then existing term of this Agreement longer than five (5) years, then this provision shall be null and void and of no effect. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the National Invitation Tournament (“NIT”), or the NCAA Tournament, to the exclusion of all other pre-season exhibition games or post-season invitational tournaments.

### ARTICLE 3

#### 3.1. Regular Compensation.

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

- a) ~~a)~~ — An annual salary of :  
October 25, 2015 to March 31, 2016 – \$276,434;  
April 1, 2016 to March 31, 2017 – \$650,000;  
April 1, 2017 to March 31, 2018 – \$675,000;  
April 1, 2018 to March 31, 2019 – \$700,000;  
April 1, 2019 to March 31, 2020 – \$725,000,  
\$596,573 per year, all generally payable in biweekly installments in accordance with normal University procedures.  
~~, such amount to increase by three percent (3%) on April 1 of each year of the Agreement;;~~
- ~~a)b)~~ A one-time bonus payment of \$45,000, which shall be paid after execution of this Agreement, but prior to November 22, 2016.
- ~~b)~~ ~~c)~~ — The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- ~~e)~~ ~~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:

- a) Regular Season Conference Champions \$5,000
- b) The greater of the following two:
  - Conference Tournament Finalist \$3,000
  - Conference Tournament Champions \$15,000
- c) NCAA Tournament game wins \$5,000 per game
- d) NIT appearances \$3,000 per game
- e) The greater of the following two:
  - Winning Record (more wins than losses) \$4,000
  - 20 Wins \$8,000
- f) At-large selection to the NCAA Tournament \$5,000

3.2.2. Academic Achievement

- a) Coach shall qualify for supplemental pay annually if the one-year Academic Progress Rate (“APR”, meaning the measurement as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs) for that year meets the following levels in the National Ranking within men’s basketball (four-year rate):

i.	50% to 59.9%	\$5,000
ii.	60% to 69.9%	<del>\$7,58,000</del>
iii.	70% to 79.9%	<del>\$120,000</del>
iv.	<del>80% or above to 89.9%</del>	<del>\$125,5000</del>
v.	90% to 94.9%	\$17,000
vi.	95% or above	\$20,000

[TCE1]

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

- a) Payment Date for Academic Achievement Supplemental Compensation and for Athletic Achievement Supplemental Compensation shall be made July 1<sup>st</sup> of each year following the completion of the season in which it is earned.
- b) In order to receive the 3.2.1 supplemental compensation, the basketball team’s retention rate must be at least 50 percent for the academic year in which the supplemental pay is

earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4. Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate men's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President to request from, and subject to approval at the sole discretion of, the [State University's Board of Education Trustees](#).

3.2.5. Compensation for Media. ~~The~~ Coach may receive a portion of the section 3.1.1(a) compensation from the University, the University's designated media outlet(s), or from public appearance fees or a combination thereof (at the discretion of the University and the Media outlets), each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). This sum may be paid either through the University ~~by~~ weekly payroll or may be paid monthly directly from the media outlets. The Coach will be advised annually, or at other times as needed, as to the source of payment. Coach acknowledges that the differing sources of payment may change the nature of the benefits attached to such payments and the University and Coach shall mutually agree on such changes if there is ~~an~~ alteration to the source of payment. Agreements requiring the Coach to participate in 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 productions and all parties desiring public appearances by ~~the~~ Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6. ~~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. Summer Camp. The University may operate a summer youth basketball camp using University facilities, and in so doing, the University shall allow Coach the~~

~~opportunity to earn supplemental compensation by assisting the University in his capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In considering whether to operate a summer youth camp, the University may consider the following conditions:~~

~~a) — The summer youth camp operation reflects positively on the University and the Department;~~

~~b) — The summer youth camp is operated as a University activity in which the University shall pay Coach a reasonable supplemental income based in part upon the revenue and expenses of the summer camp. The camp operation will have the opportunity to internally lease University facilities for the summer camp which will be charged as an operating expense of the camp;~~

~~e) — The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps;~~

~~d) — All revenues and expenses of the camp shall be deposited with and paid by the University.~~

~~e) — If required by the University, Coach shall secure through University risk management as an expense of the camp, supplemental 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; [TCE2]~~

~~In the event of termination of this Agreement, or suspension from employment of the Coach, University shall not be under any obligation to hold a summer youth camp with the Coach after the effective date of such termination or suspension and the University shall be released from all obligations relating thereto.~~

3.2.7. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said

company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not, without University approval, 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.

3.2.8. Away Game Guarantee. In the event the University schedules an away contest with a non-conference opponent for which a game guarantee is paid to the University by the host institution, the payment shall be distributed as follows: (a) the first \$~~5~~40,000 of the game guarantee will be retained by the Department; (b) any amount of the game guarantee exceeding \$~~5~~40,000, less expenses associated with the contest, will be distributed to Coach and ~~A~~assistant ~~C~~oaches at the recommendation of Coach, subject to the Director's final approval.

3.2.9. Home Game Scheduling. In the event the University schedules a home game against a team from one of the five following conferences, Coach will be paid a \$10,000 bonus: Big Ten, ACC, Big 12, SEC or Pac-12. In the event the University schedules a home game against an opponent who has an RPI in the top 125 (based on three year average), Coach will be paid a \$7,500 bonus. If an opponent is in an eligible conference (Big Ten, ACC, Big 12, SEC or Pac-12) and also has an RPI in the top 125, Coach will only be paid the \$10,000 bonus, not also the \$7,500 bonus. Payment of any such bonus will be made within 45 days after the completion of the contest.

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 salary provided pursuant to section 3.1.1 that is also paid through the University, 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 [NCAA Compliance](#) if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) [the University's Policies](#); ~~(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 athletic 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.

4.76. 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.

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

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

## ARTICLE 5

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

5.1.1. In addition to the definitions contained in applicable policies, rules and regulations, the University and Coach hereby specifically agree that the following shall

constitute good or adequate cause for suspension or termination of this Agreement:

- a) A repetitive or major violation of Coach's duties under this [aA](#)greement 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 cure any violation of any of the terms of this [aA](#)greement within 30 days after written notice from the University;
- c) (i) A repetitive or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board or the conference, or (ii) the finding by the NCAA of a repetitive or major violation of the rules or policies of the NCAA, including but not limited to any major violation which may have occurred during the employment of Coach at another NCAA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes a grave violation of the moral sentiment or accepted moral standards of society or that would, in the University's reasonable 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 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 when the Coach had actual knowledge of, or in the proper and faithful performance of his duties should have known of, such violation; or

- i) A major violation of any applicable law or the policies, rules or regulations of the University or the University's governing board, or the finding by the conference or the NCAA of a major violation of the rules or policies of 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, in the proper and faithful performance of his duties, should have known of the violation and could have prevented it by ordinary supervision.

5.1.2. Suspension or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension 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 the University terminates this Agreement for its own convenience, the University shall be obligated to pay to Coach the 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—“Similar or Related eEmployment” (as defined in this section 5.2.2), whichever occurs first, provided however, in the event Coach obtains other-Similar or Related eEmployment 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-Similar or Related eEmployment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in

section 3.1.1(a) (before deductions required by law) by the gross compensation paid to ~~the~~ Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains ~~reasonably comparable~~ Similar or Related ~~e~~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 business days of obtaining any 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 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. For purposes of this Section 5.2.2, "Similar or Related Employment" means employment in basketball, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with the National Basketball Association (NBA) or one of its affiliates, or (c) in sports related media.

5.2.3. 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 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. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

5.3.- Termination by Coach for Convenience.

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

5.3.2. ~~The~~ Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be

effective ten (10) days after notice is given to the University.

5.3.3. If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for his convenience and pursues employment as, or performs the services or duties regularly associated with, a head coach in NCAA Division 1 collegiate basketball, professional basketball in any capacity, or sports media in any capacity, he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement if the Agreement is terminated on or before expiration of the term, including any extensions thereof, the following sums: of \$175,000.

On or before March 31, 2016: \$200,000

April 1, 2016, through March 31, 2017: \$210,000

April 1, 2017, through March 31, 2018: \$220,000

April 1, 2018, through March 31, 2019: \$230,000

April 1, 2019, through the natural termination of this Agreement, including any extension resulting from the automatic extension provided for in Section 2.4: \$240,000.

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 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. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

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

5.4. Termination due to Disability or Death of Coach.

5.4.1. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled

as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

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

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

5.5. Interference by Coach. In the event of termination or suspension, 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.

5.76. 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 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 employees, if the University suspends 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~~ Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and ~~the~~ University Policies.

5.98. Use of Annual Leave. 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.

## 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 ~~a~~ 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 policies regarding furloughs and financial exigency.

6.2. University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term 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 therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

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

with a copy to: President  
1910 University Drive  
Boise, ID 83725-100

~~the~~ Coach: \_\_\_\_\_ Leon Rice  
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.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

**ATTACHMENT 2**

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 effective July 1, 2013~~4~~ as it was amended effective November 1, 2014, 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 Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney, and has not relied upon the advice of any legal counsel acting on behalf of the University. 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

Robert W. Kustra, President Curt Apsey, Director of Athletics \_\_\_\_\_ Date \_\_\_\_\_  
Leon Rice - \_\_\_\_\_ Date

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

Approved by the Board of Trustees on the \_\_\_\_\_ day of June \_\_\_\_\_, 20145.

~~(MODEL ATHLETICS CONTRACT)~~ EMPLOYMENT AGREEMENT

This ~~Employment Agreement~~ (Agreement) is entered into by and between ~~Boise State University (College), the University~~, and ~~Leon Rice~~ (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)~~ Men's Basketball team (~~the 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.~~ 4.2. Reporting Relationship. Coach shall report and be responsible directly to the ~~University (College)'s~~ University's Director ~~of Athletics (the Director)~~ or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the ~~University (College)'s Chief executive officer (Chief executive officer)~~ University's President (the President).

~~1.3.~~ 4.3. 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) shall cease.~~

ARTICLE 2

~~2.1.~~ 2.1. Term. This Agreement is for a fixed-term appointment of ~~( )~~ ( ) years, commencing on ~~October 25, 2015~~ and terminating, ~~without further notice to Coach,~~ on ~~March 31, 2020~~ unless sooner terminated in accordance with other provisions of this Agreement.

~~2.2.~~ 2.2. ~~Extension or~~ Renewal. This Agreement is renewable solely upon an offer from the University (~~College~~) and an acceptance by Coach, both of which must be in writing and

signed by the parties. Any renewal is subject to the prior approval of the University's Board of Education Trustees. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this ~~agreement~~Agreement count in any way toward tenure at the University ~~(College)~~.

2.3. Conference Change Term Extension. If the conference affiliation of the University (currently the Mountain West Conference) changes during the term of this agreement and Coach's employment is not already terminated or suspended as otherwise provided herein, this Agreement shall automatically be extended by one (1) additional year to its then existing term; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension of the additional year as provided in this section 2.3 would have the effect of making the then existing term of this agreement longer than five (5) years, then this provision shall be null and void and of no effect.

2.4. Automatic Extensions. The term of this Agreement will be automatically extended by one (1) additional year commencing on April 1 and concluding on March 31 for each season in which the Team has at least eighteen (18) wins or advances to the NCAA Tournament; provided, however, that at no time may the term of this Agreement exceed five (5) years. If the extension, as provided in this section 2.4, would have the effect of making the then existing term of this Agreement longer than five (5) years, then this provision shall be null and void and of no effect. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the National Invitation Tournament ("NIT"), or the NCAA Tournament, to the exclusion of all other pre-season exhibition games or post-season invitational tournaments.

### 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) ~~a) —~~ An annual salary of \$                      per year, ~~;~~  
October 25, 2015 to March 31, 2016 – \$276,434;  
April 1, 2016 to March 31, 2017 – \$650,000;  
April 1, 2017 to March 31, 2018 – \$675,000;  
April 1, 2018 to March 31, 2019 – \$700,000;  
April 1, 2019 to March 31, 2020 – \$725,000,  
all generally payable in biweekly installments in accordance with  
normal University (~~College~~) procedures, and such salary  
increases as may.
- b) A one-time bonus payment of \$45,000, which shall be determined  
appropriate by the Director and Chief executive officer and  
approved by the University (~~College~~)'s Board of paid after  
execution of this Agreement, but prior to November 22, 2016.  
~~(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 provides generally to non-faculty exempt employees; 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

~~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 may earn supplemental compensation in an amount equal to as follows:~~

~~3.2.1. Athletic Achievement:~~

- ~~a) Regular Season Conference Champions \$5,000~~
- ~~b) The greater of the following two:  
Conference Tournament Finalist \$3,000  
Conference Tournament Champions \$15,000~~
- ~~c) NCAA Tournament game wins \$5,000 per game~~
- ~~d) NIT appearances \$3,000 per game~~
- ~~e) The greater of the following two:  
Winning Record (more wins than losses) \$4,000  
20 Wins \$8,000~~

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

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

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

~~3.2.4 Each At-large selection to the NCAA Tournament \$5,000~~

3.2.2. Academic Achievement

- a) Coach shall qualify for supplemental pay annually if the one-year Academic Progress Rate (“APR”, meaning the measurement as used by the NCAA to track academic progress of NCAA eligible student athletes and NCAA athletic programs) for that year meets the following levels in the National Ranking within men’s basketball (four-year rate):

i.	50% to 59.9%	\$5,000
ii.	60% to 69.9%	\$8,000
iii.	70% to 79.9%	\$12,000
iv.	80% to 89.9%	\$15,000
v.	90% to 94.9%	\$17,000
vi.	95% or above	\$20,000

[TCE1]

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

- a) Payment Date for Academic Achievement Supplemental Compensation and for Athletic Achievement Supplemental Compensation shall be made July 1<sup>st</sup> of each year following the completion of the season in which it is earned.
- b) In order to receive the 3.2.1 supplemental compensation, the basketball team’s retention rate must be at least 50 percent for the academic year in which the supplemental pay is earned. The

retention rate will be calculated anew each year and will not be cumulative.

3.2.4. Each year Coach ~~shall~~may 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)~~ men's basketball 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~~President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the ~~Chief executive officer in consultation with~~President to request from, and subject to approval at the ~~Director's~~sole discretion of, the University's Board of Trustees.

3.2.5—The. Compensation for Media. Coach ~~shall~~may receive a portion of the sum of (amount or computation) section 3.1.1(a) compensation from the University ~~(College) or the University (College)s,~~ the University's designated media outlet(s), or from public appearance fees or a combination thereof (at the discretion of the University and the Media outlets), each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). ~~Coach's right~~ This sum may be paid either through the University bi-weekly payroll or may be paid monthly directly from the media outlets. The Coach will be advised annually, or at other times as needed, as to receive such a the source of payment. Coach acknowledges that the differing sources of payment may change the nature of the benefits attached to such payments and the University and Coach shall vest mutually agree 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) such changes if there is an alteration to the source of payment. Agreements requiring the Coach to participate in Programs related to his duties as an employee of ~~the~~ 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 University'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) athletic camps ("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 Camps in Coach's Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps 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 (College)'s summer football camps, the shall pay Coach supplemental compensation.

3.2.7

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

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

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

g) ~~Within thirty days of the last day of the summer youth camp(s),  
Coach shall submit to the Director a preliminary "Camp~~

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

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

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

~~3.2.7 Coach~~ agrees that the University ~~(College)~~ has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University ~~(College)~~. Coach recognizes that the University ~~(College)~~ ~~is negotiating or has entered the authority to enter~~ into an agreement with ~~—(Company Name)—a company~~ 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 concerning ~~an —(Company Name)—a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by —(Company Name)~~ the University's designated company, or give a lecture at an event sponsored in whole or in part by ~~—(Company Name)—said company~~, 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) basketball~~ coach. In order to avoid entering into an agreement with a competitor of ~~(Company Name) the University's designated company,~~ 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, without University approval, endorse any athletic footwear, apparel and/or equipment products, including (Company Name), and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.2.8. Away Game Guarantee. In the event the University schedules an away contest with a non-conference opponent for which a game guarantee is paid to the University by the host institution, the payment shall be distributed as follows: (a) the first \$40,000 of the game guarantee will be retained by the Department; (b) any amount of the game guarantee exceeding \$40,000, less expenses associated with the contest, will be distributed to Coach and assistant coaches at the recommendation of Coach, subject to the Director's final approval.

3—2.9. Home Game Scheduling. In the event the University schedules a home game against a team from one of the five following conferences, Coach will be paid a \$10,000 bonus: Big Ten, ACC, Big 12, SEC or Pac-12. In the event the University schedules a home game against an opponent who has an RPI in the top 125 (based on three year average), Coach will be paid a \$7,500 bonus. If an opponent is in an eligible conference (Big Ten, ACC, Big 12, SEC or Pac-12) and also has an RPI in the top 125, Coach will only be paid the \$10,000 bonus, not also the \$7,500 bonus. Payment of any such bonus will be made within 45 days after the completion of the contest.

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 compensationsalary provided pursuant to section 3.1.1 that is also paid through the University, except to the extent required by the terms and conditions of a specific fringe benefit program.

#### ARTICLE 4

4.1. 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. 4.1.1. Devote Coach's full time and best efforts to the performance of  
4.1.1. Coach's duties under this Agreement;

4.1.2. 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.~~ ~~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~~ University'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~~ Department's Director of NCAA 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

4.1.4. ~~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 Handbook;~~ (c) ~~University (College)'s Administrative Procedures~~the University's Policy Manual; (d) the policies of the Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~(Sport) athletic~~ conference of which the University ~~(College)~~ is a member.

4.2. ~~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'sCoach'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—~~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—~~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—~~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—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.

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

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

#### ARTICLE 5

5.1— Termination of Coach for Cause. The University (College) may, in its discretion, temporarily or permanently 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 policies, rules and regulations.

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

~~d)~~ Ten (10) working ~~days'~~days' absence of Coach from duty without the

~~d)~~ ~~University (College)'s~~ University's consent;

~~e)~~ ~~e)~~ Any conduct of Coach that constitutes ~~a grave violation of the~~ moral ~~turpitude~~sentiment or accepted moral standards of society or that would, in the ~~University (College)'s~~ University's reasonable judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;

~~f)~~ ~~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; when the Coach had actual knowledge of, or in the proper and faithful performance of his duties should have known of, such violation; or
- i)- \_\_\_ A major violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~ or the University (College)'s University's governing board, or the finding by the conference, or the NCAA (NAIA), of a major violation of the rules or policies of 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, in the proper and faithful performance of his duties, 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 the University (College) terminates this Agreement for its own convenience, the University (College) shall be obligated to pay to 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 the University (College) until the term of this Agreement ends; or until Coach obtains reasonably comparable employment, "Similar or Related Employment" (as defined in this section 5.2.2), whichever occurs first, provided, however, in the event Coach obtains other employment Similar or Related 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 Similar or Related 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 the health insurance plan and group life insurance as if he Coach remained a University (College) employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment Similar or Related 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 business days of obtaining any 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 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 to him by the University after the date he Coach obtains other employment, to which he Coach is not entitled under this provision. For purposes of this Section 5.2.2, "Similar or Related Employment" means employment in basketball, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with the National Basketball Association (NBA) or one of its affiliates, or (c) in sports related media.~~

~~5.2.3 The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and~~ 5.2.3. 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 the University ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by the 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

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

**ATTACHMENT 3**

termination by the University~~(College)~~. The liquidated damages are not, and shall not be construed to be, a penalty. Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

5.3. Termination by Coach for Convenience.

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

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

5.3.3 ~~If the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for his convenience and pursues employment as, or performs the services or duties regularly associated with, a head coach in NCAA Division 1 collegiate basketball, professional basketball in any capacity, or sports media in any capacity, he shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, for the breach of this Agreement if the Agreement is terminated on or before expiration of the term, including any extensions thereof, the following ~~sums:~~ sums:

On or before March 31, 2016: \$200,000

April 1, 2016, through March 31, 2017: \$210,000

April 1, 2017, through March 31, 2018: \$220,000

April 1, 2018, through March 31, 2019: \$230,000

April 1, 2019, through the natural termination of this Agreement, including any extension resulting from the automatic extension provided for in Section 2.4: \$240,000.

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 the University (College) shall constitute adequate and reasonable compensation to the 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).~~ Coach has been given an opportunity to consult with legal counsel of his own choosing and has not relied upon the advice of any legal counsel acting on behalf of the University.

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

5.4\_ Termination due to Disability or Death of Coach.

5.4.1—\_\_\_\_\_ Notwithstanding \_\_\_\_\_ any other provision— of this \_\_\_\_\_ Agreement, \_\_\_\_\_ this Agreement shall terminate automatically if Coach becomes totally or permanently

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

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

5.5—         Interference by Coach. —In the event of termination, or 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.

5.7—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—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 Rule Manual (IDAPA 08) and Governing Policies and Procedures, IDAPA 08.01.01 et seq., Manual, and the University (College) Faculty Staff Handbook Policies.

5.8. Use of Annual Leave. 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.

## 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 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 rules University's policies regarding furloughs and financial exigency.

6.2. University (College) Property. All personal property (excluding vehicle(s) provided ~~through the~~ Courtesy Car program), ~~material, and articles of~~ information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to 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 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~~ 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.



6.11—~~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, including the Employment Agreement effective July 1, 2014 as it was amended effective November 1, 2014, 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 the University's Board of (Regents or Trustees).

6.16—Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney, and has not relied upon the advice of any legal counsel acting on behalf of the University. 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

\_\_\_\_\_  
Chief executive officer

\_\_\_\_\_  
Curt Apsey, Director of Athletics

Date

Date

\_\_\_\_\_  
Leon Rice

\_\_\_\_\_  
Robert W. Kustra, President

Date

Approved by the Board of (Regents or Trustees) on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, 2015.

**BOISE STATE UNIVERSITY**

Men's Basketball APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2013-14
<b>Men's Basketball</b>	898	942	962	1000
<i>National % Rank by Sport</i>	<i>0-10</i>	<i>30-40</i>	<i>50-60</i>	<i>90-100</i>

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

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

<b>Boise State University Basketball</b>	<b>Men's</b>	956	950	941	951
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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

**ATTACHMENT 5**

**Coach Leon Rice Maximum Compensation Calculation - 2015-2020**

		<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>
3.1.1a	Annual Base Salary	\$ 625,000.00	\$ 650,000.00	\$ 675,000.00	\$ 700,000.00	\$ 725,000.00
3.1.1b	One-Time Bonus Payment	\$ 45,000.00	\$ -	\$ -	\$ -	\$ -
3.2.1	Additional Pay based on Performance	\$ 68,000.00	\$ 68,000.00	\$ 68,000.00	\$ 68,000.00	\$ 68,000.00
3.2.2	Additional Pay based on Academic Achievement	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 758,000.00	\$ 738,000.00	\$ 763,000.00	\$ 788,000.00	\$ 813,000.00
3.2.8	Away Game Guarantee					
	University of Arizona	\$ 40,600.00	NA	NA	NA	NA
	University of Oregon	NA	\$0.00	\$ 15,000.00	NA	NA
	Other		Indeterminant	Indeterminant	Indeterminant	Indeterminant
3.2.9	Home Game Scheduling					
	University of Oregon	\$ 10,000.00	NA	NA	NA	NA
	Other	\$ -	Indeterminant	Indeterminant	Indeterminant	Indeterminant

# BUSINESS AFFAIRS AND HUMAN RESOURCES

Comparison of Liquidated Damages Clauses in the Contracts of Mountain West Conference and Pac 12 Schools

ATTACHMENT 6

OCTOBER 22, 2015

Coach	School	Conference	Length of Contract	2014 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
Carter, David	Nevada	Mountain West	4 years	\$ 500,960	Yes	Tied to Base Salary and number of years remaining on contract	Year 1: \$300,000 x 4; Year 2: \$300,000 x 3; Year 3: \$300,000 x 2; Year 4: \$300,000
Eustachy, Larry	Colorado State	Mountain West	6 years	\$ 928,200	Yes	Flat Rate/ Sliding Scale	\$4,500,000 for the first 5 years; \$2,250,000 in year 6
Fisher, Steve	San Diego State	Mountain West	5 years	\$ 951,000	Yes	Sliding Scale	If coach leaves during first two years of contract, buyout is \$750,000. If coach leaves during year 3 of the contract, buyout is \$500,000. If coach leaves during years four or five, buyout is \$300,000.
Morrill, Stew	Utah State	Mountain West	3 years	\$ 715,138	No	n/a	No buy-out provision, announced his retirement at the end of 2014-2015 season.
Neal, Craig	New Mexico	Mountain West	6 years	\$ 950,000	Yes	Flat Rate	\$1,000,000
Pilipovich, Dave	Air Force	Mountain West	3 years	\$ 250,000	No	Sliding Scale	If coach leaves during year 1 of contract, buyout is \$187,500. If coach leaves during year 2 of contract, buyout is \$100,000.
Rice, Dave	UNLV	Mountain West	5 years	\$ 700,000	Yes	Sliding Scale	If coaches leaves during first year of contract, buyout is \$ 1 million; if coach leaves during year 2 of contract, buyout is \$750,000; if coach leaves during year 3 of contract, buyout is \$500,000; if coach leaves during year 4 of contract, buyout is \$250,000; if coach leaves during year 5 of contract, buyout is \$125,000.
Shyatt, Larry	Wyoming	Mountain West	5 years	\$ 650,008	Yes	Tied to Base Salary and number of years remaining on contract	If coaches leaves during first year of contract, buyout is \$ 1,045,020; if coach leaves during year 2 of contract, buyout is \$840,012; if coach leaves during year 3 of contract, buyout is \$635,004; if coach leaves during year 4 of contract, buyout is \$425,004; if coach leaves during year 5 of contract, buyout is \$215,004
Terry, Rodney	Fresno State	Mountain West	5 years	\$ 350,000	No	n/a	
Wojcik, Dave	San Jose State	Mountain West	5 years	\$ 403,848	Yes	Sliding Scale	If coach leaves during first two years of contract, buyout is \$200,000. If coach leaves during year three of contract, buyout is \$150,000. If coach leaves during year 4 or 5 of contract, buyout is \$125,000.

# BUSINESS AFFAIRS AND HUMAN RESOURCES

Comparison of Liquidated Damages Clauses in the Contracts of Mountain West Conference and Pac 12 Schools

OCTOBER 22, 2015

ATTACHMENT 6

Coach	School	Conference	Length of Contract	2014 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
Alford, Steve	UCLA	Pac-12	7 years	\$ 2,630,000	Yes	Sliding Scale	Year 1 buyout = \$10.4 Million; Year 2 buyout = \$7.8 million; Year 3 buyout = \$5.2 million; Year 4 buyout = \$1 million
Altman, Dana	Oregon	Pac-12	6 years	\$ 1,900,000	Yes	Sliding Scale	If coach leaves during first two years of contract, buyout is \$1.8 million. If coach leaves during the third year of the contract, buyout is \$1.5 million. If coach leaves during third year of contract, buyout is \$1.2 million.
Boyle, Tad	Colorado	Pac-12	5 years	\$ 1,450,000	Yes	Sliding Scale	If coach leaves anytime during first two years of the contract, buyout is \$500,000. If coach leaves during year three or four of contract, buyout is \$250,000. If coaches leaves during year five of contract, buyout is \$100,000.
Krystkowiak, Larry	Utah	Pac-12	5 years	\$ 1,650,000	Yes	Flat Rate	Buyout is \$1.4 million
Miller, Sean	Arizona	Pac-12	5 years	\$ 2,400,000	Yes	Flat Rate	During first three years of contract, buyout is \$500,000. No buyout after first three years.
Romar, Lorenzo	Washington	Pac-12	8 years	\$ 1,500,000	Yes	Sliding Scale/ Flat Rate	If coach leaves during year 1, buyout is \$600,000. If coach leaves during year two, buyout is \$500,000. If coach leaves during year three, buyout is \$450,000. If coach leaves during year four, buyout is equal to base salary (\$412,000). If coach leaves for a Pac-12 school, buyout is \$1 million.
Sendek, Herb	Arizona State	Pac-12	4 years	\$ 1,200,000	Yes	Flat Rate	Buyout is \$1.1 million.
Tinkle, Wayne	Oregon State	Pac-12	6 years	\$ 800,004	Yes	Sliding Scale- goes up then down	If coach leaves during year 1, buyout is \$800,000. If coach leaves during year two, buyout is \$900,000. If coach leaves during year three or four, buyout is \$1,000,000. If coach leaves during year five, buyout is \$750,000. If coach leaves during year six, buyout is \$500,000 pro-rated by number of days already worked.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Three year employment contract for Head Women's Swimming and Diving Coach  
Jeremy Kipp

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is requesting approval of a three year contract for its  
new Head Women's Swimming and Diving Coach, Jeremy Kipp.

**IMPACT**

The base salary is \$80,000, with incentives as follows:

Academic incentive pay may be earned as follows:

National rank within sport:

50th - 59.9%	=	\$1,400
60th - 69.9%	=	\$1,600
70th - 79.9%	=	\$2,000
80% or above	=	\$3,000

Athletic incentive pay may be earned as follows:

Conference Championship	\$3,000
OR	
Qualify Team Individual for NCAA Championship	
1 to 4 student-athletes	\$1,000
5 to 9 student-athletes	\$3,000
10 or more student-athletes	\$5,000
NCAA National Coach of the Year	\$5,000
Conference Coach of the Year	\$3,000
Top 25 National Ranking at End of Season	\$2,000
OR	
Top 10 National Ranking at End of Season	\$4,000
OR	
Top 5 National Ranking at End of Season	\$5,000
Top 35 at NCAA Championships	\$2,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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Maximum potential annual compensation (base salary and potential incentive payments) is \$103,000.

In the event Jeremy Kipp terminates the contract for convenience, the following liquidated damages shall be due:

If the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.

If the Agreement is terminated on or before June 30, 2017, the sum of \$10,000.

The coach can earn supplemental compensation by assisting with summer camps.

**ATTACHMENTS**

Attachment 1 – Proposed agreement 2015-2018	Page 3
Attachment 2 – Redline to Board model agreement	Page 17
Attachment 3 – 2010-2014 APR summary	Page 41
Attachment 4 – Maximum compensation for coach	Page 42
Attachment 5 – Conference Liquidated Damages	Page 43

**STAFF COMMENTS AND RECOMMENDATIONS**

Academic incentive amounts are material, with the highest amount (\$3,000) equivalent to that of a conference tournament championship.

The contract also provides the coach with a vehicle for personal and professional use. Board Policy II.F. prohibits automobile or automobile allowances unless expressly authorized by the Board. The Board of Examiners state travel policies prohibit the use of state vehicles for personal use. The Athletic Committee is working with institutions to bring their vehicle policies in compliance with Board policy and State statute. Staff recommends excluding any contract provisions for any state vehicles used for personal purposes.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a new three year employment agreement with Jeremy Kipp, Head Women's Swimming and Diving Coach, for a term commencing October 25, 2015 and terminating June 30, 2018 in substantial conformance with the terms of the agreement set forth in Attachment 1, provided the agreement excludes any provisions authorizing personal use of state vehicles.

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

**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 Jeremy Kipp (“Coach”).

**ARTICLE 1**

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

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

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

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment, commencing on October 25, 2015 and terminating, without further notice to Coach, on June 30, 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 \$80,000, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees;
- 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) Conference Championship: \$3,000  
OR  
Qualify Team Individual for NCAA Championship  
1 to 4 student-athletes \$1,000  
5 to 9 student-athletes \$3,000  
10 or more student-athletes \$5,000
- b) NCAA National Coach of the Year \$5,000
- c) Conference Coach of the Year \$3,000

- d) Top 25 National Ranking at End of Season \$2,000  
OR  
Top 10 National Ranking at End of Season \$4,000  
OR  
Top 5 National Ranking at End of Season \$5,000
- e) Top 35 at NCAA Championships \$2,000

National rankings will be determined by either the College Swimming Coaches of America poll (CSCAA) or the Endless Polls/collegeswimming.com poll, whichever is higher.

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 July if Coach is still employed by the University on that date.

3.2.2. Academic Achievement Incentive Pay. Coach will qualify for Academic Incentive Pay if the single year team Academic Progress Rate (“APR”) for the Team meets the following levels in the National Ranking within Women’s Swimming and Diving:

- a) 50% - 59.9% = \$1,400
- b) 60% - 69.9% = \$1,600
- c) 70% - 79.9% = \$2,000
- d) 80% or above = \$3,000

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.

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director’s sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach’s individual performance, athletic/academic performance of Coach’s assigned player personnel groups, or other performance-related factors.

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. Neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

3.2.6. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of 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:

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 employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) 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 Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director

and the President.

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to 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 President and the University's Board of Trustees.

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

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

## 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 Director or Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, 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 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 Coach.

5.2.2. 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.

5.2.3. 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 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.

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

5.3. Termination by Coach for Convenience.

5.3.1. 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.

5.3.2. 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 competition) so as to minimize the impact on the program.

5.3.3. 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 sum: (a) if the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, 2016 and June 30, 2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4. The parties have both been represented by, 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.

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

5.4. Termination Due to Disability or Death of Coach.

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

5.4.3. 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.

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

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

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

6.2. University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise

in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

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

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

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

6.9. Non-Confidentiality. 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: Jeremy Kipp  
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.

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**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

\_\_\_\_\_  
Curt Apsey, Director of Athletics

\_\_\_\_\_  
Jeremy Kipp

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

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



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2.2. ~~2.2.~~ Extension or Renewal. This Agreement is renewable solely upon an offer from the University ~~(College)~~ and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board of Education Trustees. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this ~~agreement~~ 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~~ A salary in the amount of \$ ~~\_\_\_\_\_~~ per year ~~80,000~~, 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

~~a) (Regents or Trustees);~~

~~b) b)~~ The opportunity to receive such employee benefits calculated on the "base salary" as the University ~~(College)~~ provides generally to non-faculty exempt employees; ~~and~~

~~c) 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) d)~~ The opportunity to receive such employee benefits as the University ~~(College)'s~~ 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~~ 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~~

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~~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~~ 3.2.1. Athletic Achievement Incentive Pay.

a)	<u>Conference Championship:</u>	<u>\$3,000</u>
	<u>OR</u>	
	<u>Qualify Team Individual for NCAA Championship</u>	
	<u>1 to 4 student-athletes</u>	<u>\$1,000</u>
	<u>5 to 9 student-athletes</u>	<u>\$3,000</u>
	<u>10 or more student-athletes</u>	<u>\$5,000</u>
b)	<u>NCAA National Coach of the Year</u>	<u>\$5,000</u>
c)	<u>Conference Coach of the Year</u>	<u>\$3,000</u>
d)	<u>Top 25 National Ranking at End of Season</u>	<u>\$2,000</u>
	<u>OR</u>	
	<u>Top 10 National Ranking at End of Season</u>	<u>\$4,000</u>
	<u>OR</u>	
	<u>Top 5 National Ranking at End of Season</u>	<u>\$5,000</u>
e)	<u>Top 35 at NCAA Championships</u>	<u>\$2,000</u>

National rankings will be determined by either the College Swimming Coaches of America poll (CSCAA) or the Endless Polls/collegeswimming.com poll, whichever is higher.

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 July if Coach is still employed by the University on that date.

3.2.2. Academic Achievement Incentive Pay. Coach will qualify for Academic Incentive Pay if the single year team Academic Progress Rate (“APR”) for the Team meets the following levels in the National Ranking within Women’s Swimming and Diving:

a)	<u>50% - 59.9% =</u>	<u>\$1,400</u>
b)	<u>60% - 69.9% =</u>	<u>\$1,600</u>
c)	<u>70% - 79.9% =</u>	<u>\$2,000</u>
d)	<u>80% or above =</u>	<u>\$3,000</u>

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.

~~The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director's sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach's individual performance, athletic/academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the Chief executive officer in consultation with the Director. The determination shall be based on the following factors: the Academic Progress Rate set by the Board, grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. performance of Coach's assigned player personnel groups, or other performance-related factors.~~

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~~reportable to the Board of ~~(Regents or Trustees)~~ as a document available to the public under the Idaho Public Records Act.

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

3.2.5 ~~The Coach shall receive the sum of (amount or computation) hereunder from the University (College) or the University (College)'s 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 ~~the~~ Coach to participate in Programs related to ~~his~~Coach's duties as an employee of ~~the~~ 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~~Coach's services to and ~~perform~~appear on the Programs and to cooperate in their production, broadcasting, and telecasting. ~~It is understood that neither~~Neither Coach nor any assistant ~~coaches~~coach 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

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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 University's designated media outlets.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~

~~5. Coach agrees that the University (College) has the exclusive right to operate youth (Sport) athletic camps ("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 Camps in Coach's Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps. 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 (College)'s summer football camps, the shall pay Coach supplemental compensation.~~

~~3.2.6. University (College) shall pay per year as supplemental Coach (amount) 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 \_\_\_\_\_.~~

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~~g) Within thirty days of the last day of the summer youth camp(s),  
Coach shall submit to the Director a preliminary "Camp~~

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

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

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

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

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

3.3 ~~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 and paid from the University to Coach, except to the extent required by the terms and conditions of a specific fringe benefit program.

#### ARTICLE 4

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

~~4.1.1. Devote Coach's full time and best efforts to the performance of~~  
4.1.1. 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's Board of Trustees, the conference of which the University (College)'s governing board, the conference, is a member (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 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 (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 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~~

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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.

~~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 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) conference of which the University (College) is a member.~~

#### 4.2

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~~ 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. Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s Chief executive officer~~ President and Director for all athletically-related income and benefits from sources outside the University ~~(College) and~~. Coach shall report the source and amount of all such income and benefits to the ~~University (College)'s Chief executive officer~~ 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 ~~the~~ 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 governing board, the conference, or the NCAA (or NAIA),~~ 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~~ President and the ~~University (College)'s~~ University's Board of ~~(Trustees or Regents)~~.

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

~~4.7~~ 6. Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Without first giving ten (10) days prior written notice to the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

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, and policies.

~~5.1.1~~ In addition to the definitions contained in applicable rules and regulations, policies, the 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) 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)~~ b) The failure of Coach to remedy any violation of any of the terms of this ~~agreement~~ Agreement within thirty (30) days after written notice from the University ~~(College)~~;
- ~~c)~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ National Association of Intercollegiate Athletics ("NAIA") member institution;
- ~~d)~~ d) Ten (10) working ~~days'~~ days' absence of Coach from duty without the ~~University (College)'s~~ University's consent;
- ~~e)~~ 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)~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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 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 ~~(College)~~ as follows: before the effective date of the suspension, reassignment, or termination, the Director or ~~his~~ Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the 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, ~~the~~ 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 ~~the~~ University ~~(College)~~ terminates this Agreement for its own convenience, ~~the~~ University ~~(College)~~ 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 ~~(College)~~ until the ~~term~~ Term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided; however, in the event Coach obtains other employment after such termination, then the amount of compensation ~~the~~ University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation ~~deduction~~ deductions according to law. In addition, Coach will be entitled to continue ~~his~~ the health insurance plan and group life insurance as if ~~he~~ Coach 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 ~~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 ~~to him~~ by ~~the~~ University after the date ~~he~~ Coach obtains other employment, to which ~~he~~ Coach is not entitled under this provision.

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

In \_\_\_\_\_ the \_\_\_\_\_ event \_\_\_\_\_ of \_\_\_\_\_

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

5.3. Termination by Coach for Convenience.

5.3.1 ~~The~~ Coach recognizes that ~~his~~Coach's promise to work for ~~the~~ 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~~Coach's employment by entering into this Agreement and that its investment would be lost were ~~he~~Coach to resign or otherwise terminate ~~his~~Coach's employment with the University ~~(College)~~ before the end of the contract ~~term~~Term.

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

5.3.3 ~~—~~ If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for ~~his~~ convenience ~~he~~ Coach shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum:

(a) if the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, 2016 and June 30, 2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 ~~—~~ The parties have both been represented by 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 ~~(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 ~~the~~ University ~~(College)~~ shall constitute adequate and reasonable compensation to ~~the~~ 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 elsewhere in this Agreement, if Coach terminates this Agreement for convenience, ~~he~~Coach shall forfeit to the extent permitted by law ~~his~~Coach's right to receive all supplemental compensation and other payments and all accumulated annual leave.

5.4. Termination ~~due~~Due to Disability or Death of Coach.

5.4.1 ~~Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently~~

disabled as defined by the University (College)'s University's disability insurance carrier, becomes unable to perform the essential functions of the ~~position of head coach~~Position, or dies.

5.4.2—         If this Agreement is terminated because of ~~Coach's~~Coach's death, ~~Coach's~~Coach's salary and all other benefits shall terminate as of the last day worked, except that ~~the Coach's~~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~~Coach's estate or beneficiaries ~~thereunder~~hereunder.

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

5.5—Interference by Coach. —In the event of ~~termination~~, suspension, ~~or~~ reassignment or termination, 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.

5.7—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—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~~provided for in the State Board of Education Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures, ~~IDAPA 08.01.01 et seq., Manual, and the~~ University ~~(College)~~ Faculty Staff Handbook Policies.

## 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 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 or policies regarding furloughs or financial exigency.

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

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

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

the University ~~(College):~~ Boise State University  
Director of Athletics

1910 University Drive  
Boise, Idaho 83725-1020

with a copy to: ~~Chief executive officer~~ Boise State University

O 1910 University Drive  
Boise, Idaho 83725-1000

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Coach: Jeremy Kipp

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

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

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

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

\_\_\_\_\_ 6.13— Non-Use of Names and Trademarks. ~~The~~ Coach shall not, without the University (College)'s University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (~~College~~)—(including contraction, abbreviation or simulation), except in the course and scope of his Coach's 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~~between the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by ~~University (College)'s~~the University's Board of ~~(Regents or Trustees)~~\_\_\_\_\_.

6.16— Opportunity to Consult with Attorney. ~~The~~ Coach acknowledges that ~~he~~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 ~~(COLLEGE)~~ \_\_\_\_\_

COACH

\_\_\_\_\_  
Chief executive officer \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date

\_\_\_\_\_  
Curt Apsey, Director of Athletics

\_\_\_\_\_  
Jeremy Kipp

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

Approved by the Board of ~~(Regents or Trustees)~~ on the \_\_\_\_\_ day of \_\_\_\_\_, ~~2014.~~2015.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

**ATTACHMENT 3**

**BOISE STATE UNIVERSITY**

Women's Swimming & Diving APR History and National Percentile Rank

<b>SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES</b>
---

	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
<b>Women's Swimming &amp; Diving</b>	991	991	1000	1000
<i>National % Rank by Sport</i>	<i>60-70</i>	<i>60-70</i>	<i>90-100</i>	<i>90-100</i>

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

<b>MULTI-YEAR (4-Year Rolling Average)</b>
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<b>Boise State University Women's Swimming &amp; Diving</b>	985	991	991	995
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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

**ATTACHMENT 4**

**Coach Jeremy Kipp Maximum Compensation Calculation - 2015-2018**

	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>
3.1.1a Annual Base Salary	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00
3.2.1 Additional Pay based on Performance	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
3.2.2 Additional Pay based on Academic Achievement	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Total Maximum potential annual compensation under Employment Agreement	\$ 103,000.00	\$ 103,000.00	\$ 103,000.00

Policies on coach compensation/liquidated damages in the Mountain West  
Governing board policies and procedures and university policies and procedures

Air Force

No information found

Colorado State

Gov board – no applicable policies found

University – no applicable policies found

Fresno State

Gov board – no applicable policies found

University – no applicable policies found

University of Hawaii

Gov board

Policy EP 9.216  
Classification and Compensation of Coaches

III.

D. All multi-year contracts shall contain performance criteria. Criteria which coaches shall be expected to meet will be developed for each coach. At a minimum, coaches with multi-year contracts shall be expected to meet established standards in the following areas: (1) academic performance of student athletes; (2) personal behavior; (3) conduct of assistant coaches, staff, and players; and (4) program development.

E. It is intended that the salaries be consistent with those of colleges and universities with comparable programs....

University – no applicable policies found

University of Nevada, Reno

Gov board

NSHE Code

Title 2, Chapter 5,  
5.4.2.

(e) Contracts for appointment of head athletic coaches and assistant coaches, including interim or acting appointments, shall require only approval of the institutional president as long as the term or remaining term of the contract together with any option that has been exercised or any extension that has been offered a) does not exceed 36 months, and b) the total compensation is \$1,200,000 or less for the contract term. For these purposes, total compensation does not include standard fringe benefits available to all NSHE employees including but not limited to retirement contributions, insurance, travel, out-of-pocket expense reimbursement, annual and sick leave nor does it include outside income from sources including but not limited to commercial endorsements of products and services, income from written and video materials, summer camps or apparel and equipment endorsements. Total compensation includes performance bonuses and perquisites including but not limited to moving expenses, host account, automobile allowance or privilege, housing allowance or privilege, club membership, guest travel, event tickets and media and personal appearances. The chancellor may approve contracts that exceed 36 months for head athletic coaches and assistant coaches, other than head athletic coaches of football and men's and women's basketball. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until the chancellor approves the appointments. The appointments shall be reported to the Board of Regents by the president and/or the chancellor. If, in the chancellor's opinion, any contract rises to a level in length of term that the Board's approval is needed, such approval will be required. Contracts for head athletic coaches of football and men's and women's basketball that exceed 36 months, all contracts that exceed \$1,200,000 for the contract term, and all contracts for directors of athletics shall require approval of the Board of Regents.

(f) The president shall negotiate all athletic department personnel contracts involving directors of athletics or coaches with the assistance of institutional counsel. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the vice chancellor for legal affairs, including as to consistency of form.

Title 4, Chapter 24,  
1.5.c. Compensation

Compensation to athletic department personnel shall be approved by the president and awarded through proper institutional channels. Employees receiving compensation for outside professional services will comply with provisions of Title 4, Chapter 3 of the Board of Regents' *Handbook*. The contracts of coaches in Departments of Intercollegiate Athletics shall provide that coaches found by the institution to have committed violations of NCAA or NJCAA rules, as applicable, will be subject to actions as provided by NCAA or NJCAA enforcement provisions. Contracts shall also provide that all coaches, full-time and part-time, must report annually to the institution all athletically related income.

University – nothing more

University of Nevada, Las Vegas

Gov board – see above, UNR

University – nothing more

University of New Mexico

Gov board

Regents' Policy Manual - Section 6.9: Employment Contracts

Policy

Certain administrative positions within the University are characterized by a level of responsibility such that the University shall reserve the discretion to renew or not renew the periodic employment contracts of these administrators when their contracts expire. The President is authorized to designate these positions from time to time.

Implementation

The President shall adopt an administrative policy governing the terms and conditions of employment of these administrators and recognizing the discretion of the University to renew or not renew their employment contracts upon the contracts' expiration. The policy shall provide that failure to renew the contracts of administrators who are also faculty members shall not affect the rights and privileges of these administrators as faculty members. The policy shall also apply to contracts of athletic coaches.

University

Administrative Policies and Procedures Manual - Policy 3210: Recruitment and Hiring

5.13. Employment of Intercollegiate Coaches

In recognition of the unique nature of the recruitment and hiring of athletic coaches, the University provides for an exception to competitive hiring processes noted in this Policy. A hiring official may fill a new or vacant position in those circumstances where the urgency of committing a job offer to a candidate is documented and indicates that normal competitive processes are not practical to secure the selection of a highly qualified candidate. All candidates hired under this exception will serve under time-limited contract appointments.

Administrative Policies and Procedures Manual - Policy 3240: Contract Employees

2. Contract Terms and Conditions

Contracts for administrators subject to this policy are normally written for one (1) year terms. Multi-year contract terms may also be used subject to prior approval of each multi-year contract term by the President. Except for the University's right either to renew or not renew administrators' contracts, and except for matters specifically set forth in such contracts (including duties and salary), the benefits, terms, and conditions of employment of administrators on contract shall be governed by the University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual*. This includes the University's right to terminate or otherwise discipline such employees for proper cause during the term of their contracts, pursuant to the University's personnel policies and procedures.

7. Coaches

Head coaches and assistant coaches in the University Athletic Department are also employed by means of periodic employment contracts, and they are subject to release by the University at the expiration of their contract terms pursuant to this policy and to the policies and procedures of the Athletic Department. The University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual* shall apply to such coaches and assistant coaches only to the extent that they are not inconsistent with the specific terms of their contracts, this policy, and the Athletic Department policies and procedures.

San Diego State

Gov board – none (Shared Governance - SDSU governing bodies include the Office of the President, Associated Students, and the University Senate.)

University – no applicable policy found

San Jose State

Gov board – no applicable policy found

University – no applicable policy found

Utah State

Gov board – no applicable policy found

University

Policy 104 The University President and Other Officers

**4.7 Vice President and Director of Athletics**

The Vice President and Director of Athletics is the chief athletic program officer and is responsible to the President or his/her designee. He or she shall:

- (1) provide leadership and direction for the University athletic program;
- (2) recommend appointment and dismissal of athletics personnel and define their duties;
- (3) develop all intercollegiate sport schedules for the University;
- (4) direct the work of the head coaches, assistants, and part-time coaches of the University;
- (5) prepare the budget for intercollegiate activities for approval by the Athletic Council, President, and Trustees;
- (6) supervise the use of all athletic equipment and facilities and the expenditure of athletic funds; direct the athletic promotion, development and publicity programs, in cooperation with the Vice President for University Advancement and Commercialization;
- (7) supervise the intercollegiate athletic scholarship and grants-in-aid program and all athletic awards after consultation with and approval of the Athletic Council; and
- (9) perform such other duties as may be assigned by the President.

University of Wyoming

Gov board – no applicable policies found

University – no applicable policies found

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Three year employment contract for Defensive Coordinator Marcel Yates

**REFERENCE**

February 2015 Idaho State Board of Education (Board) approved material term sheet and directed Boise State University 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. Mr. Yates has served as BSU's Defensive Coordinator since 2014. 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 Bowl Subdivision (FBS) programs. The contract is similar to the standard issued by Boise State University and in conformance with the Board approved Model Agreement.

**IMPACT**

No state funds are used to pay contract amounts. All payments are paid 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

**Pay for Performance - Athletic:**

Conference Championship Game \$2,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

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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 University'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 \$351,500.

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

**ATTACHMENTS**

Attachment 1 – Proposed agreement 2015-2018	Page 5
Attachment 2 – Redline to Board model agreement	Page 19
Attachment 3 – 2010-2013 APR summary	Page 43
Attachment 4 – Maximum compensation for coach	Page 44
Attachment 5 – Conference Liquidated Damages	Page 45

**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 with a vehicle for personal and professional use. Board Policy II.F. prohibits automobile or automobile allowances unless expressly authorized by the Board. The Board of Examiners state travel policies prohibit the use of state vehicles for personal use. The Athletic Committee is working with institutions to bring their vehicle policies in compliance with Board policy and State statute. Staff recommends excluding any contract provisions for any state vehicles used for personal purposes.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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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, provided the agreement excludes any provisions authorizing personal use of state vehicles.

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.**

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director’s sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach’s individual performance, athletic/academic performance of Coach’s assigned player personnel groups, or other performance-related factors.

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.



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.

**ATTACHMENT 1**

UNIVERSITY

COACH

\_\_\_\_\_  
Curt Apsey, Director of Athletics      Date

\_\_\_\_\_  
Marcel Yates      Date

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

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

**~~(MODEL ATHLETICS CONTRACT)~~ EMPLOYMENT AGREEMENT**

This ~~Employment Agreement~~ (~~the "Agreement"~~) is entered into this                      day of                     , 2015 ("Effective Date") by                      and                      between                      (Boise State University (College)), ("the University") and                      (Marcel Yates ("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~~ defensive coordinator (the "Position") of its intercollegiate ~~(Sport)~~ Football team (the "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. ~~4.2.~~ Reporting Relationship. Coach shall report and be responsible directly to the University (College)'s Director or University's Head Coach of the Director's Team (the "Head Coach") or the Head Coach's designee. Coach shall abide by the reasonable instructions of Director Head Coach or the Director's Head Coach's designee and shall confer with the Director Head Coach or the Director's Head Coach'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 Director of Athletics (the "Director").

1.3. ~~4.3.~~ Duties. Coach shall ~~manage and supervise~~ serve as the defensive coordinator for the Team and shall perform such other duties in the University (College)'s University's athletic program as the Director 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. ~~2.4.~~ 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.~~ ~~2.2.~~—Extension or Renewal. This Agreement is renewable solely upon an offer from the University ~~(College)~~ and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board of ~~Education~~Trustees. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this ~~agreement~~Agreement count in any way toward tenure at the University ~~(College)~~.



## ATTACHMENT 1

- b) If the football team participates in a bowl game ~~pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs~~, and, 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 ~~continues to be~~ is still employed as University (College)'s head \_\_\_\_\_ (Sport) coach as of the ensuing July 1st, 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(College) shall pay to Coach. Conditions for payment of Athletic and Academic Achievement 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.~~

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director's sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach's individual performance, athletic/

~~3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the Chief executive officer in consultation with the Director. The determination shall be based on the following factors: the Academic Progress Rate set by the Board, grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. performance of Coach's assigned player personnel groups, or other performance-related factors.~~

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~~reportable to the Board of ~~(Regents or Trustees)~~ as a document available to the public under the Idaho Public Records Act.

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

~~3.2.5~~ The Coach shall receive the sum of ~~(amount or computation)~~ hereunder from the University (College) or the University (College)'s ~~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 the Coach to participate in Programs related to ~~his~~Coach's duties as an employee of the 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~~Coach's services to and ~~perform~~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~~

## ATTACHMENT 1

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.

~~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 ~~(College)~~ has the exclusive right to operate youth ~~(Sport)~~ athletic camps ("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~~ Camps in Coach's capacity as a University ~~(College)~~ employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the ~~University (College)'s football camps.~~ 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 (College)'s summer football camps,~~ the shall pay Coach supplemental compensation.

~~University (College) shall pay per year as supplemental~~

3.2.6

Coach ~~(amount)~~ —

~~compensation during each year of his employment as head (Sport) coach at the University (College). This amount shall be paid (terms of payment) —.~~

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

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

~~g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp~~

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

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

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

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

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

3.3—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 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. 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. 4.1.1.—Devote Coach's full time and best efforts to the performance of~~  
~~4.1.1. Coach's duties under this Agreement;~~

~~4.1.2. 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. 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. 4.1.4.—Know, recognize, and comply with all applicable laws and the~~  
~~policies, rules and regulations of the University (College), the University's Board of Trustees, the~~  
~~conference of which the University (College)'s governing board, the conference, is a member~~  
~~(the "Conference"), and the NCAA (or NAIA); 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~~  
~~Department's University's Director of NCAA Compliance if Coach has reasonable cause to~~  
~~believe that any person or entity, including without limitation representatives of the University~~  
~~(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 Coach shall promote an~~

## **ATTACHMENT 1**

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.

~~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 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) conference of which the University (College) is a member.~~

#### 4.2

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 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 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 University President and the Chief executive officer Director.

4.3—NCAA (or NAIA) Rules. Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the University ~~(College)'s Chief executive officer~~ President and the Director for all athletically-related income and benefits from sources outside the University ~~(College) and~~. Coach shall report the source and amount of all such income and benefits to the University (College)'s Chief executive officer 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 ~~(College)~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to the 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 governing board, the conference, or the NCAA (or NAIA)~~, 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~~ 4.4 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 ~~(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 ~~and policies.~~

5.1.1— In addition to the definitions contained in applicable rules and regulations, policies, the 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)~~ 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) ~~b)~~ The failure of Coach to remedy any violation of any of the terms of this ~~agreement~~ Agreement within thirty (30) days after written notice from the University ~~(College)~~;
- c) ~~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~~ University's Board of Trustees, the ~~conference~~ 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~~ National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) ~~d)~~ Ten (10) working ~~days'~~ days' absence of Coach from duty without the ~~University (College)'s~~ University's consent;
- e) ~~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) ~~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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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) ~~\_\_\_\_\_~~ ~~i)~~ A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the ~~University (College)'s governing board~~ University's Board of Trustees, the ~~conference~~ 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 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 ~~(College)~~ as follows: ~~—~~before the effective date of the suspension, reassignment, or termination, the Head Coach, Director, or his ~~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 ~~(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 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 ~~(College)~~.

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

~~5.3.2.2-~~ \_\_\_\_\_ In the event that the University ~~(College)~~ terminates this Agreement for its own convenience, the University ~~(College)~~ 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 ~~(College)~~ until the ~~term~~ Term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided; however, in the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation ~~deduction~~ deductions according to law. In addition, Coach will be entitled to continue ~~his~~ the health insurance plan and group life insurance as if ~~he~~ Coach 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 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 ~~to him~~ by the University after the date ~~he~~ Coach obtains other employment, to which ~~he~~ Coach is not entitled under this provision.

~~5.2.3-~~ 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

## ATTACHMENT 1

foregoing liquidated damages provision, giving consideration to the fact that ~~the~~ Coach may lose certain benefits, supplemental compensation, or outside compensation relating to ~~his~~ Coach's employment with the University ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by the 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 the University ~~(College)~~. 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.

5.34.1 ~~The~~ Coach recognizes that ~~his~~ Coach's promise to work for ~~the~~ 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~~ Coach's employment by entering into this Agreement and that its investment would be lost were ~~he~~ Coach to resign or otherwise terminate ~~his~~ Coach's employment with the University ~~(College)~~ before the end of the contract ~~term~~ Term.

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

5.4.3.3 ~~—~~ If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for ~~his~~ convenience ~~he~~, Coach shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following ~~sum~~:

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.

5.3.4-4 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 ~~(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 ~~the~~ University ~~(College)~~ shall constitute adequate and reasonable compensation to ~~the~~ 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)~~.

5.34.5 ~~—~~ Except as provide elsewhere in this Agreement, if Coach terminates

this Agreement for convenience, ~~he~~Coach shall forfeit to the extent permitted by law ~~his~~Coach's right to receive all supplemental compensation and other payments and all accumulated annual leave.

5.45 Termination ~~due~~Due to Disability or Death of Coach.

5.45.1— \_\_\_\_\_ 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~~Position, or dies.

5.45.2—      If this Agreement is terminated because of ~~Coach's~~Coach's death, ~~Coach's~~Coach's salary and all other benefits shall terminate as of the last day worked, except that ~~the Coach's~~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~~Coach's estate or beneficiaries ~~thereunder~~hereunder.

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

5.5—6 Interference by Coach. —In the event of ~~termination~~—suspension, ~~or~~ reassignment or termination, 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.

5.7—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—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~~provided for in the State Board of Education Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures, ~~IDAPA 08-01.01 et seq.,~~ Manual, and ~~the~~ University ~~(College)~~ Faculty-Staff HandbookPolicies.

## 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~~Agreement shall be subject to: the approval of the University (College)'s University's Board of

~~-(Regents or Trustees)~~, the ~~Chief executive officer~~ Director, and the ~~Director~~ 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 ~~-(Regents or Trustees)~~ and University (College)'s University's rules or policies regarding furloughs or financial exigency.

6.2 University (College) 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 ~~(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 Term of this agreement Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the ~~Director~~ 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 ~~the courts of the state of~~ 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 ~~(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~~ therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

the University ~~(College):~~ Boise State University  
Director of Athletics

1910 University Drive  
Boise, Idaho 83725-1020

with a copy to: ~~Chief executive officer~~ Boise State University

O 1910 University Drive  
Boise, Idaho 83725-1000

Coach: Marcel Yates

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

6.16— Opportunity to Consult with Attorney. ~~The~~ Coach acknowledges that ~~he~~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 ~~(COLLEGE)~~ \_\_\_\_\_

COACH

\_\_\_\_\_  
~~Chief executive officer~~ \_\_\_\_\_

\_\_\_\_\_  
Curt Apsey, Director of Athletics      Date  
Date

\_\_\_\_\_  
Marcel Yates

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

Approved by the Board ~~of (Regents or Trustees)~~ on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
~~2014.~~

**BOISE STATE UNIVERSITY**

Football APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2013-14
<b>Football</b>	984	985	980	973
<i>National % Rank by Sport</i>	<i>90-100</i>	<i>90-100</i>	<i>90-100</i>	<i>70-80</i>

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

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

<b>Football</b>	989	993	988	981
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Coach Marcel Yates Maximum Compensation Calculation - 2015-2018

	Yr 1	Yr 2	Yr 3
3.1.1a Annual Base Salary	\$ 330,000.00	\$ 330,000.00	\$ 330,000.00
3.2.1 (a) Additional Pay based on Performance	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
3.2.1 (b) Additional Pay based on Performance	\$ 16,500.00	\$ 16,500.00	\$ 16,500.00
3.2.2 Additional Pay based on Academic Achievement	\$5,000	\$5,000	\$5,000
Total Maximum potential annual compensation under Employment Agreement	\$ 353,500.00	\$ 353,500.00	\$ 353,500.00

Policies on coach compensation/liquidated damages in the Mountain West  
Governing board policies and procedures and university policies and procedures

Air Force

No information found

Colorado State

Gov board – no applicable policies found

University – no applicable policies found

Fresno State

Gov board – no applicable policies found

University – no applicable policies found

University of Hawaii

Gov board

Policy EP 9.216  
Classification and Compensation of Coaches

III.

D. All multi-year contracts shall contain performance criteria. Criteria which coaches shall be expected to meet will be developed for each coach. At a minimum, coaches with multi-year contracts shall be expected to meet established standards in the following areas: (1) academic performance of student athletes; (2) personal behavior; (3) conduct of assistant coaches, staff, and players; and (4) program development.

E. It is intended that the salaries be consistent with those of colleges and universities with comparable programs....

University – no applicable policies found

University of Nevada, Reno

Gov board

NSHE Code

Title 2, Chapter 5,  
5.4.2.

(e) Contracts for appointment of head athletic coaches and assistant coaches, including interim or acting appointments, shall require only approval of the institutional president as long as the term or remaining term of the contract together with any option that has been exercised or any extension that has been offered a) does not exceed 36 months, and b) the total compensation is \$1,200,000 or less for the contract term. For these purposes, total compensation does not include standard fringe benefits available to all NSHE employees including but not limited to retirement contributions, insurance, travel, out-of-pocket expense reimbursement, annual and sick leave nor does it include outside income from sources including but not limited to commercial endorsements of products and services, income from written and video materials, summer camps or apparel and equipment endorsements. Total compensation includes performance bonuses and perquisites including but not limited to moving expenses, host account, automobile allowance or privilege, housing allowance or privilege, club membership, guest travel, event tickets and media and personal appearances. The chancellor may approve contracts that exceed 36 months for head athletic coaches and assistant coaches, other than head athletic coaches of football and men's and women's basketball. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until the chancellor approves the appointments. The appointments shall be reported to the Board of Regents by the president and/or the chancellor. If, in the chancellor's opinion, any contract rises to a level in length of term that the Board's approval is needed, such approval will be required. Contracts for head athletic coaches of football and men's and women's basketball that exceed 36 months, all contracts that exceed \$1,200,000 for the contract term, and all contracts for directors of athletics shall require approval of the Board of Regents.

(f) The president shall negotiate all athletic department personnel contracts involving directors of athletics or coaches with the assistance of institutional counsel. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the vice chancellor for legal affairs, including as to consistency of form.

Title 4, Chapter 24,  
1.5.c. Compensation

Compensation to athletic department personnel shall be approved by the president and awarded through proper institutional channels. Employees receiving compensation for outside professional services will comply with provisions of Title 4, Chapter 3 of the Board of Regents' *Handbook*. The contracts of coaches in Departments of Intercollegiate Athletics shall provide that coaches found by the institution to have committed violations of NCAA or NJCAA rules, as applicable, will be subject to actions as provided by NCAA or NJCAA enforcement provisions. Contracts shall also provide that all coaches, full-time and part-time, must report annually to the institution all athletically related income.

University – nothing more

University of Nevada, Las Vegas

Gov board – see above, UNR

University – nothing more

University of New Mexico

Gov board

Regents' Policy Manual - Section 6.9: Employment Contracts

Policy

Certain administrative positions within the University are characterized by a level of responsibility such that the University shall reserve the discretion to renew or not renew the periodic employment contracts of these administrators when their contracts expire. The President is authorized to designate these positions from time to time.

Implementation

The President shall adopt an administrative policy governing the terms and conditions of employment of these administrators and recognizing the discretion of the University to renew or not renew their employment contracts upon the contracts' expiration. The policy shall provide that failure to renew the contracts of administrators who are also faculty members shall not affect the rights and privileges of these administrators as faculty members. The policy shall also apply to contracts of athletic coaches.

University

Administrative Policies and Procedures Manual - Policy 3210: Recruitment and Hiring

5.13. Employment of Intercollegiate Coaches

In recognition of the unique nature of the recruitment and hiring of athletic coaches, the University provides for an exception to competitive hiring processes noted in this Policy. A hiring official may fill a new or vacant position in those circumstances where the urgency of committing a job offer to a candidate is documented and indicates that normal competitive processes are not practical to secure the selection of a highly qualified candidate. All candidates hired under this exception will serve under time-limited contract appointments.

Administrative Policies and Procedures Manual - Policy 3240: Contract Employees

## 2. Contract Terms and Conditions

Contracts for administrators subject to this policy are normally written for one (1) year terms. Multi-year contract terms may also be used subject to prior approval of each multi-year contract term by the President. Except for the University's right either to renew or not renew administrators' contracts, and except for matters specifically set forth in such contracts (including duties and salary), the benefits, terms, and conditions of employment of administrators on contract shall be governed by the University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual*. This includes the University's right to terminate or otherwise discipline such employees for proper cause during the term of their contracts, pursuant to the University's personnel policies and procedures.

## 7. Coaches

Head coaches and assistant coaches in the University Athletic Department are also employed by means of periodic employment contracts, and they are subject to release by the University at the expiration of their contract terms pursuant to this policy and to the policies and procedures of the Athletic Department. The University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual* shall apply to such coaches and assistant coaches only to the extent that they are not inconsistent with the specific terms of their contracts, this policy, and the Athletic Department policies and procedures.

### San Diego State

Gov board – none (Shared Governance - SDSU governing bodies include the Office of the President, Associated Students, and the University Senate.)

University – no applicable policy found

### San Jose State

Gov board – no applicable policy found

University – no applicable policy found

### Utah State

Gov board – no applicable policy found

University

Policy 104 The University President and Other Officers

**4.7 Vice President and Director of Athletics**

The Vice President and Director of Athletics is the chief athletic program officer and is responsible to the President or his/her designee. He or she shall:

- (1) provide leadership and direction for the University athletic program;
- (2) recommend appointment and dismissal of athletics personnel and define their duties;
- (3) develop all intercollegiate sport schedules for the University;
- (4) direct the work of the head coaches, assistants, and part-time coaches of the University;
- (5) prepare the budget for intercollegiate activities for approval by the Athletic Council, President, and Trustees;
- (6) supervise the use of all athletic equipment and facilities and the expenditure of athletic funds; direct the athletic promotion, development and publicity programs, in cooperation with the Vice President for University Advancement and Commercialization;
- (7) supervise the intercollegiate athletic scholarship and grants-in-aid program and all athletic awards after consultation with and approval of the Athletic Council; and
- (9) perform such other duties as may be assigned by the President.

University of Wyoming

Gov board – no applicable policies found

University – no applicable policies found

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Three year employment contract for Co-Head Women's Gymnastics Coach Neil Resnick

**REFERENCE**

December 2012 Idaho State Board of Education (Board) approved a three year employment agreement with Neil Resnick

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is requesting approval of a three year contract with Neil Resnick as Co-Head Women's Gymnastics Coach.

Coach Resnick's accomplishments and the accomplishments of the team since then the previous contract include:

- Mountain Rim Gymnastics Conference (MRGC) Champions in 2015.
- 2014 MRGC Runner-Up.
- WAC Champions in 2013.
- WAC Co-Head Coaches of the Year in 2013. - Finished the season in the nation's Top 25 all eight seasons at Boise State.
- Ciera Perkins received National Association of Collegiate Gymnastic Coaches/Women (NAGCC/W) Second Team All-America honors on vault and uneven bars in 2015, and on floor exercise in 2014 (Making her the first Bronco to earn All-America honors on floor exercise).
- Boise State had 12 All-MRGC honors among their athletes in 2015, the most in the conference.
- The team finished the 2014-15 academic year with a 3.7256 team GPA, the third-highest team GPA in the country. It is also the highest ranking in school history for the program.

**IMPACT**

The contract base salary is \$78,802 the first year, \$81,800 for the second year, and \$84,800 for the third year with incentives as follows:

Academic incentive pay may be earned if the team Academic Progress Rate (APR) is as follows:

National score within sport:

50% – 59.9% = \$1,400

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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60% – 69.9%	=	\$1,600
70% – 79.9%	=	\$1,800
80% or higher	=	\$2,000

Athletic Incentive Pay may be earned as follows:

– Conference Tournament Championships	\$2,000
– or –	(Only one)
– Qualify Team for NCAA Regionals	\$1,500
– Qualify Team for NCAA Nationals	\$3,000
– Conference Coach of the Year	\$2,000
– NCAA Regional Coach of the Year	\$3,000
– NCAA National Coach of the Year	\$5,000
– Top 25 National Ranking at End of Season	\$2,000
– or –	(Only one)
– Top 12 National Ranking at End of Season	\$4,000
– or –	(Only one)
– Top 6 National Ranking at End of Season	\$5,000

Maximum potential annual compensation (base salary and potential incentive payments) is \$100,800.

In the event Neil Resnick terminates the agreement for convenience, the following liquidated damages shall be due:

If agreement is terminated on or before June 30, 2016, the sum of \$20,000.  
If agreement is terminated on or before June 30, 2017, the sum of \$10,000.

**ATTACHMENTS**

Attachment 1 – Proposed agreement 2015-2018	Page 5
Attachment 2 – Redline to current agreement	Page 19
Attachment 3 – Redline to Board model agreement	Page 35
Attachment 4 – 2010-2014 APR summary	Page 59
Attachment 5 – Maximum compensation for coach	Page 60
Attachment 6 – Conference Liquidated Damages	Page 61

**STAFF COMMENTS AND RECOMMENDATIONS**

Academic incentive amounts are material, with the highest amount (\$2,000) equivalent to that of a conference tournament championship.

The contract also provides the coach with a vehicle for personal and professional use. Board Policy II.F. prohibits automobile or automobile allowances unless expressly authorized by the Board. The Board of Examiners state travel policies prohibit the use of state vehicles for personal use. The Athletic Committee is

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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working with institutions to bring their vehicle policies in compliance with Board policy and State statute. Staff recommends excluding any contract provisions for any state vehicles used for personal purposes.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a new three year employment agreement with Neil Resnick, Co-Head Women's Gymnastics Coach, for a term commencing October 25, 2015 and terminating June 30, 2018 in substantial conformance with the terms of the agreement set forth in Attachment 1, provided the agreement excludes any provisions authorizing personal use of state vehicles.

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 Neil Resnick (“Coach”).

ARTICLE 1

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

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of, commencing on October 25, 2015 and terminating, without further notice to Coach, on June 30, 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 base salary in the amount of:  
 \$78,802 for the first year;  
 \$81,800 for the second year;  
 \$84,800 for the third year;  
 payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University’s Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the “base salary” as the University provides generally to non-faculty exempt employees;
- 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) Conference Tournament Champions \$2,000  
OR  
Qualify team for NCAA Regionals \$1,500
- b) Quality team for NCAA Nationals \$3,000
- c) Conference Coach of the Year \$2,000

- d) NCAA Regional Coach of the Year \$3,000
- e) NCAA National Coach of the Year \$5,000
- f) Top 25 National Ranking at End of Season: \$2,000  
OR  
Top 12 National Ranking at End of Season: \$4,000  
OR  
Top 6 National Ranking at End of Season: \$5,000

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 July if Coach is still employed by the University on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned if the annual Academic Progress Rate (“APR”) for the Team meets the following levels of the 4 year National Ranking:

*National Rank within Sport*

50 <sup>th</sup> -59.9%	=	\$1,400
60 <sup>th</sup> - 69.9 %	=	\$1,600
70 <sup>th</sup> – 79.9 %	=	\$1,800
80 <sup>th</sup> % or above	=	\$2,000

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.

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director’s sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach’s individual performance, athletic/academic performance of Coach’s assigned player personnel groups, or other performance-related factors.

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. Neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

3.2.6. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of 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:

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 employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) 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 Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income

and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to 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 President and the University's Board of Trustees.

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

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

## 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.

## ATTACHMENT 1

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 Director or Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, 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 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 Coach.

5.2.2. 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.

5.2.3. 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 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.

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

5.3. Termination by Coach for Convenience.

5.3.1. 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.

5.3.2. 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 competition) so as to minimize the impact on the program.

5.3.3. 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 sum: (a) if the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, 2016 and June 30, 2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4. The parties have both been represented by, 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.

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

5.4. Termination Due to Disability or Death of Coach.

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

5.4.3. 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.

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

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

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

6.2. University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, 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



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: Neil Resnick  
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.

**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

\_\_\_\_\_  
Curt Apsey, Director of Athletics

\_\_\_\_\_  
Neil Resnick

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

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

**EMPLOYMENT AGREEMENT**

This Employment Agreement (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, ~~2012~~, 2015 (“Effective Date”) by and between Boise State University (“the University”) and Neil Resnick (“Coach”).

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the ~~University’s intercollegiate women’s gymnastics team (the “Team”)~~ and shall perform such other duties in the University’s athletic program as the Director may assign and as may be described elsewhere in this Agreement ~~and any addenda hereto.~~ Coach shall, to the best of Coach’s ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position. Coach shall share in these duties with co-head coach Tina Bird.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~three (3) years,~~ commencing on ~~July 1, 2013~~October 25, 2015 and terminating, without further notice to Coach, on June 30, ~~2016-2018~~ (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)~~ —A base salary in the amount set forth inof:  
\$78,802 for the attached Addendum, first year;  
\$81,800 for the second year;  
\$84,800 for the third year;  
payable in biweekly installments in accordance with normal University procedures ~~(except as provided in the Addendum),~~ and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) ~~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) ~~c)~~ eAssignment 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. ~~University~~ Coach may ~~provide~~ earn supplemental compensation, as ~~set forth in the attached Addendum~~ [TCE1]-follows:

~~3.2.1~~ 3.2.1. Athletic Achievement Incentive Pay.

- a) Conference Tournament Champions \$2,000

OR

Qualify team for NCAA Regionals	\$1,500
b) Quality team for NCAA Nationals	\$3,000
c) Conference Coach of the Year	\$2,000
d) NCAA Regional Coach of the Year	\$3,000
e) NCAA National Coach of the Year	\$5,000
f) Top 25 National Ranking at End of Season:	\$2,000

OR

Top 12 National Ranking at End of Season: \$4,000

OR

Top 6 National Ranking at End of Season: \$5,000

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 July if Coach is still employed by the University on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned if the annual Academic Progress Rate (“APR”) for the Team meets the following levels of the 4 year National Ranking:

National Rank within Sport

50 <sup>th</sup> -59.9%	=	\$1,400
60 <sup>th</sup> - 69.9 %	=	\$1,600
70 <sup>th</sup> – 79.9 %	=	\$1,800
80 <sup>th</sup> % or above	=	\$2,000

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.

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director’s sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach’s individual performance, athletic/academic performance of Coach’s assigned player personnel groups, or other performance-related factors.

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

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

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

3.2.4-6. 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 ~~National Collegiate Athletic Association (the "NCAA")~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

3.3. General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any

fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1 and paid from the University to Coach, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

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

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

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

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

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

~~4.24.2.~~ Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval

of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to 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 ~~governing board~~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 (i.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 President and the University's Board of Trustees.

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

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

education or with any professional sports team requiring the performance of the duties set forth herein ~~without first giving ten (10) days prior written notice to the Director.~~

ARTICLE 5

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

5.1.1. In addition to the definitions contained in applicable rules and policies, 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 ~~governing board~~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 ~~governing board~~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 ~~governing board~~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 ~~governing board~~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 Director or Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, 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 ~~the~~ Coach was employed.

5.2- Termination of Coach 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 Coach.

5.2.2. 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 ~~the~~ Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform 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.

5.2.3. The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that ~~the~~ Coach may lose certain benefits, supplemental compensation, or outside compensation relating to Coach’s employment with 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.

5.2.4 In the event of non-renewal or termination of Coach’s

employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3- Termination by Coach for Convenience.

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

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

5.3.3—~~\_\_\_\_\_~~ If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, ~~for the breach of this Agreement~~ the following sum: (a) if the Agreement is terminated on or before June 30, ~~2013~~2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, ~~2013~~2016 and June 30, ~~2014~~2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4—~~The~~ parties have both been represented by 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.

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

5.4. Termination Due to Disability or Death of Coach.

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

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

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

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



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

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

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

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

**ATTACHMENT 2**

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~~Curt Apsey, Director of Athletics

\_\_\_\_\_  
Neil Resnick

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

Approved by the Board on the \_\_\_\_\_ day of \_\_\_\_\_,  
2012 \_\_\_\_\_, 2015.

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**(MODEL ATHLETICS CONTRACT) EMPLOYMENT AGREEMENT**

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

## ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University ~~(College)~~ shall employ Coach as the ~~co-head coach~~ (the "Position") of its intercollegiate ~~(Sport)~~ women's gymnastics team (the "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.~~ 4.2. Reporting Relationship. Coach shall report and be responsible directly to the ~~University (College)'s~~ University's Director of Athletics (the "Director") or the Director's designee. Coach shall abide by the reasonable instructions of Director or the ~~Director's~~ 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~~ University's ~~Chief executive officer (Chief executive officer)~~ President (the "President").

~~1.3.~~ 4.3. 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) shall cease~~ 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. Coach shall share in these duties with co-head coach Tina Bird.

## ARTICLE 2

~~2.1.~~ 2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ (   ) years, commencing on October 25, 2015 and terminating, without further notice to Coach, on June 30, 2018 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

~~2.2.~~ 2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University ~~(College)~~ and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board of

~~Education Trustees~~. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this ~~agreement~~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) ~~a) \_\_\_\_\_~~ ~~An annual~~ A base salary in the amount of \$ \_\_\_\_\_ per:  
\$78,802 for the first year;  
\$81,800 for the second year;  
\$84,800 for the third 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 Trustees;

~~(Regents or Trustees) \_\_\_\_\_;~~

b) \_\_\_\_\_

- b) ~~\_\_\_\_\_~~ The opportunity to receive such employee benefits calculated on the "base salary" as the University ~~(College)~~ 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 (College)'s 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

- 3.2 ~~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 as follows:~~

~~\_\_\_\_\_(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~~

3.2.1. Athletic Achievement Incentive Pay.

- a) Conference Tournament Champions \$2,000
- OR
- Qualify team for NCAA Regionals \$1,500
- b) Quality team for NCAA Nationals \$3,000
- c) Conference Coach of the Year \$2,000
- d) NCAA Regional Coach of the Year \$3,000
- e) NCAA National Coach of the Year \$5,000
- f) Top 25 National Ranking at the discretion of the Chief executive officer in consultation with the Director. The determination shall be based on
- End of Season: \$2,000
- OR
- Top 12 National Ranking at End of Season: \$4,000
- OR
- Top 6 National Ranking at End of Season: \$5,000

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 July if Coach is still employed by the University on that date.

3.2.factors: the2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned if the annual 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. (“APR”) for the Team meets the following levels of the 4 year National Ranking:

<u>National Rank within Sport</u>		
<u>50<sup>th</sup> -59.9%</u>	<u>=</u>	<u>\$1,400</u>
<u>60<sup>th</sup> - 69.9 %</u>	<u>=</u>	<u>\$1,600</u>
<u>70<sup>th</sup> – 79.9 %</u>	<u>=</u>	<u>\$1,800</u>
<u>80<sup>th</sup> % or above</u>	<u>=</u>	<u>\$2,000</u>

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.

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director's sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach's individual performance, athletic/academic performance of Coach's assigned player personnel groups, or other performance-related factors.

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~~reportable to the Board of ~~(Regents or Trustees)~~ as a document available to the public under the Idaho Public Records Act.

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

~~3.2.5 The Coach shall receive the sum of (amount or computation) hereunder from the University (College) or the University (College)'s 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 ~~the~~ Coach to participate in Programs related to ~~his~~ Coach's duties as an employee of ~~the~~ 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~~ Coach's services to and ~~perform~~appear on the Programs and to cooperate in their production, broadcasting, and telecasting. ~~It is understood that neither~~ Neither Coach nor any assistant ~~coaches~~coach 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 University's designated media outlets.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~

~~5. Coach agrees that the University (College) has the exclusive right to operate youth (Sport) athletic camps ("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 Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University (College)'s summer football camps, the shall pay Coach supplemental compensation.~~

~~3.2.6. University (College) shall pay per year as supplemental Coach (amount)~~

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

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

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

~~g) Within thirty days of the last day of the summer youth camp(s),  
Coach shall submit to the Director a preliminary "Camp~~

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

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

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

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

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

3.3 ~~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 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. 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~~  
~~4.1.1. Coach's duties under this Agreement;~~

~~4.1.2. 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. 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. 4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University (College), the University's Board of Trustees, the conference of which the University (College)'s governing board, the conference, is a member (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 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 (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 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~~

**ATTACHMENT 3**

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.

~~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 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) conference of which the University (College) is a member.~~

#### 4.2

~~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~~ 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.~~ Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s Chief executive officer~~ President and Director for all athletically-related income and benefits from sources outside the University ~~(College) and.~~ Coach shall report the source and amount of all such income and benefits to the ~~University (College)'s Chief executive officer~~ 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 ~~the~~ 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 governing board, the conference, or the NCAA (or NAIA).~~, 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~~ 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~~Team's competitions, but the final decision shall be made by the Director or the Director's designee.

~~4.7—6.~~ Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Without first giving ten (10) days prior written notice to the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

## 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, and policies.

5.1.1—In addition to the definitions contained in applicable rules and regulations, policies, the 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)—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)~~ b)—The failure of Coach to remedy any violation of any of the terms of this ~~agreement~~Agreement within thirty (30) days after written notice from the University ~~(College)~~;
- ~~c)~~ e)—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 boardUniversity's Board of Trustees, the ~~conference~~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~~National Association of Intercollegiate Athletics ("NAIA") member institution;
- ~~d)~~ d)—Ten (10) working ~~days~~days' absence of Coach from duty without the University (College)'s University's consent;
- ~~e)~~ e)—Any conduct of Coach that constitutes moral turpitude or that would, in the University (College)'sUniversity's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- ~~f)~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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 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 ~~(College)~~ as follows: before the effective date of the suspension, reassignment, or termination, the Director or ~~his~~ Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, ~~the~~ 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, ~~the~~ 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 ~~the~~ University ~~(College)~~ terminates this Agreement for its own convenience, ~~the~~ University ~~(College)~~ 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 ~~(College)~~ until the ~~term~~ Term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided; however, in the event Coach obtains other employment after such termination, then the amount of compensation ~~the~~ University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation ~~deduction~~ deductions according to law. In addition, Coach will be entitled to continue ~~his~~ the health insurance plan and group life insurance as if ~~he~~ Coach 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 ~~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 ~~to him~~ by ~~the~~ University after the date ~~he~~ Coach obtains other employment, to which ~~he~~ Coach is not entitled under this provision.

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

In the event of

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

5.3. Termination by Coach for Convenience.

5.3.1 ~~The~~ Coach recognizes that ~~hisCoach's~~ promise to work for ~~the~~ 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 ~~hisCoach's~~ employment by entering into this Agreement and that its investment would be lost were ~~heCoach~~ to resign or otherwise terminate ~~hisCoach's~~ employment with the University ~~(College)~~ before the end of the contract ~~term~~Term.

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

5.3.3 ~~—~~ If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for ~~his~~ convenience ~~he, Coach~~ shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum:

(a) if the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, 2016 and June 30, 2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 ~~—~~ The parties have both been represented by, 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 ~~(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 ~~the~~ University ~~(College)~~ shall constitute adequate and reasonable compensation to ~~the~~ 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 elsewhere in this Agreement, if Coach terminates this Agreement for convenience, ~~heCoach~~ shall forfeit to the extent permitted by law ~~hisCoach's~~ right to receive all supplemental compensation and other payments and all accumulated annual leave.

5.4. Termination ~~due~~Due to Disability or Death of Coach.

5.4.1 ~~Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently~~

disabled as defined by the University (College)'s University's disability insurance carrier, becomes unable to perform the essential functions of the ~~position of head coach~~ Position, or dies.

5.4.2—         If this Agreement is terminated because of ~~Coach's~~ Coach's death, ~~Coach's~~ Coach's salary and all other benefits shall terminate as of the last day worked, except that ~~the Coach's~~ 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~~ Coach's estate or beneficiaries ~~thereunder~~ hereunder.

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

5.5—         Interference by Coach. In the event of ~~termination~~, suspension, ~~or~~ reassignment or termination, 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.

5.7—~~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—~~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~~ provided for in the State Board of Education Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures, IDAPA 08.01.01 et seq., Manual, and ~~the~~ University ~~(College) Faculty-Staff Handbook~~ Policies.

## 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~~ 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 or policies regarding furloughs or financial exigency.

6.2. University (College) 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 (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~~Term of this ~~agreement~~Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

6.6—Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in ~~the courts of the state of~~ 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 (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~~therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

the University ~~(College)~~: Boise State University  
Director of Athletics

\_\_\_\_\_

1910 University Drive  
Boise, Idaho 83725-1020

with a copy to: ~~Chief executive officer~~ Boise State University

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

O 1910 University Drive  
Boise, Idaho 83725-1000

Coach: Neil Resnick

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

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

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

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

\_\_\_\_\_ 6.13— Non-Use of Names and Trademarks. ~~The~~ Coach shall not, without the University (College)'s University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (~~College~~)—(including contraction, abbreviation or simulation), except in the course and scope of his Coach's 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 between~~ the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University (College) the University's Board of ~~(Regents or Trustees)~~.

6.16—Opportunity to Consult with Attorney. ~~The~~ Coach acknowledges that ~~he~~ 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 ~~(COLLEGE)~~ \_\_\_\_\_

COACH

\_\_\_\_\_  
Chief executive officer \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date

\_\_\_\_\_  
Curt Apsey, Director of Athletics \_\_\_\_\_ Neil Resnick \_\_\_\_\_

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

Approved by the Board of ~~(Regents or Trustees)~~ on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
2014.

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**BOISE STATE UNIVERSITY**

Women's Gymnastics APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2013-14
<b>Women's Gymnastics</b>	1000	918	981	1000
<b>National % Rank by Sport</b>	<b>90-100</b>	<b>0-10</b>	<b>10-20</b>	<b>90-100</b>

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

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

<b>Boise State University Women's Gymnastics</b>	990	975	971	974
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Coach Neil Resnick Maximum Compensation Calculation - 2015-2018

	Yr 1	Yr 2	Yr 3
3.1.1a Annual Base Salary	\$ 78,802.00	\$ 81,800.00	\$ 84,800.00
3.2.1 Additional Pay based on Performance	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
3.2.2 Additional Pay based on Academic Achievement	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Total Maximum potential annual compensation under Employment Agreement	\$ 100,802.00	\$ 103,800.00	\$ 106,800.00

Policies on coach compensation/liquidated damages in the Mountain West  
Governing board policies and procedures and university policies and procedures

Air Force

No information found

Colorado State

Gov board – no applicable policies found

University – no applicable policies found

Fresno State

Gov board – no applicable policies found

University – no applicable policies found

University of Hawaii

Gov board

Policy EP 9.216  
Classification and Compensation of Coaches

III.

D. All multi-year contracts shall contain performance criteria. Criteria which coaches shall be expected to meet will be developed for each coach. At a minimum, coaches with multi-year contracts shall be expected to meet established standards in the following areas: (1) academic performance of student athletes; (2) personal behavior; (3) conduct of assistant coaches, staff, and players; and (4) program development.

E. It is intended that the salaries be consistent with those of colleges and universities with comparable programs....

University – no applicable policies found

University of Nevada, Reno

Gov board

NSHE Code

Title 2, Chapter 5,  
5.4.2.

(e) Contracts for appointment of head athletic coaches and assistant coaches, including interim or acting appointments, shall require only approval of the institutional president as long as the term or remaining term of the contract together with any option that has been exercised or any extension that has been offered a) does not exceed 36 months, and b) the total compensation is \$1,200,000 or less for the contract term. For these purposes, total compensation does not include standard fringe benefits available to all NSHE employees including but not limited to retirement contributions, insurance, travel, out-of-pocket expense reimbursement, annual and sick leave nor does it include outside income from sources including but not limited to commercial endorsements of products and services, income from written and video materials, summer camps or apparel and equipment endorsements. Total compensation includes performance bonuses and perquisites including but not limited to moving expenses, host account, automobile allowance or privilege, housing allowance or privilege, club membership, guest travel, event tickets and media and personal appearances. The chancellor may approve contracts that exceed 36 months for head athletic coaches and assistant coaches, other than head athletic coaches of football and men's and women's basketball. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until the chancellor approves the appointments. The appointments shall be reported to the Board of Regents by the president and/or the chancellor. If, in the chancellor's opinion, any contract rises to a level in length of term that the Board's approval is needed, such approval will be required. Contracts for head athletic coaches of football and men's and women's basketball that exceed 36 months, all contracts that exceed \$1,200,000 for the contract term, and all contracts for directors of athletics shall require approval of the Board of Regents.

(f) The president shall negotiate all athletic department personnel contracts involving directors of athletics or coaches with the assistance of institutional counsel. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the vice chancellor for legal affairs, including as to consistency of form.

Title 4, Chapter 24,  
1.5.c. Compensation

Compensation to athletic department personnel shall be approved by the president and awarded through proper institutional channels. Employees receiving compensation for outside professional services will comply with provisions of Title 4, Chapter 3 of the Board of Regents' *Handbook*. The contracts of coaches in Departments of Intercollegiate Athletics shall provide that coaches found by the institution to have committed violations of NCAA or NJCAA rules, as applicable, will be subject to actions as provided by NCAA or NJCAA enforcement provisions. Contracts shall also provide that all coaches, full-time and part-time, must report annually to the institution all athletically related income.

University – nothing more

University of Nevada, Las Vegas

Gov board – see above, UNR

University – nothing more

University of New Mexico

Gov board

Regents' Policy Manual - Section 6.9: Employment Contracts

Policy

Certain administrative positions within the University are characterized by a level of responsibility such that the University shall reserve the discretion to renew or not renew the periodic employment contracts of these administrators when their contracts expire. The President is authorized to designate these positions from time to time.

Implementation

The President shall adopt an administrative policy governing the terms and conditions of employment of these administrators and recognizing the discretion of the University to renew or not renew their employment contracts upon the contracts' expiration. The policy shall provide that failure to renew the contracts of administrators who are also faculty members shall not affect the rights and privileges of these administrators as faculty members. The policy shall also apply to contracts of athletic coaches.

University

Administrative Policies and Procedures Manual - Policy 3210: Recruitment and Hiring

5.13. Employment of Intercollegiate Coaches

In recognition of the unique nature of the recruitment and hiring of athletic coaches, the University provides for an exception to competitive hiring processes noted in this Policy. A hiring official may fill a new or vacant position in those circumstances where the urgency of committing a job offer to a candidate is documented and indicates that normal competitive processes are not practical to secure the selection of a highly qualified candidate. All candidates hired under this exception will serve under time-limited contract appointments.

Administrative Policies and Procedures Manual - Policy 3240: Contract Employees

2. Contract Terms and Conditions

Contracts for administrators subject to this policy are normally written for one (1) year terms. Multi-year contract terms may also be used subject to prior approval of each multi-year contract term by the President. Except for the University's right either to renew or not renew administrators' contracts, and except for matters specifically set forth in such contracts (including duties and salary), the benefits, terms, and conditions of employment of administrators on contract shall be governed by the University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual*. This includes the University's right to terminate or otherwise discipline such employees for proper cause during the term of their contracts, pursuant to the University's personnel policies and procedures.

7. Coaches

Head coaches and assistant coaches in the University Athletic Department are also employed by means of periodic employment contracts, and they are subject to release by the University at the expiration of their contract terms pursuant to this policy and to the policies and procedures of the Athletic Department. The University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual* shall apply to such coaches and assistant coaches only to the extent that they are not inconsistent with the specific terms of their contracts, this policy, and the Athletic Department policies and procedures.

San Diego State

Gov board – none (Shared Governance - SDSU governing bodies include the Office of the President, Associated Students, and the University Senate.)

University – no applicable policy found

San Jose State

Gov board – no applicable policy found

University – no applicable policy found

Utah State

Gov board – no applicable policy found

University

Policy 104 The University President and Other Officers

4.7 Vice President and Director of Athletics

The Vice President and Director of Athletics is the chief athletic program officer and is responsible to the President or his/her designee. He or she shall:

- (1) provide leadership and direction for the University athletic program;
- (2) recommend appointment and dismissal of athletics personnel and define their duties;
- (3) develop all intercollegiate sport schedules for the University;
- (4) direct the work of the head coaches, assistants, and part-time coaches of the University;
- (5) prepare the budget for intercollegiate activities for approval by the Athletic Council, President, and Trustees;
- (6) supervise the use of all athletic equipment and facilities and the expenditure of athletic funds; direct the athletic promotion, development and publicity programs, in cooperation with the Vice President for University Advancement and Commercialization;
- (7) supervise the intercollegiate athletic scholarship and grants-in-aid program and all athletic awards after consultation with and approval of the Athletic Council; and
- (9) perform such other duties as may be assigned by the President.

University of Wyoming

Gov board – no applicable policies found

University – no applicable policies found

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Three year employment contract for Co-Head Women's Gymnastics Coach Tina Bird

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is requesting approval of a three year contract as Co-Head Coach of Women's Gymnastics.

**IMPACT**

The contract base salary is \$64,356 the first year, \$70,000 for the second year, and \$75,000 for the third year with incentives as follows:

Academic incentive pay may be earned if the team Academic Progress Rate (APR) is as follows:

National score within sport:

50% – 59.9%	=	\$1,400
60% – 69.9%	=	\$1,600
70% – 79.9%	=	\$1,800
80% or higher	=	\$2,000

Athletic incentive pay may be earned as follows:

– Conference Tournament Championships	\$2,000
– or –	(Only one)
– Qualify Team for NCAA Regionals	\$1,500
– Qualify Team for NCAA Nationals	\$3,000
– Conference Coach of the Year	\$2,000
– NCAA Regional Coach of the Year	\$3,000
– NCAA National Coach of the Year	\$5,000
– Top 25 National Ranking at End of Season	\$2,000
– or –	(Only one)
– Top 12 National Ranking at End of Season	\$4,000
– or –	(Only one)
– Top 6 National Ranking at End of Season	\$5,000

Maximum potential annual compensation (base salary and potential incentive payments) is \$86,356.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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In the event Tina Bird terminates the agreement for convenience, the following liquidated damages shall be due:

If agreement is terminated on or before June 30, 2016, the sum of \$20,000.  
If agreement is terminated on or before June 30, 2017, the sum of \$10,000.

**ATTACHMENTS**

Attachment 1 – Proposed agreement 2015-2018	Page 3
Attachment 2 – Redline to Board model agreement	Page 17
Attachment 3 – 2010-2014 APR summary	Page 41
Attachment 4 – Maximum compensation for coach	Page 42
Attachment 5 – Conference Liquidated Damages	Page 43

**STAFF COMMENTS AND RECOMMENDATIONS**

Academic incentive amounts are material, with the highest amount (\$2,000) equivalent to that of a conference tournament championship.

The contract also provides the coach with a vehicle for personal and professional use. Board Policy II.F. prohibits automobile or automobile allowances unless expressly authorized by the Board. The Board of Examiners state travel policies prohibit the use of state vehicles for personal use. The Athletic Committee is working with institutions to bring their vehicle policies in compliance with Board policy and State statute. Staff recommends excluding any contract provisions for any state vehicles used for personal purposes.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a new three year employment agreement with Tina Bird, Co-Head Women's Gymnastics Coach, for a term commencing October 25, 2015 and terminating June 30, 2018 in substantial conformance with the terms of the agreement set forth in Attachment 1, provided the agreement excludes any provisions authorizing personal use of state vehicles.

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

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 Tina Bird (“Coach”).

ARTICLE 1

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

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of, commencing on October 25, 2015 and terminating, without further notice to Coach, on June 30, 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 base salary in the amount of:  
\$64,356 for the first year, prorated;  
\$70,000 for the second year;  
\$75,000 for the third year;  
payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University’s Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the “base salary” as the University provides generally to non-faculty exempt employees;
- 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) Conference Tournament Champions \$2,000  
OR  
Qualify team for NCAA Regionals \$1,500
- b) Quality team for NCAA Nationals \$3,000
- c) Conference Coach of the Year \$2,000

- d) NCAA Regional Coach of the Year \$3,000
- e) NCAA National Coach of the Year \$5,000
- f) Top 25 National Ranking at End of Season: \$2,000  
OR  
Top 12 National Ranking at End of Season: \$4,000  
OR  
Top 6 National Ranking at End of Season: \$5,000

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 July if Coach is still employed by the University on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned if the annual Academic Progress Rate (“APR”) for the Team meets the following levels of the 4 year National Ranking:

*National Rank within Sport*

50 <sup>th</sup> -59.9%	=	\$1,400
60 <sup>th</sup> - 69.9 %	=	\$1,600
70 <sup>th</sup> – 79.9 %	=	\$1,800
80 <sup>th</sup> % or above	=	\$2,000

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.

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director’s sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach’s individual performance, athletic/academic performance of Coach’s assigned player personnel groups, or other performance-related factors.

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. Neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

3.2.6. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of 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:

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 employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) 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 Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income

and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to 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 President and the University's Board of Trustees.

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

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

## 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.

## ATTACHMENT 1

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 Director or Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, 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 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 Coach.

5.2.2. 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.

5.2.3. 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 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.

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

5.3. Termination by Coach for Convenience.

5.3.1. 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.

5.3.2. 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 competition) so as to minimize the impact on the program.

5.3.3. 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 sum: (a) if the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, 2016 and June 30, 2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4. The parties have both been represented by, 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.

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

5.4. Termination Due to Disability or Death of Coach.

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

5.4.3. 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.

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

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

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

6.2. University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, 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



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: Tina Bird  
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.

**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

\_\_\_\_\_  
Curt Apsey, Director of Athletics

\_\_\_\_\_  
Tina Bird

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

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

**(MODEL ATHLETICS CONTRACT) EMPLOYMENT AGREEMENT**

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

## ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University ~~(College)~~ shall employ ~~Coach~~ as the ~~co-head coach~~ (the "Position") of ~~its~~ intercollegiate ~~(Sport)~~ women's gymnastics team (the "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.~~ 1.2. Reporting Relationship. Coach shall report and be responsible directly to the ~~University (College)'s~~ University's Director of Athletics (the "Director") or the Director's designee. Coach shall abide by the reasonable instructions of Director or the ~~Director's~~ 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 (the "President").

~~1.3.~~ 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) shall cease~~ 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. Coach shall share in these duties with co-head coach Neil Resnick.

## ARTICLE 2

~~2.1.~~ 2.1. Term. This Agreement is for a fixed-term appointment of ~~\_\_\_\_\_ ( )~~ years, commencing on ~~\_\_\_\_\_~~ October 25, 2015 and terminating, without further notice to Coach, on June 30, 2018 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

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

nor shall Coach's service pursuant to this ~~agreement~~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) \_\_\_\_\_~~ ~~a) \_\_\_\_\_~~ ~~An annual~~ ~~A base~~ salary in the amount of \$ ~~\_\_\_\_\_~~ per:  
~~\$64,356 for the first year, prorated;~~  
~~\$70,000 for the second year;~~  
~~\$75,000 for the third 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 Trustees;

~~\_\_\_\_\_(Regents or Trustees)\_\_\_\_\_;~~

~~b) \_\_\_\_\_~~

- ~~b) \_\_\_\_\_~~ The opportunity to receive such employee benefits calculated on the "base salary" as the University ~~(College)~~ 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 (College)'s 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

- ~~3.2 \_\_\_\_\_~~ ~~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 as follows:~~

~~\_\_\_\_\_(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~~

3.2.1. Athletic Achievement Incentive Pay.

- a) Conference Tournament Champions                      \$2,000  
OR  
Qualify team for NCAA Regionals                      \$1,500
- b) Quality team for NCAA Nationals                      \$3,000
- c) Conference Coach of the Year                      \$2,000
- d) NCAA Regional Coach of the Year                      \$3,000
- e) NCAA National Coach of the Year                      \$5,000
- f) Top 25 National Ranking at the discretion of the Chief executive officer in consultation with the Director. The determination shall be based on  
End of Season:                      \$2,000  
OR  
Top 12 National Ranking at End of Season: \$4,000  
OR  
Top 6 National Ranking at End of Season: \$5,000

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 July if Coach is still employed by the University on that date.

3.2.factors: the2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned if the annual 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. ("APR") for the Team meets the following levels of the 4 year National Ranking:

<u>National Rank within Sport</u>		
<u>50<sup>th</sup> -59.9%</u>	<u>=</u>	<u>\$1,400</u>
<u>60<sup>th</sup> - 69.9 %</u>	<u>=</u>	<u>\$1,600</u>
<u>70<sup>th</sup> – 79.9 %</u>	<u>=</u>	<u>\$1,800</u>
<u>80<sup>th</sup> % or above</u>	<u>=</u>	<u>\$2,000</u>

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.

The decisions whether or not to award the Incentive Pay outlined in this Section 3.2, and in what amounts, are within the Director's sole discretion. The decisions may be made based on a variety of factors, including, but not limited to, Coach's individual performance, athletic/academic performance of Coach's assigned player personnel groups, or other performance-related factors.

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~~reportable to the Board of ~~(Regents or Trustees)~~ as a document available to the public under the Idaho Public Records Act.

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

3.2.5 ~~The Coach shall receive the sum of (amount or computation) hereunder from the University (College) or the University (College)'s 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 ~~the~~ Coach to participate in Programs related to hisCoach's duties as an employee of ~~the~~ 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 hisCoach's services to and ~~perform~~appear on the Programs and to cooperate in their production, broadcasting, and telecasting. ~~It is understood that neither~~Neither Coach nor any assistant ~~coaches~~coach 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 University's designated media outlets.

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~

~~5. Coach agrees that the University (College) has the exclusive right to operate youth (Sport) athletic camps ("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 Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University (College)'s summer football camps, the shall pay Coach supplemental compensation.~~

~~3.2.6. University (College) shall pay per year as supplemental Coach (amount)~~

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

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

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

~~(College) facilities including the \_\_\_\_\_.~~

~~g) Within thirty days of the last day of the summer youth camp(s),  
Coach shall submit to the Director a preliminary "Camp~~

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

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

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

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

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

3.3— 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 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. 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  
4.1.1. Coach's duties under this Agreement;

~~4.1.2. 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. 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. 4.1.4.—~~ Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University ~~(College)~~, the University's Board of Trustees, the conference of which the University (College)'s governing board, the conference, is a member (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~~ 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 (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 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.

~~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 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) conference of which the University (College) is a member.~~

#### 4.2

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~~ 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. Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s Chief executive officer~~ President and Director for all athletically-related income and benefits from sources outside the University ~~(College) and Coach~~ shall report the source and amount of all such income and benefits to the ~~University (College)'s Chief executive officer~~ 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 ~~the 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 governing board, the conference, or the NCAA (or NAIA), 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~~ 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~~Team’s competitions, but the final decision shall be made by the Director or the Director’s designee.

~~4.7—6.~~ Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Without first giving ten (10) days prior written notice to the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

## 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, and policies.

5.1.1—In addition to the definitions contained in applicable rules and regulations, policies, the 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)—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)~~ b)—The failure of Coach to remedy any violation of any of the terms of this ~~agreement~~Agreement within thirty (30) days after written notice from the University ~~(College)~~;
- ~~c)~~ e)—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 boardUniversity's Board of Trustees, the ~~conference~~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 NAIANational Association of Intercollegiate Athletics ("NAIA") member institution;
- ~~d)~~ d)—Ten (10) working ~~days~~days' absence of Coach from duty without the University (College)'s University's consent;
- ~~e)~~ e)—Any conduct of Coach that constitutes moral turpitude or that would, in the University (College)'sUniversity's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- ~~f)~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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~~ University's Board of Trustees, the ~~conference~~ 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 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 ~~(College)~~ as follows: before the effective date of the suspension, reassignment, or termination, the Director or ~~his~~ Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, ~~the~~ 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, ~~the~~ 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 ~~the~~ University ~~(College)~~ terminates this Agreement for its own convenience, ~~the~~ University ~~(College)~~ 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 ~~(College)~~ until the ~~term~~ Term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided; however, in the event Coach obtains other employment after such termination, then the amount of compensation ~~the~~ University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation ~~deduction~~ deductions according to law. In addition, Coach will be entitled to continue ~~his~~ the health insurance plan and group life insurance as if ~~he~~ Coach 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 ~~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 ~~to him~~ by ~~the~~ University after the date ~~he~~ Coach obtains other employment, to which ~~he~~ Coach is not entitled under this provision.

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

In the event of

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

5.3. Termination by Coach for Convenience.

5.3.1 ~~The~~ Coach recognizes that ~~his~~Coach's promise to work for ~~the~~ 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~~Coach's employment by entering into this Agreement and that its investment would be lost were ~~he~~Coach to resign or otherwise terminate ~~his~~Coach's employment with the University ~~(College)~~ before the end of the contract ~~term~~Term.

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

5.3.3 ~~—~~ If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for ~~his~~ convenience ~~he, Coach~~ shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum:

(a) if the Agreement is terminated on or before June 30, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between July 1, 2016 and June 30, 2017 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 ~~—~~ The parties have both been represented by, 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 ~~(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 ~~the~~ University ~~(College)~~ shall constitute adequate and reasonable compensation to ~~the~~ 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 elsewhere in this Agreement, if Coach terminates this Agreement for convenience, ~~he~~Coach shall forfeit to the extent permitted by law ~~his~~Coach's right to receive all supplemental compensation and other payments and all accumulated annual leave.

5.4. Termination ~~due~~Due to Disability or Death of Coach.

5.4.1 ~~Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently~~

disabled as defined by the University (College)'s University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach Position, or dies.

5.4.2—         If this Agreement is terminated because of Coach's Coach's death, Coach's Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's 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 Coach's estate or beneficiaries thereunder hereunder.

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

5.5—         Interference by Coach. In the event of termination, suspension, or reassignment or termination, 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.

5.7—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—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 provided for in the State Board of Education Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures, IDAPA 08.01.01 et seq., Manual, and the University (College) Faculty Staff Handbook Policies.

## 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 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 or policies regarding furloughs or financial exigency.

6.2. University (College) 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 ~~(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~~Term of this ~~agreement~~Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

6.6 ~~—~~. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in ~~the courts of the state of~~ 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 ~~(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~~therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

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

the University ~~(College):~~ Boise State University  
Director of Athletics

\_\_\_\_\_

1910 University Drive  
Boise, Idaho 83725-1020

with a copy to: ~~Chief executive officer~~ Boise State University

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

O 1910 University Drive  
Boise, Idaho 83725-1000

Coach: Tina Bird

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

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

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

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

\_\_\_\_\_ 6.13— Non-Use of Names and Trademarks. ~~The~~ Coach shall not, without the University (College)'s University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (~~College~~) (including contraction, abbreviation or simulation), except in the course and scope of ~~his~~ Coach's 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~~between the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University ~~(College)'s~~the University's Board of ~~(Regents or Trustees)~~\_\_\_\_\_.

6.16—\_\_\_\_\_ Opportunity to Consult with Attorney. ~~The~~ Coach acknowledges that ~~he~~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 ~~(COLLEGE)~~\_\_\_\_\_

COACH

\_\_\_\_\_  
Chief executive officer \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date

\_\_\_\_\_  
Curt Apsey, Director of Athletics \_\_\_\_\_ Tina Bird \_\_\_\_\_

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

Approved by the Board of ~~(Regents or Trustees)~~\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
2014.

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**BOISE STATE UNIVERSITY**

Women's Gymnastics APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2013-14
<b>Women's Gymnastics</b>	1000	918	981	1000
<b>National % Rank by Sport</b>	<i>90-100</i>	<i>0-10</i>	<i>10-20</i>	<i>90-100</i>

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

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

<b>Boise State University Women's Gymnastics</b>	990	975	971	974
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Coach Tina Bird Maximum Compensation Calculation - 2015-2018

		Yr 1	Yr 2	Yr 3
3.1.1a	Annual Base Salary	\$ 64,356.00	\$ 70,000.00	\$ 75,000.00
3.2.1	Additional Pay based on Performance	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
3.2.2	Additional Pay based on Academic Achievement	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 86,356.00	\$ 92,000.00	\$ 97,000.00

Policies on coach compensation/liquidated damages in the Mountain West  
Governing board policies and procedures and university policies and procedures

Air Force

No information found

Colorado State

Gov board – no applicable policies found

University – no applicable policies found

Fresno State

Gov board – no applicable policies found

University – no applicable policies found

University of Hawaii

Gov board

Policy EP 9.216  
Classification and Compensation of Coaches

III.

D. All multi-year contracts shall contain performance criteria. Criteria which coaches shall be expected to meet will be developed for each coach. At a minimum, coaches with multi-year contracts shall be expected to meet established standards in the following areas: (1) academic performance of student athletes; (2) personal behavior; (3) conduct of assistant coaches, staff, and players; and (4) program development.

E. It is intended that the salaries be consistent with those of colleges and universities with comparable programs....

University – no applicable policies found

University of Nevada, Reno

Gov board

NSHE Code

Title 2, Chapter 5,  
5.4.2.

(e) Contracts for appointment of head athletic coaches and assistant coaches, including interim or acting appointments, shall require only approval of the institutional president as long as the term or remaining term of the contract together with any option that has been exercised or any extension that has been offered a) does not exceed 36 months, and b) the total compensation is \$1,200,000 or less for the contract term. For these purposes, total compensation does not include standard fringe benefits available to all NSHE employees including but not limited to retirement contributions, insurance, travel, out-of-pocket expense reimbursement, annual and sick leave nor does it include outside income from sources including but not limited to commercial endorsements of products and services, income from written and video materials, summer camps or apparel and equipment endorsements. Total compensation includes performance bonuses and perquisites including but not limited to moving expenses, host account, automobile allowance or privilege, housing allowance or privilege, club membership, guest travel, event tickets and media and personal appearances. The chancellor may approve contracts that exceed 36 months for head athletic coaches and assistant coaches, other than head athletic coaches of football and men's and women's basketball. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until the chancellor approves the appointments. The appointments shall be reported to the Board of Regents by the president and/or the chancellor. If, in the chancellor's opinion, any contract rises to a level in length of term that the Board's approval is needed, such approval will be required. Contracts for head athletic coaches of football and men's and women's basketball that exceed 36 months, all contracts that exceed \$1,200,000 for the contract term, and all contracts for directors of athletics shall require approval of the Board of Regents.

(f) The president shall negotiate all athletic department personnel contracts involving directors of athletics or coaches with the assistance of institutional counsel. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the vice chancellor for legal affairs, including as to consistency of form.

Title 4, Chapter 24,  
1.5.c. Compensation

Compensation to athletic department personnel shall be approved by the president and awarded through proper institutional channels. Employees receiving compensation for outside professional services will comply with provisions of Title 4, Chapter 3 of the Board of Regents' *Handbook*. The contracts of coaches in Departments of Intercollegiate Athletics shall provide that coaches found by the institution to have committed violations of NCAA or NJCAA rules, as applicable, will be subject to actions as provided by NCAA or NJCAA enforcement provisions. Contracts shall also provide that all coaches, full-time and part-time, must report annually to the institution all athletically related income.

University – nothing more

University of Nevada, Las Vegas

Gov board – see above, UNR

University – nothing more

University of New Mexico

Gov board

Regents' Policy Manual - Section 6.9: Employment Contracts

Policy

Certain administrative positions within the University are characterized by a level of responsibility such that the University shall reserve the discretion to renew or not renew the periodic employment contracts of these administrators when their contracts expire. The President is authorized to designate these positions from time to time.

Implementation

The President shall adopt an administrative policy governing the terms and conditions of employment of these administrators and recognizing the discretion of the University to renew or not renew their employment contracts upon the contracts' expiration. The policy shall provide that failure to renew the contracts of administrators who are also faculty members shall not affect the rights and privileges of these administrators as faculty members. The policy shall also apply to contracts of athletic coaches.

University

Administrative Policies and Procedures Manual - Policy 3210: Recruitment and Hiring

5.13. Employment of Intercollegiate Coaches

In recognition of the unique nature of the recruitment and hiring of athletic coaches, the University provides for an exception to competitive hiring processes noted in this Policy. A hiring official may fill a new or vacant position in those circumstances where the urgency of committing a job offer to a candidate is documented and indicates that normal competitive processes are not practical to secure the selection of a highly qualified candidate. All candidates hired under this exception will serve under time-limited contract appointments.

Administrative Policies and Procedures Manual - Policy 3240: Contract Employees

## 2. Contract Terms and Conditions

Contracts for administrators subject to this policy are normally written for one (1) year terms. Multi-year contract terms may also be used subject to prior approval of each multi-year contract term by the President. Except for the University's right either to renew or not renew administrators' contracts, and except for matters specifically set forth in such contracts (including duties and salary), the benefits, terms, and conditions of employment of administrators on contract shall be governed by the University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual*. This includes the University's right to terminate or otherwise discipline such employees for proper cause during the term of their contracts, pursuant to the University's personnel policies and procedures.

## 7. Coaches

Head coaches and assistant coaches in the University Athletic Department are also employed by means of periodic employment contracts, and they are subject to release by the University at the expiration of their contract terms pursuant to this policy and to the policies and procedures of the Athletic Department. The University's personnel policies and procedures, found in [Section 3000](#) of the *University Business Policies and Procedures Manual* shall apply to such coaches and assistant coaches only to the extent that they are not inconsistent with the specific terms of their contracts, this policy, and the Athletic Department policies and procedures.

### San Diego State

Gov board – none (Shared Governance - SDSU governing bodies include the Office of the President, Associated Students, and the University Senate.)

University – no applicable policy found

### San Jose State

Gov board – no applicable policy found

University – no applicable policy found

### Utah State

Gov board – no applicable policy found

University

Policy 104 The University President and Other Officers

4.7 Vice President and Director of Athletics

The Vice President and Director of Athletics is the chief athletic program officer and is responsible to the President or his/her designee. He or she shall:

- (1) provide leadership and direction for the University athletic program;
- (2) recommend appointment and dismissal of athletics personnel and define their duties;
- (3) develop all intercollegiate sport schedules for the University;
- (4) direct the work of the head coaches, assistants, and part-time coaches of the University;
- (5) prepare the budget for intercollegiate activities for approval by the Athletic Council, President, and Trustees;
- (6) supervise the use of all athletic equipment and facilities and the expenditure of athletic funds; direct the athletic promotion, development and publicity programs, in cooperation with the Vice President for University Advancement and Commercialization;
- (7) supervise the intercollegiate athletic scholarship and grants-in-aid program and all athletic awards after consultation with and approval of the Athletic Council; and
- (9) perform such other duties as may be assigned by the President.

University of Wyoming

Gov board – no applicable policies found

University – no applicable policies found

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Multi-year employment agreement with Nate Houle, Head Men's and Women's Cross Country Coach.

**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 two-year eight month employment agreement for Nate Houle, Head Men's and Women's Cross Country Coach. The position is funded by state appropriated funds.

**IMPACT**

The annual base salary from appropriated funds is \$44,012.80

The coach is entitled to receive the following incentive/supplemental compensation:

1. Conference champions or co-champion in either Men's or Women's Cross Country = \$1,692.80 (1/26<sup>th</sup> of base salary)
2. Academic achievement and behavior of team based on APR national score exceeding 990 = up to \$1,000.
3. Academic year (two semesters) average GPA of 3.50 or more = \$1,500.
4. To ensure Coach's participation in annual cross country summer camps, 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 \$48,398.40.

In the event the coach terminates the contract for convenience, the following liquidated damages shall be due:

If the Agreement is terminated on or before June 21, 2016, the sum of \$20,000.

If the Agreement is terminated on or before June 21, 2017, the sum of \$10,000.

If the Agreement is terminated on or before end of the 2017 season, the sum of \$5,000.

**ATTACHMENTS**

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement - Redline	Page 15

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

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Attachment 3	Cross Country APR Scores	Page 31
Attachment 4	Max Compensation Calculation	Page 32
Attachment 5	Liquidated Damages	Page 33

**STAFF AND COMMENTS AND RECOMMENDATIONS**

The maximum academic incentive is \$2,500. The Board has historically looked favorably on academic incentives in excess of a conference tournament championship. Supplemental compensation under the contract for a conference champions or co-champion is equivalent to almost \$1,700.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Idaho State University to extend the multi-year employment agreement with Nate Houle, Head Men's and Women's Cross Country Coach, for a term commencing October 23, 2015 and terminating June 21, 2018 at a base salary of \$44,012.80 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\_\_\_\_\_

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY (“the University”) and NATE HOULE (“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 Men’s & Women’s Cross Country 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 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 Chief executive officer (Chief executive officer).

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 3.2.6 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two years and approximately eight months, commencing on October 23, 2015 and terminating, without further notice to Coach, on June 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$44,012.80 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 Chief executive officer 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 men's or women's Team is the regular-season conference champion or co-champion, and if Coach continues to be employed as University's head Cross Country coach as of the ensuing January 21st, the University shall pay to Coach supplemental compensation in an amount equal to 1/26th 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, if Coach continues to be employed as University's head Cross country coach as of the ensuing January 21st, Coach shall be eligible to receive supplemental compensation in an amount up to \$1,000.00 based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director 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 men's and women's Team's combined one-year APR score based on attainment of the following levels:

Team APR Ranking

Maximum Incentive Pay

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.

3.2.3 Coach agrees that the University has the exclusive right to operate youth cross country 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 cross country 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 cross country camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head Cross Country 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 Cross country program budget at the University. This amount shall be paid within 30 days after all camp bills have been paid.

3.2.4 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 his duties and obligations as head Cross country 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.

3.2.5 Each year Team achieves a single-year (two semesters) combined average GPA of 3.50 or higher, and if Coach continues to be employed as University

head Men's & Women's Cross Country coach as of the ensuing January 21st, 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.

3.3 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) ISU Policies and Procedures; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference.

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

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

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

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

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

ARTICLE 5

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

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

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

b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;

c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or member institution;

d) Ten (10) working days' absence of Coach from duty without the University's consent;

e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;

f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;

g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;

h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively

responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

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

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within

ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to his by University after the date he obtains other employment, to which he is not entitled under this provision.

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, the following sum: \$20,000.00 if notice of termination is given on or before June 21, 2016; \$10,000.00 if notice is given between June 22, 2016 and June 21, 2017; and \$5,000.00 if notice is given between June 22, 2017 and the end of the 2017 Cross Country season, including any and all post-season play. 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4 Termination due to Disability or Death of Coach.

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

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

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

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

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

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

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

**ARTICLE 6**

6.1 Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the Chief executive officer, 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 the University's rules regarding financial exigency.

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

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

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

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

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

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

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

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

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

the University: Jeffrey K. Tingey, Director of Athletics  
921 S. 8th Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: President Arthur C. Vailas  
921 S. 8th Ave. Stop 8310  
Pocatello, ID 83209-8310

the Coach: Nate Houle  
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 the University's Board of Trustees.

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

IDAHO STATE UNIVERSITY

COACH

\_\_\_\_\_  
Arthur C. Vailas, President      Date

\_\_\_\_\_  
Nate Houle      Date

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

**(MODEL ATHLETICS CONTRACT)****EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between  
 \_\_\_\_\_ (IDAHO STATE UNIVERSITY ("the University (College));") and  
 \_\_\_\_\_ (NATE HOULE ("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)~~ Men's & Women's Cross Country team (Team) ~~(or Director of Athletics);~~. Coach ~~(Director)~~ represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University (College)'s University's Director 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 University's Chief executive officer (Chief executive officer).

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)~~ 3.2.6 shall cease.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ ~~( )~~ two years and approximately eight months, commencing on \_\_\_\_\_ October 23, 2015 and terminating, without further notice to Coach, on \_\_\_\_\_ June 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University ~~(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 \$ ~~\_\_\_\_\_~~ \$44,012.80 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 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 men's or women's 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)~~ Cross Country coach as of the ensuing ~~July 1st~~ January 21st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~(amount or computation)~~ of 1/26th 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~~

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~~ University's head ~~(Sport)~~ Cross country 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.~~

~~3.2.2.~~ 3.2.3 ~~Each year~~January 21st, Coach shall be eligible to receive supplemental compensation in an amount up to ~~(amount or computation)~~\$1,000.00 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~~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 men's and women's Team's combined one-year APR score based on attainment of the following levels:

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

~~3.2.5 The Coach shall receive the sum of (amount 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) the University has the exclusive right to operate youth (Sport) cross country 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 cross country 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~~ cross country camps, ~~the University (College)~~ shall pay Coach ~~(amount)~~ any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head ~~(Sport)~~ Cross Country 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 Cross country 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;

- e) ~~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.~~

3.2.74 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 duties and obligations as head ~~(Sport) Cross country~~ 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.

3.2.5 Each year Team achieves a single-year (two semesters) combined average GPA of 3.50 or higher, and if Coach continues to be employed as University head Men's & Women's Cross Country coach as of the ensuing January 21st, 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.

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 University'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 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 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 of which the University (College) is a member~~ Big Sky Conference.

4.24.2. 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.

4.6 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.

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) 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) 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) 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) d) Ten (10) working days' absence of Coach from duty without the University (College)'s University's consent;

e) 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) f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;

g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University (College)'s University's governing board, the conference, or the NCAA ~~(NAIA)~~;

h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University (College)'s University's governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the University (College)'s University's governing board, the conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if

Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

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

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

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

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

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

5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum: \$20,000.00 if notice of termination is given on or before June 21, 2016; \$10,000.00 if notice is given between June 22, 2016 and June 21, 2017; and \$5,000.00 if notice is given between June 22, 2017 and the end of the 2017 Cross Country

season, including any and all post-season play. 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 elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

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

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

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

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

5.5 Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the ~~University (College)'s~~ University's student-athletes or otherwise obstruct the ~~University~~ University

~~(College)~~'s University's ability to transact business or operate its intercollegiate athletics program.

5.6 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.

5.7 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 Governing Policies and Procedures, IDAPA 08.01.01 et seq., and the University ~~(College)~~ Faculty-Staff Handbook and/or Policies and Procedures.

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved ~~of~~ by 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, 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 Trustees' and the University's rules regarding financial exigency.

6.2 University (College) 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 ~~(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)~~ or, in the case of courtesy vehicles, the property of the provider. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

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

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

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

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

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

the University ~~(College)~~: Jeffrey K. Tingey, Director of Athletics  
921 S. 8th Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: ~~Chief executive officer~~ President Arthur C. Vailas  
921 S. 8th Ave. Stop 8310  
Pocatello, ID 83209-8310



\_\_\_\_\_, ~~Chief executive officer~~ Arthur C. Vailas, President Date \_\_\_\_\_  
\_\_\_\_\_, Nate Houle Date \_\_\_\_\_

Approved by the Board of ~~(Regents or Trustees)~~ on the \_\_\_\_ day of \_\_\_\_\_,  
~~2010~~ 2015.

IDAHO STATE UNIVERSITY

Cross Country APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2014-15
<b>Men's Cross Country</b>	969	1000	913	1000

REPORT YEAR
Raw Score for single year

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

<b>Men's Cross Country</b>	976	983	965	995
<b>National % Rank by Sport</b>	40-50	60-70	20-30	40-50

*Percentile Rank for Sport*

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

	2010-11	2011-12	2012-13	2014-15
<b>Women's Cross Country</b>	942	927	1000	976

REPORT YEAR
Raw Score for single year

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

<b>Women's Cross Country</b>	986	959	970	970
<b>National % Rank by Sport</b>	50-60	10-20	10-20	10-20

*Percentile Rank for Sport*

Houle (ISU Women's and Men's Cross Country) Max  
 Compensation Calculation - 2015 Contract

		Yr 1	Yr 2	Yr 3
3.1.1a	The annual base salary from appropriated funds is \$	44,012.80	44,012.80	44,012.80
3.2.1	Conference men's champion or co-champion - 1/26th of salary	\$ 1,692.80	\$ 1,692.80	\$ 1,692.80
3.2.1	Conference women's champion or co-champion - 1/26th of salary	\$ 1,692.80	\$ 1,692.80	\$ 1,692.80
3.2.2	Team comportment and APR scores	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
3.2.3	Summer soccer camp revenues net of all expenses -- Coach may instead elect to add to program budget	TBD	TBD	TBD
	Total potential annual compensation	\$ 48,398.40	\$ 48,398.40	\$ 48,398.40

## **Idaho State University – Liquidated Damages**

### **Sacramento State - No state policy**

Those on a definite term MPP (a multi-year management contract) would receive payout of their contracted compensation unless their termination criteria was met within the document (they have a long list of items, however none that let them fire coaches for only losing). The coaching-faculty track head coaches would be paid out to the end of their term, but they set those up on a sporting year cycle (so, for example, if you are a basketball coach, your contract goes from April 1-Mar. 30; if you are a volleyball coach, your contract would go from Jan. 1-Dec. 31).

### **Northern Colorado - Partial state policy**

Currently, in their coaches contract they offer a multi-year contract (FB, MBB, WBB, VB), but they can terminate them at any point and are only responsible for three month's salary. State of Colorado statute does not allow them to use "state funds" to pay for early contract terminations (with or without cause). If they have non-state money, they can use these funds in a buy-out, but it is not in any current contract.

### **Montana & Montana State - State policy**

Coach contracts are 100% buyout during the course of the contract, until the final year of the agreement.

### **Portland State - No state policy; school only policy**

There is nothing required by PSU or the state specifically for multi-year coaches contracts. They have language in their multi-year contracts that address termination for just cause (arrest, abusive behavior, NCAA compliance issues, APR penalties etc) and termination for no cause (poor winning performance). Termination for cause offers no payout or severance and is effective upon notification. Termination for no cause offers some payout with conditions:

-Termination in Contract Year One: 36 months severance based on base salary with no benefits.

-Termination in Contract Year Two: 24 months severance based on base salary with no benefits.

-Termination in Contract Year Three: 12 months severance based on base salary with no benefits.

-Termination in Contract Year Four: 3 months severance based on base salary with no benefits.

**Weber State- No state policy; school policy only**

For 5-year contracts they reduce the "buy-out" by 20% each year. For example if a coach making \$100K leaves before completing the first year they would owe \$100K as their buyout. If they left in year 2, they would owe an 80% buyout, or \$80K.

For a 4-year contract they would reduce by 25% per year

For a 3-year contract they would reduce by 33% each year.

**Eastern Washington - No state policy; they are working on a school-only policy**

**Northern Arizona - No state policy; they are creating a school-only policy**

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Multi-year employment agreement with Candi Letts, Head Women's Softball Coach.

**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 two-year eight month employment agreement for Candi Letts, Head Softball Coach (Coach).

**IMPACT**

The annual base salary is \$58,011.20 (state appropriated funds).

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

1. Regular-season Conference champion or co-champion = \$2,231.20 (1/26<sup>th</sup> of base salary).
2. Post-season conference tournament champion or co-champion = \$2,231.20 (1/26<sup>th</sup> of base salary).
3. Academic achievement and behavior of team based on APR national score exceeding 970: up to \$1,000.
4. Academic year (two semesters) average GPA of 3.30 or more = \$1,500.
5. NCAA Tournament victories = up to \$42,000.00 for the National Championship.
6. To ensure Coach's participation in annual softball summer camps, 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 \$106,973.60.

In the event the coach terminates the contract for convenience, the following liquidated damages shall be due:

If the Agreement is terminated on or before June 21, 2016, the sum of \$25,000.

If the Agreement is terminated on or before June 21, 2017, the sum of \$15,000.

If the Agreement is terminated on or before end of the 2017 season, the sum of \$5,000.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

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**ATTACHMENTS**

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement - Redline	Page 17
Attachment 3	Cross Country APR Scores	Page 33
Attachment 4	Max Compensation Calculation	Page 34
Attachment 5	Conference Liquidated Damages	Page 35

**STAFF AND COMMENTS AND RECOMMENDATIONS**

The maximum academic incentive is \$2,500. The Board has historically looked favorably on academic incentives in excess of a conference tournament championship. Supplemental compensation under the contract for a conference champion or co-champion is \$2,231.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Idaho State University to extend the multi-year employment agreement with Candi Letts, Head Women's Softball Coach, for a term commencing October 23, 2015 and terminating June 21, 2018 at a base salary of \$58,011.20 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 \_\_\_\_\_

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY (“the University”) and CANDI LETTS (“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 Softball 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 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 Chief executive officer (Chief executive officer).

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 3.2.6 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two years and approximately eight months, commencing on October 23, 2015 and terminating, without further notice to Coach, on June 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$58,011.20 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and Chief executive officer 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 Softball\_ coach as of the ensuing June 21st, the University shall pay to Coach supplemental compensation in an amount equal to 1/26th 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 is the post-season conference tournament champion or co-champion, and if Coach continues to be employed as University's head Softball coach as of the ensuing June 21st, the University shall pay to Coach supplemental compensation in an amount equal to 1/26th 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.

3.2.3. Each year, if Coach continues to be employed as University's head Softball coach as of the ensuing June 21st, Coach shall be eligible to receive supplemental compensation in an amount up to \$1,000.00 based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director 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 meeting or exceeding the following academic benchmarks:

Benchmark	Maximum Incentive Pay
970-979:	\$700
980-989:	\$800
990-999:	\$900
1,000:	\$1,000
Academic year (2 semester) average GPA of 3.30 or more	\$ 1,500.00

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

3.2.4 Each year the team advances to the NCAA Women’s Softball Tournament, and if Coach continues to be employed as University’s head Women’s Softball coach as of the ensuing June 21<sup>st</sup>, the University shall pay to Coach supplemental compensation in the amounts set forth below based advancement in the tournament:

<b>Achievement</b>	<b>Additional Bonus</b>
Entry into Regional	No additional bonus
Advancement to Round of 16	\$4,000.00
Advancement to Round of 8	\$5,000.00
Advancement to College World Series	\$8,000.00
Advancement to Championship Series	\$10,000.00
National Championship	\$15,000.00

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

3.2.5 Coach agrees that the University has the exclusive right to operate youth women’s softball 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 softball 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 softball 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 Softball 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 Softball program budget at the University. This amount shall be paid within 30 days after all camp bills have been paid.

3.2.6 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. 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 Softball 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) ISU Policies and Procedures; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference.

4.2. Outside Activities. 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 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. 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, the following sum: \$25,000.00 if notice of termination is given on or before June 21, 2016; \$15,000.00 if notice is given between June 22, 2016 and June 21, 2017; and \$5,000.00 if notice is given between June 22, 2017 and the end of the 2017 Women's Softball season, including any and all post-season play. 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 provided 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 Governing Policies and Procedures, IDAPA 08.01.01 et seq., and the University Faculty-Staff Handbook and/or Policies and Procedures.

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the Chief executive officer, 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 the University's rules regarding financial exigency.

6.2 University Property. All personal property, material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the

University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University (or, in the case of courtesy vehicles, the property of the provider). 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: Jeffrey K. Tingey, Director of Athletics  
921 S. 8th Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: President Arthur C. Vailas  
921 S. 8th Ave. Stop 8310  
Pocatello, ID 83209-8310

the Coach: Candi Letts  
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 the 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

\_\_\_\_\_  
Candi Letts      Date

Approved by the Board of (Regents or Trustees) on the \_\_\_\_ day of \_\_\_\_\_, 2015.

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**(MODEL ATHLETICS CONTRACT)****EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between \_\_\_\_\_ (IDAHO STATE UNIVERSITY ("the University (College));") and \_\_\_\_\_ (CANDI LETTS ("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 Softball team (Team) ~~(or Director of Athletics);~~. Coach ~~(Director)~~ represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University (College)'s University's Director 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 University's Chief executive officer (Chief executive officer).

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)~~ 3.2.6 shall cease.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ ~~( )~~ two years and approximately eight months, commencing on \_\_\_\_\_ October 23, 2015 and terminating, without further notice to Coach, on \_\_\_\_\_ June 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University ~~(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 \$ ~~\_\_\_\_\_~~ \$58,011.20 per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and Chief executive officer 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)~~ Softball coach as of the ensuing ~~July 1st~~ June 21st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~\_(amount or computation)\_~~ of 1/26th 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 the top 25 in the (national rankings of sport's division)~~ post-season conference tournament champion or co-champion, and if Coach continues to be employed as ~~University (College)'s~~ University's head ~~\_(Sport)~~

Softball coach as of the ensuing ~~July 1st~~ June 21st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~—(amount or computation)—~~ of Coach's 1/26th of Coach's Annual Salary in effect on ~~during the fiscal year in which the date of the final poll championship is 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, if Coach continues to be employed as University's head Softball coach as of the ensuing June 21st, Coach shall be eligible to receive supplemental compensation in an amount up to ~~(amount or computation)~~ \$1,000.00 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~~ 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 meeting or exceeding the following academic benchmarks:~~

<u>Benchmark</u>	<u>Maximum Incentive Pay</u>
<u>970-979:</u>	<u>\$700</u>
<u>980-989:</u>	<u>\$800</u>
<u>990-999:</u>	<u>\$900</u>
<u>1,000:</u>	<u>\$1,000</u>
<u>Academic year (2 semester) average GPA of 3.30 or more</u>	<u>\$ 1,500.00</u>

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

3.2.4 Each year the team advances to the NCAA Women's Softball Tournament, and if Coach continues to be employed as University's head Women's Softball coach as of the ensuing June 21<sup>st</sup>, the University shall ~~be eligible~~ pay to receive Coach supplemental compensation in ~~an amount up to —(amount or computation)—~~ the amounts set forth below 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 (advancement in the tournament:~~

<u>Achievement</u>	<u>Additional Bonus</u>
<u>Entry into Regional</u>	<u>No additional bonus</u>

<u>Advancement to Round of 16</u>	<u>\$4,000.00</u>
<u>Advancement to Round of 8</u>	<u>\$5,000.00</u>
<u>Advancement to <del>College</del> students, staff, faculty, alumni and boosters; and any other factors the Chief executive officer wishes to consider.</u>	<u>World Series</u>
<u>\$8,000.00</u>	
<u>Advancement to Championship Series</u>	<u>\$10,000.00</u>
<u>National Championship</u>	<u>\$15,000.00</u>

The ~~determination of whether~~University shall determine the appropriate manner in which it shall pay Coach ~~will receive~~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) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College)~~

3.2.5 Coach agrees that the University has the exclusive right to operate youth women's softball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'s University's camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s University's women's softball 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 softball 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 Softball~~ 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 Softball 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.~~

3.2.76 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 Softball 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>1</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 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 of which the University (College) is a member~~ Big Sky Conference.

4.24.2. 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.

4.6 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.

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   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)   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)   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)   d   Ten (10) working days' absence of Coach from duty without the University (College)'s University's consent;

e)   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)   f   The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;

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

5.3.2 The Coach, for his/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, the following sum: ~~\_\_\_\_\_~~ \$25,000.00 if notice of termination is given on or before June 21, 2016; \$15,000.00 if notice is given between June 22, 2016 and June 21, 2017; and \$5,000.00 if notice is given between June 22, 2017 and the end of the 2017 Women's Softball season, including any and all post-season play. 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 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.

5.6 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.

5.7 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 Governing Policies and Procedures, IDAPA 08.01.01 et seq., and the University ~~(College)~~ Faculty-Staff Handbook and/or Policies and Procedures.

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved ~~of by~~ 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, 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~~ Trustees' and the University's rules regarding financial exigency.

6.2 University (College) 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 ~~(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)~~ or, in the case of courtesy vehicles, the property of the provider. 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)'s~~ University's sole discretion.

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

the University ~~(College):~~ Jeffrey K. Tingey, Director of Athletics  
921 S. 8th Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: ~~Chief executive officer~~ President Arthur C. Vailas  
921 S. 8th Ave. Stop 8310  
Pocatello, ID 83209-8310

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

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

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

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

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

6.16 Opportunity to Consult with Attorney. The Coach acknowledges that ~~he~~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 ~~(COLLEGE)~~  
COACH

\_\_\_\_\_, ~~Chief executive officer~~ Arthur C. Vailas, President Date \_\_\_\_\_  
Candi Letts Date \_\_\_\_\_

Approved by the Board of (Regents or Trustees) on the \_\_\_\_ day of \_\_\_\_\_,  
~~2010~~2015.

**IDAHO STATE UNIVERSITY**

Softball APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2014-15
<b>Softball</b>	942	971	1000	1000

REPORT YEAR
Raw Score for single year

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

<b>Softball</b>	895	896	925	971
<b>National % Rank by Sport</b>	<b>1-10</b>	<b>1-10</b>	<b>20-30</b>	<b>40-50</b>

<b>Percentile Rank for Sport</b>
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Letts (ISU Women's Softball) Max Compensation Calculation -  
2015 Contract

		Yr 1	Yr 2	Yr 3
3.1.1a	The annual base salary from appropriated funds is \$	\$ 58,011.20	\$ 58,011.20	\$ 58,011.20
3.2.1	Conference champion or co-champion - 1/26th of salary	\$ 2,231.20	\$ 2,231.20	\$ 2,231.20
3.2.1	Post-season tournament champion or co-champion - 1/26th of salary	\$ 2,231.20	\$ 2,231.20	\$ 2,231.20
3.2.2	Team comportment and APR scores	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
	Team GPA	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
	NCAA National Tournament championship	\$ 42,000.00	\$ 42,000.00	\$ 42,000.00
3.2.3	Summer soccer camp revenues net of all expenses -- Coach may instead elect to add to program budget	TBD	TBD	TBD
	Total potential annual compensation	\$ 106,973.60	\$ 106,973.60	\$ 106,973.60

## **Idaho State University – Liquidated Damages**

### **Sacramento State - No state policy**

Those on a definite term MPP (a multi-year management contract) would receive payout of their contracted compensation unless their termination criteria was met within the document (they have a long list of items, however none that let them fire coaches for only losing). The coaching-faculty track head coaches would be paid out to the end of their term, but they set those up on a sporting year cycle (so, for example, if you are a basketball coached, your contract goes from April 1-Mar. 30; if you are a volleyball coach, you contract would go from Jan. 1-Dec. 31).

### **Northern Colorado - Partial state policy**

Currently, in their coaches contract they offer a multi-year contract (FB, MBB, WBB, VB), but they can terminate them at any point and are only responsible for three month's salary. State of Colorado statute does not allow them to use "state funds" to pay for early contract terminations (with or without cause). If they have non-state money, they can use these funds in a buy-out, but it is not in any current contract.

### **Montana & Montana State - State policy**

Coach contracts are 100% buyout during the course of the contract, until the final year of the agreement.

### **Portland State - No state policy; school only policy**

There is nothing required by PSU or the state specifically for multi-year coaches contracts. They have language in their multi-year contracts that address termination for just cause (arrest, abusive behavior, NCAA compliance issues, APR penalties etc) and termination for no cause (poor winning performance). Termination for cause offers no payout or severance and is effective upon notification. Termination for no cause offers some payout with conditions:

-Termination in Contract Year One: 36 months severance based on base salary with no benefits.

-Termination in Contract Year Two: 24 months severance based on base salary with no benefits.

-Termination in Contract Year Three: 12 months severance based on base salary with no benefits.

-Termination in Contract Year Four: 3 months severance based on base salary with no benefits.

**Weber State- No state policy; school policy only**

For 5-year contracts they reduce the "buy-out" by 20% each year. For example if a coach making \$100K leaves before completing the first year they would owe \$100K as their buyout. If they left in year 2, they would owe an 80% buyout, or \$80K.

For a 4-year contract they would reduce by 25% per year

For a 3-year contract they would reduce by 33% each year.

**Eastern Washington - No state policy; they are working on a school-only policy**

**Northern Arizona - No state policy; they are creating a school-only policy**

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 22, 2015**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Multi-year employment agreement with Fredrick Reynolds, Head Women's Volleyball Coach.

**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 two-year three month employment agreement for Fredrick Reynolds, Head Women's Volleyball Coach (Coach).

**IMPACT**

The annual base salary is \$69,014.40 (state appropriated funds).

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

1. Conference champions or co-champion = \$2,654.40 (1/26<sup>th</sup> of base salary).
2. Post-season tournament champion = \$2,654.40 (1/26<sup>th</sup> of base salary).
3. Regular season win totals – up to \$2,500.00 for 26 victories.
4. Academic achievement and behavior of team based on APR national score exceeding 970: up to \$1,000.
5. Academic year (two semesters) average GPA of 3.50 or more = \$1,500.
6. Conference Coach of the Year Award = \$2,654.40 (1/26<sup>th</sup> of base salary).
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 \$80,477.60.

In the event the coach terminates the contract for convenience, the following liquidated damages shall be due:

If the Agreement is terminated on or before January 21, 2016, the sum of \$30,000.

If the Agreement is terminated on or before January 21, 2017, the sum of \$20,000.

If the Agreement is terminated on or before end of the 2017 season, the sum of \$10,000.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 22, 2015**

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**ATTACHMENTS**

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement - Redline	Page 17
Attachment 3	Cross Country APR Scores	Page 33
Attachment 4	Max Compensation Calculation	Page 34
Attachment 5	Conference Liquidated Damages	Page 35

**STAFF AND COMMENTS AND RECOMMENDATIONS**

The maximum academic incentive is \$2,500. The Board has historically looked favorably on academic incentives in excess of a conference tournament championship. Supplemental compensation under the contract for conference champions or co-champion is \$2,654.

The Athletics Committee met on October 9 to review this contract and will provide its recommendation at the October 22 Board meeting.

**BOARD ACTION**

I move to approve the request by Idaho State University to extend the multi-year employment agreement with Fredrick Reynolds, Head Women's Volleyball Coach, for a term commencing October 23, 2015 and terminating January 21, 2018 at a base salary of \$69,014.40 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 \_\_\_\_\_

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY (“the University”) and FREDRICK REYNOLDS (“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 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’s 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 Chief executive officer (Chief executive officer).

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 two years and approximately three months, commencing on October 23, 2015 and terminating, without further notice to Coach, on January 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$69,014.40 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 Chief executive officer 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 Volleyball coach as of the ensuing January 21st, the University shall pay to Coach supplemental compensation in an amount equal to 1/26th 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 is the post-season conference tournament champion or co-champion, and if Coach continues to be employed as University's head Volleyball coach as of the ensuing January 21st, the University shall pay to Coach supplemental compensation in an amount equal to 1/26th 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.

3.2.3. Each year, if Coach continues to be employed as University's head Volleyball coach as of the ensuing January 21st, the University shall pay to Coach supplemental compensation for number of regular-season victories in the amount set forth in the table below. These bonus amounts are non-cumulative. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

20 wins:	\$ 1,000.00
22 wins:	\$ 1,500.00
24 wins:	\$ 2,000.00
26 wins:	\$ 2,500.00

3.2.4. Each year Coach shall be eligible to receive supplemental compensation in an amount up to \$1,000.00 based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director 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
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.

3.2.5 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 Volleyball coach as of the ensuing January 5th, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ( $2/52 \times$  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 Coach agrees that the University has the exclusive right to operate youth women's 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 women's 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 summer women's volleyball camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head Women's Volleyball 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 Volleyball program budget at the University. This amount shall be paid within 30 days after all camp bills have been paid.

3.2.7 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has 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 Volleyball 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.

3.2.8 Each year Team achieves a single-year (two semesters) combined average GPA of 3.50 or higher, and if Coach continues to be employed as University head Women's Volleyball coach as of the ensuing January 21st, 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.

3.3 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.

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

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, the following sum: \$30,000.00 if notice of termination is given on or before January 21, 2016; \$20,000.00 if notice is given between January 22, 2016 and January 21, 2017; and \$10,000.00 if notice is given between January 22, 2017 and the end of the 2017 Women's Volleyball season, including any and all post-season play. 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 provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

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

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

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

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

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

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

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

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall

be subject to the approval of the University's Board of Trustees, the Chief executive officer, 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 the University's rules regarding financial exigency.

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

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

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

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

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

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

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

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

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

the University: Jeffrey K. Tingey, Director of Athletics  
921 S. 8th Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: President Arthur C. Vailas  
921 S. 8th Ave. Stop 8310  
Pocatello, ID 83209-8310

the Coach: Fredrick Reynolds  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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

**ATTACHMENT 1**

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement 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. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

IDAHO STATE UNIVERSITY

COACH

\_\_\_\_\_  
Arthur C. Vailas, President      Date

\_\_\_\_\_  
Fredrick Reynolds      Date

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

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**(MODEL ATHLETICS CONTRACT)****EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between \_\_\_\_\_ (IDAHO STATE UNIVERSITY (“the University-~~(College)~~”)) and \_\_\_\_\_ (FREDRICK REYNOLDS (“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 Volleyball team (Team) ~~(or Director of Athletics)~~. Coach ~~(Director)~~ represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University (College)’s University’s Director 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 University’s Chief executive officer (Chief executive officer).

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)~~ 3.2.7 shall cease.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ ~~( )~~ two years and approximately three months, commencing on \_\_\_\_\_ October 23, 2015 and terminating, without further notice to Coach, on \_\_\_\_\_ January 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University ~~(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 \$ ~~\_\_\_\_\_~~ \$69,014.40 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 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)Volleyball\_~~ coach as of the ensuing ~~July 1st~~ January 21st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~\_(amount or computation)\_~~ 1/26th 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 the top 25 in the (national rankings of sport's division)~~ post-season conference tournament champion or co-champion, and if Coach continues to be employed as ~~University (College)'s~~ University's head ~~\_(Sport)Volleyball\_~~ coach as of the ensuing ~~July 1st~~ January 21st, the University ~~(College)~~ shall

pay to Coach supplemental compensation in an amount equal to ~~-(amount or computation)~~ of Coach's 1/26th of Coach's Annual Salary in effect on during the fiscal year in which the date of the final poll championship is achieved. The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. 3. Each year, if Coach continues to be employed as University's head Volleyball coach as of the ensuing January 21st, the University shall pay to Coach supplemental compensation for number of regular-season victories in the amount set forth in the table below. These bonus amounts are non-cumulative. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

<u>20 wins:</u>	<u>\$ 1,000.00</u>
<u>22 wins:</u>	<u>\$ 1,500.00</u>
<u>24 wins:</u>	<u>\$ <del>2.3</del>,000.00</u>
<u>26 wins:</u>	<u>\$ 2,500.00</u>

3.2.4. Each year Coach shall be eligible to receive supplemental compensation in an amount up to ~~(amount or computation)~~\$1,000.00 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~~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.

3.2.45 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 Volleyball coach

~~as of the ensuing January 5th, the University shall be eligible pay to receive~~ Coach 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 ~~equal~~ to various constituency groups, including ~~University (College)~~ students, staff, faculty, alumni and boosters; and any other factors the Chief executive officer wishes to consider. ~~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 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) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College)~~

3.2.6 Coach agrees that the University has the exclusive right to operate youth women's volleyball camps on its campus using University facilities. The University 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 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 University's summer football women's volleyball camps, the University (College) shall pay Coach (amount) any net revenues resulting from the camp per year as supplemental

compensation during each year of his employment as head ~~(Sport)~~ Women's Volleyball 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 Volleyball 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.~~

3.2.7 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 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 Volleyball 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.

3.2.8 Each year Team achieves a single-year (two semesters) combined average GPA of 3.50 or higher, and if Coach continues to be employed as University head Women's Volleyball coach as of the ensuing January 21st, 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.

3.3 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 University'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 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 of which the University (College) is a member~~ ~~Big Sky Conference~~.

4.24.2. 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.

4.6 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.

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)     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) 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) 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) d)     Ten (10) working days' absence of Coach from duty without the University (College)'s University's consent;

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

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

### 5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University ~~(College)~~ for the entire term of this Agreement is of the essence of this Agreement. The

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum: \$30,000.00 if notice of termination is given on or before January 21, 2016; \$20,000.00 if notice is given between January 22, 2016 and January 21, 2017; and \$10,000.00 if notice is given between January 22, 2017 and the end of the 2017 Women's Volleyball season, including any and all post-season play. 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 elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

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

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

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

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

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

5.6 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.

5.7 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 Governing Policies and Procedures, IDAPA 08.01.01 et seq., ~~and the University (College) Faculty-Staff Handbook~~ and/or Policies and Procedures.

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved ~~of by~~ 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, 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~~ Trustees' and the University's rules regarding financial exigency.

6.2 University (College) 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 ~~(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)~~ or, in the case of courtesy vehicles, the property of the provider. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

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

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

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

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

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

the University ~~(College):~~ Jeffrey K. Tingey, Director of Athletics  
921 S. 8th Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to: ~~Chief executive officer~~ President Arthur C. Vailas  
921 S. 8th Ave. Stop 8310  
Pocatello, ID 83209-8310

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

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY ~~(COLLEGE)~~ \_\_\_\_\_  
COACH

\_\_\_\_\_, ~~Chief executive officer~~ Arthur C. Vailas, President Date \_\_\_\_\_  
Fredrick Reynolds Date \_\_\_\_\_

Approved by the Board of ~~(Regents or~~ Trustees) on the \_\_\_\_ day of \_\_\_\_\_, ~~2010~~ 2015.

**IDAHO STATE UNIVERSITY**

Volleyball APR History and National Percentile Rank

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

	2010-11	2011-12	2012-13	2014-15
<b>Volleyball</b>	1000	1000	962	1000

REPORT YEAR
Raw Score for single year

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

<b>Volleyball</b>	983	984	990	990
<b>National % Rank by Sport</b>	<b>40-50</b>	<b>40-50</b>	<b>50-60</b>	<b>50-60</b>

<i>Percentile Rank for Sport</i>
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Reynolds (ISU Women's Volleyball) Max Compensation  
Calculation - 2015 Contract

		Yr 1	Yr 2	Yr 3
3.1.1a	The annual base salary from appropriated funds is \$	\$69,014.40	\$69,014.40	\$69,014.40
3.2.1	Conference champion or co-champion - 1/26th of salary	\$ 2,654.40	\$ 2,654.40	\$ 2,654.40
	Conference tournament champion or NCAA tournament berth -			
3.2.2	1/26th of salary	\$ 2,654.40	\$ 2,654.40	\$ 2,654.40
3.2.3	Single-season total wins bonus	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
3.2.4	Team comportment and APR scores	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
3.2.5	Conference Coach of the Year	\$ 2,654.40	\$ 2,654.40	\$ 2,654.40
	Summer soccer camp revenues net of all expenses -- Coach may			
3.2.6	instead elect to add to program budget	TBD	TBD	TBD
	Total potential annual compensation	\$ 80,477.60	\$ 80,477.60	\$ 80,477.60

## **Idaho State University – Liquidated Damages**

### **Sacramento State - No state policy**

Those on a definite term MPP (a multi-year management contract) would receive payout of their contracted compensation unless their termination criteria was met within the document (they have a long list of items, however none that let them fire coaches for only losing). The coaching-faculty track head coaches would be paid out to the end of their term, but they set those up on a sporting year cycle (so, for example, if you are a basketball coach, your contract goes from April 1-Mar. 30; if you are a volleyball coach, your contract would go from Jan. 1-Dec. 31).

### **Northern Colorado - Partial state policy**

Currently, in their coaches contract they offer a multi-year contract (FB, MBB, WBB, VB), but they can terminate them at any point and are only responsible for three month's salary. State of Colorado statute does not allow them to use "state funds" to pay for early contract terminations (with or without cause). If they have non-state money, they can use these funds in a buy-out, but it is not in any current contract.

### **Montana & Montana State - State policy**

Coach contracts are 100% buyout during the course of the contract, until the final year of the agreement.

### **Portland State - No state policy; school only policy**

There is nothing required by PSU or the state specifically for multi-year coaches contracts. They have language in their multi-year contracts that address termination for just cause (arrest, abusive behavior, NCAA compliance issues, APR penalties etc) and termination for no cause (poor winning performance). Termination for cause offers no payout or severance and is effective upon notification. Termination for no cause offers some payout with conditions:

-Termination in Contract Year One: 36 months severance based on base salary with no benefits.

-Termination in Contract Year Two: 24 months severance based on base salary with no benefits.

-Termination in Contract Year Three: 12 months severance based on base salary with no benefits.

-Termination in Contract Year Four: 3 months severance based on base salary with no benefits.

**Weber State- No state policy; school policy only**

For 5-year contracts they reduce the "buy-out" by 20% each year. For example if a coach making \$100K leaves before completing the first year they would owe \$100K as their buyout. If they left in year 2, they would owe an 80% buyout, or \$80K.

For a 4-year contract they would reduce by 25% per year

For a 3-year contract they would reduce by 33% each year.

**Eastern Washington - No state policy; they are working on a school-only policy**

**Northern Arizona - No state policy; they are creating a school-only policy**