

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

TAB	DESCRIPTION	ACTION
1	RETIREMENT PLAN COMMITTEE APPOINTMENTS	Motion to approve
2	CHIEF EXECUTIVE OFFICER COMPENSATION	Motion to approve
3	BOISE STATE UNIVERSITY Multi-Year Employment Agreement – Women’s Head Volleyball Coach	Motion to approve
4	UNIVERSITY OF IDAHO Multi-Year Employment Agreement – Athletic Director	Motion to approve

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SUBJECT

Retirement Plan Committee Appointments

REFERENCE

April 2015 Idaho State Board of Education (Board) approved second reading of Board Policy II.R., establishing a Retirement Plan Committee

APPLICABLE STATUTES, RULE OR POLICY

Idaho Code §33-107A, 107B, 107C

Idaho Code §59-513

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

BACKGROUND / DISCUSSION

The Board is the Plan Sponsor for three Defined Contribution (DC) Optional Retirement Plan (ORP) plans used by non-PERSI employees at the colleges and universities. The Board has a 401(a) mandatory plan (with employer and employee contributions), and also voluntary 403(b) and 457(b) plans (with employee-only contributions). The exclusive Board-approved vendors for the 401(a) and 457(b) plans are TIAA-CREF and VALIC. These two vendors are available for 403(b) plans, along with a half-dozen other plan vendors that employees can elect to use, and with whom the Board has established information sharing agreements.

The Board has assigned oversight responsibility for the above-described plans to an ORP Committee, chaired by a Board member appointed by the Board President and made up of representatives from the institutions and community colleges, as well as other experts in the area of retirement planning drawn from outside the staffs of the colleges and universities. Once convened, the committee will provide financial market expertise as it relates to evaluating portfolio performance, reviewing vendor fees, and carrying out fiduciary oversight.

Working with the previously-designated ORP chair, Bill Goesling, staff has solicited a highly-qualified slate of volunteer candidates for service on the ORP Committee. The nominees are listed below:

- “Internal” experts representing the four- and two year institutions
 - Sarah Jones: Human Resources director at Boise State University (BSU), as a representative of participants in sponsored plans
 - Brandi Terwilliger: Human Resources director at the University of Idaho (UI) as a representative of participants in sponsored plans
 - Jeff Phelps: Controller at Lewis-Clark State College (LCSC)
 - Eric Nielson: Human Resources Director at the College of Southern Idaho (CSI) as the representative of a community college

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- “External” experts (private sector members knowledgeable about financial markets)
 - Richelle Sugiyama: Retirement/Benefits expert on Public Retirement System of Idaho (PERSI) staff—previous consultant to Board staff on ORP matters
 - Kent Kinyon: Former LCSC Controller, key planner during establishment of current process for the Board’s ORP vendors
 - Jane Buser: Former BSU HRS Director—one of the principal architects in the establishment of the higher education ORP system and transfer of faculty and staff from the PERSI system
 - Bryan Raymond: Financial Advisor/Planner, Wells Fargo Advisors

IMPACT

The proposed nominees comprise a highly experienced and diverse team which is well qualified to assist the Board in carrying out its fiduciary duties as the plan sponsor of the DC Plans, in accordance with industry standards and best practices.

ATTACHMENTS

Attachment 1—Section II.R. Retirement Plan Committee

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STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends appointment of the above-listed eight nominees as members of the ORP committee.

BOARD ACTION

I move to appoint Sarah Jones, Brandi Terwilliger, Jeff Phelps, Eric Nielson, Richelle Sugiyama, Kent Kinyon, Jane Buser, and Bryan Raymond as members of the Board’s Optional Retirement Plan Committee.

Moved by_____ Seconded by_____ Carried Yes____ No____

**Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES

Subsection: R. Retirement Plan Committee

April 2015

1. The Retirement Plan Committee is a special committee of the Board. The Committee provides stewardship of the retirement plans sponsored by the Board for the exclusive benefit of participants and their beneficiaries. The Committee may establish necessary procedures to carry out its responsibilities. Such procedures must be consistent with the Board's Governing Policies and Procedures.
2. The Committee shall consist of five or more members appointed by, and serving at the pleasure of, the Board. The chair of the Committee shall be appointed by the Board President and shall be a Board member. Other members of the Committee shall include two participants in the sponsored plans: one representative from a public four-year institution and one representative from a community or technical college. At least two members shall be private sector members who are knowledgeable about financial markets. All committee members should have investment, legal or benefits management expertise sufficient to evaluate the risks associated with the Committee's purpose. A quorum of any meeting of the Committee shall consist of a majority of the members. Committee members shall not be compensated for their service on the Committee. The Committee will meet as needed, but not less than semi-annually. The Committee is supported by the Board's Chief Fiscal Officer and by the Board's outside tax counsel.
3. Board-sponsored plans include the 401(a) Optional Retirement Plan (ORP), and the 403(b) and 457(b) voluntary deferred compensation plans (collectively referred to hereinafter as "Plan" or "Plans"). The Board is the Plans' named fiduciary and has authority to manage and control the Plans' operation and administration. The Board retains exclusive authority to amend the Plans and select Trustees/Custodians.
 - a. The Committee shall report at least annually to the Board.
 - b. The Committee members shall sign a conflict of interest disclosure questionnaire.
 - c. The Board delegates execution of the following fiduciary responsibilities with respect to the Plans to the Committee:
 - i. Establishing, periodically reviewing, and maintaining a written investment policy, including investment allocation strategies.
 - ii. Overseeing administration of the Plans in accordance with the investment policy, including:
 - a) Selecting an appropriate number and type of investment asset classes and management styles for Plan participants, including default investment elections.
 - b) Establishing performance criteria and benchmarks for selected asset classes.
 - c) Researching, selecting, and withdrawing Plan investments as appropriate for specified asset classes or styles.

- d) Reviewing communication methods and materials to ensure that Plan participants receive adequate investment education and performance information.
 - e) Ensuring the Committee and the Plans comply with applicable laws, regulations, and the terms of the Plan pertaining to investments.
 - iii. Reviewing and monitoring investment performance, including the reasonableness of investment fees, against appropriate benchmarks and in accordance with the investment policy.
 - iv. Managing the Plans to ensure regulatory compliance pertaining to Plan investments, including required Plan amendments and document retention;
 - v. Monitoring the Plans' vendors and implementation of contractual service arrangements;
 - vi. Advising the Board on selection or termination of the Plans' trustee(s)/custodian(s);
 - vii. Monitoring for reasonableness and consistency with the Plans' terms any investment product fees and charges passed through to Plan participants; and
 - viii. Retaining investment consultants, subject to approval by the Board's executive director.
4. The Trustee(s) and/or Custodian(s) of the sponsored plans will be responsible for holding and investing the Plans' assets in accordance with the terms of the Trust/Custodial Agreement.
5. The Committee may recommend to the Board's executive director the engagement of outside consultants and/or other professionals. The services of consultants and other professionals may include, but are not limited to:
- a. Providing formal reviews of the performance of the investment options. Such reviews shall be based on established criteria and shall include recommendations for changes where appropriate;
 - b. Advising the Committee of any recommended modifications to the investment structure of the Plans; and
 - c. Advising the Committee as to the appropriate performance benchmarks for the investment options.

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SUBJECT

Chief Executive Officer Compensation

REFERENCE

May 2015

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

June 2015

Board amended contracts for the presidents, extending the contract terms for one (1) additional year, incorporating the salaries approved at the May 2015 Board meeting.

APPLICABLE STATUTES, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section I.E.2.c.

BACKGROUND/DISCUSSION

In the process of reviewing compensation for the institution executives, the Board determined that the current annual salary level (\$183,051.44) for the president of Lewis-Clark State College (LCSC) significantly lags behind the median of base salaries for that institution's Board-approved peers (less than 80% of the median and average of counterpart salaries at the peer institutions, excluding LCSC's three aspirational peers). This negative gap for the LCSC president significantly exceeds the comparable differences between the salaries of each of the three university presidents and their respective peers. Phased equity adjustments are appropriate to bring the LCSC chief executive position closer to the median of LCSC's peers and to ensure that the Board can fairly compensate and retain an outstanding officer in this position.

IMPACT

An increase of _____ to the annual salary for LCSC's president will result in a salary level no higher than _____% of the median salary for chief executives at LCSC's thirteen Board-approved peer institutions, and will represent a substantial step in improving compensation equity for the chief executive officers at Idaho institutions.

BOARD ACTION

I move to amend the current employment contract for Dr. Tony Fernández as President of Lewis-Clark State College to include an annual salary in the amount of \$_____, effective March 11, 2016.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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BOISE STATE UNIVERSITY

SUBJECT

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

REFERENCE

June 2012	Idaho State Board of Education (Board) approved a two and one half year employment agreement with Women's Head Volleyball Coach Shawn Garus.
December 2014	Board approved a two year employment agreement with Women's Head Volleyball Coach Shawn Garus.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

In December 2014, the Board approved a two year employment contract with Shawn Garus as the Head Women's Volleyball Coach effective February 2015 through January 2017. Boise State University (BSU) now requests approval to enter into a new multi-year contract with Coach Garus with a raise, a one-time bonus, and revised incentive pay to include a grade point average (GPA) incentive.

In 2015, the Women's Volleyball Team went 23-7 overall and 15-3 in Mountain West play. The 15 conference wins tied the most in school history, and were the most since joining the Mountain West in 2011. The BSU Broncos won nine games in a row to end the season and 15 of their last 16. Coach Garus was named Mountain West Coach of the Year and coached five all-conference players, which is also a school record.

The new contract will be a one (1) year, eleven (11) month agreement, commencing on February 28, 2016 and terminating on January 31, 2018, with the option for a one-year extension. The one-time bonus is \$750. The new salary is \$100,000, with incentives as follows:

Academic Achievement

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

2015 – 2016 academic year:

National Rank Within Sport:

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

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2016 – 2017 academic year on:

National Rank Within Sport:

970-974	\$1,500
975-979	\$1,750
980-984	\$2,000
985 and above	\$3,500

Annual Team Grade Point Average

3.0+ Average Team GPA \$1,500

Athletic Achievement

Conference Championship	\$5,000
	OR
Qualifying team for NCAA Tournament	\$3,000
	AND
Top 25 National Ranking at End of Season	\$2,500
NCAA Regional Coach of the Year	\$3,000
NCAA National Coach of the Year	\$5,000
Conference Coach of the Year	\$3,000
Winning Record	\$1,500
	Or
Number of Wins	
20 Wins	\$2,500 or
21 Wins	\$3,000 or
22 Wins	\$3,500 or
23 Wins	\$4,000 or
24+ Wins	\$4,500 or
Top 50 Team RPI at End of Season:	\$7,500

In the event coach Garus terminates the agreement for convenience, the following liquidated damages will be due: \$20,000 for the first year of the contract or \$10,000 for the second year.

IMPACT

The proposed multi-year contract includes a \$100,000 base salary with a one-time bonus of \$750. Depending on academic and athletic performance, maximum compensation (based on 2015-2016 academic year bonus levels) for the first year of the contract would be \$131,000.

ATTACHMENTS

Attachment 1 – Clean version of Proposed Contract	Page 5
Attachment 2 – Redline Comparison between the 2015-17 to Proposed	Page 19
Attachment 3 – Redline Comparison between the Model to Proposed	Page 33
Attachment 4 – 4 Year APR Scores and GPA	Page 63
Attachment 5 – Max compensation Calculation	Page 64
Attachment 6 – Peers Liquidated Damages Comparison	Page 65

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Attachment 7 – Mountain West Salary/Incentive Chart

Page 66

STAFF COMMENTS AND RECOMMENDATIONS

The proposed contract substantially conforms to the Board-specified multi-year contract template. This contract includes provisions for academic bonuses for the coach based on a combination of team APR scores and GPA—a relatively new approach for coach contracts. This contract may provide an opportunity for Board members to note and discuss the proposed (or alternate) approaches for academic bonuses; for example, the relative weighting of academic performance to a team's athletic performance (in this case, with the APR bonus equivalent to a conference championship); the change in the APR incentive from the first to the second year of the contract; and/or the relative weight of monetary bonuses between APR and GPA. A history of the team's recent APR and GPA performance is included in Attachment 4. Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to enter into a new multi-year agreement with Coach Garus commencing on February 28, 2016 and terminating on January 31, 2018, with the option for a one-year extension 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 (the “Agreement”) is entered into this _____ day of _____, (“Effective Date”) by and between Boise State University (“the University”) and Shawn Garus (“Coach”).

ARTICLE 1

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

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of one (1) year eleven (11) months, commencing on February 28, 2016 and terminating, without further notice to Coach, on January 31, 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 on or before October 1, 2017 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of 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 \$100,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) A one-time bonus payment in the amount of \$750;
- c) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees;
- d) Assignment of one vehicle through the Department's trade-out program during the term of this Agreement, subject to and according to the policy of the University's Board of Trustees. Insurance premiums for the assigned 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
- e) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

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

3.2.1. Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay as follows:

- a) For the 2015-16 academic year, if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

National Score within Sport
970-974 = \$1,500

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ATTACHMENT 1

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

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

- b) For the 2016-17 academic year, if the single year team Academic Progress Rate (“APR”) for the Team meets the following levels in the National Ranking within Women’s Volleyball:

National Score within Sport		
970-974	=	\$1,500
975-979	=	\$1,750
980-984	=	\$2,000
985 and above	=	\$3,500

and

Coach shall qualify for Academic Incentive Pay if the Annual Team Grade Point Average (“GPA”), defined as the average of the fall and spring term GPAs for scholarship student-athletes, meets the following level:

3.0+ Average Team GPA	=	\$1,500
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If Coach qualifies for Grade Point Average Pay, it will be paid in conjunction with APR, if Coach is still employed by the University on that date.

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

- | | |
|--|---------|
| a) The greater of the following two: | |
| Conference Championship: | \$5,000 |
| Qualify team for NCAA Tournament: | \$3,000 |
| b) Top 25 National Ranking at End of Season: | \$2,500 |
| c) NCAA Regional Coach of the Year: | \$3,000 |
| d) NCAA National Coach of the Year: | \$5,000 |
| e) Conference Coach of the Year: | \$3,000 |

f) The greatest of the following:

Winning Record:	\$1,500 or
Amount of Wins:	
20 Wins	\$2,500 or
21 Wins	\$3,000 or
22 Wins	\$3,500 or
23 Wins	\$4,000 or
24+ Wins	\$4,500 or
Top 50 Team RPI at End of Season:	\$7,500

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

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

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

3.2.4. 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 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 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, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 31, 2017, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, 2017 and January 31, 2018 and inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4. The parties have both been represented by, 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: Shawn Garus
 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.

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ATTACHMENT 1

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

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

UNIVERSITY

COACH

Dr. Robert Kustra, President

Shawn Garus

Approved by the Board on the ____ day of _____, 2016.

EMPLOYMENT AGREEMENT

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

ARTICLE 1

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

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~two (2) years~~ one (1) year eleven (11) months, commencing on February ~~1, 2015~~ 28, 2016 and terminating, without further notice to Coach, on January 31, ~~2017~~ 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 on or before October 1, ~~2016~~ 2017 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of the University’s Board ~~Education 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 salary in the amount of ~~\$87,610~~ \$100,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- ~~a)b)~~ A one-time bonus payment in the amount of \$750;
- ~~b)c)~~ The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; ~~and~~
- ~~e)d)~~ Assignment of one vehicle through the Department's trade-out program during the term of this Agreement, subject to and according to the policy of the University's Board of Trustees. Insurance premiums for the assigned 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
- e) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

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

3.2.1. Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay as follows:

- a) For the 2015-16 academic year, if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

National Score within Sport
970-974 = \$1,500

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 2

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

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

- b) For the 2016-17 academic year, if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

<u>National Score within Sport</u>		
<u>970-974</u>	<u>=</u>	<u>\$1,500</u>
<u>975-979</u>	<u>=</u>	<u>\$1,750</u>
<u>980-984</u>	<u>=</u>	<u>\$2,000</u>
<u>985 and above</u>	<u>=</u>	<u>\$3,500</u>

and

Coach shall qualify for Academic Incentive Pay if the Annual Team Grade Point Average ("GPA"), defined as the average of the fall and spring term GPAs for scholarship student-athletes, meets the following level:

<u>3.0+ Average Team GPA</u>	<u>=</u>	<u>\$1,500</u>
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If Coach qualifies for Grade Point Average Pay, it will be paid in conjunction with APR, if Coach is still employed by the University on that date.

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

- a) The greater of the following two:

Conference Championship:	\$5,000
OR	
Qualify team for NCAA Tournament:_____	\$3,000

- b) Top 25 National Ranking at End of Season: \$2,500

- c) NCAA Regional Coach of the Year: \$3,000

- d) NCAA National Coach of the Year: \$5,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 2

e) Conference Coach of the Year:	_____ \$3,000
f) <u>The greatest of the following:</u>	
Winning Record:	_____ \$1,500 <u>or</u>
<u>Amount of Wins:</u>	
<u>20 Wins</u>	<u>\$2,500 or</u>
<u>21 Wins</u>	<u>\$3,000 or</u>
<u>22 Wins</u>	<u>\$3,500 or</u>
<u>23 Wins</u>	<u>\$4,000 or</u>
<u>24+ Wins</u>	<u>\$4,500 or</u>
<u>Top 50 Team RPI at End of Season:</u>	<u>\$7,500</u>

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

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

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

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

3.2.5. 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 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 Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) ~~State Board of Education~~ Governing Policies and Procedures and Rule Manual 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 ~~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—Coach If ~~the~~ Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If ~~the~~ Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 31, ~~2016~~2017, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, ~~2016~~2017 and January 31, ~~2017~~2018 and inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4—~~The~~ 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 Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and ~~the~~ University Policies.

ARTICLE 6

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

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ATTACHMENT 2

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

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

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

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

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

~~the~~ Coach: Shawn Garus
 ~~last~~Last known address on file
 with University
 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 ~~whoever~~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.

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

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

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

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

UNIVERSITY

COACH

Dr. Robert Kustra, President

Shawn Garus

Approved by the Board on the ____ day of _____, ~~2014.~~
2016.

~~(MODEL ATHLETICS CONTRACT)~~ EMPLOYMENT AGREEMENT

This ~~Employment Agreement~~ ~~(the "Agreement")~~ is ~~entered into~~ this
day of, ("Effective Date") by ~~and~~ ~~between~~
~~(Boise State University (College))~~ ("the University") and ~~(Shawn Garus~~
~~("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~~ (the "Position") of its
intercollegiate
~~(Sport) team (women's volleyball (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 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 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. ~~2.1.~~ Term. This Agreement is for a fixed-term appointment of ~~()~~
~~years~~ one (1) year eleven (11) months, commencing on ~~February 28, 2016~~ and
terminating, without further notice to Coach, on ~~January 31, 2018 (the "Term")~~,
unless sooner terminated in accordance with other provisions of this Agreement.

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2.2. ~~2.2.~~ Extension or Renewal. This Agreement is renewable solely upon an offer from the University ~~(College)~~ on or before October 1, 2017 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of 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 \$~~100,000~~ per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate ~~by the Director and Chief executive officer~~ President and approved by the University (College)'s University's Board of
- a) ~~(Regents or Trustees)~~;
- b) ~~b~~ A one-time bonus payment in the amount of \$750;
- c) The opportunity to receive such employee benefits calculated on the "base salary" as the University ~~(College)~~ provides generally to non-faculty exempt employees; ~~and~~
- e) Assignment of one vehicle through the Department's trade-out program during the term of this Agreement, subject to and according to the policy of the University's Board of Trustees. Insurance premiums for the assigned 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
- e) 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~~ Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay as follows:

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- a) For the 2015-16 academic year, if the single year team Academic Progress Rate ("APR") for the Team ~~is the conference champion or co-champion~~ meets the following levels in the National Ranking within Women's Volleyball:

National Score within Sport

970-974 = \$1,500

975-979 = \$1,750

980-984 = \$2,000

985 and ~~also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post season tournament or post season playoffs)~~, above
= \$5,000

If Coach qualifies for Academic Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach ~~continues to be~~ is still employed ~~as by the~~ University ~~(College)'s head~~ ~~on that date.~~

- b) For the 2016-17 academic year, if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

National Score within Sport ~~coach~~

970-974 = \$1,500

975-979 = \$1,750

980-984 = \$2,000

985 and above = \$3,500

and

Coach shall qualify for Academic Incentive Pay if the Annual Team Grade Point Average ("GPA"), defined as the average of the ~~ensuing July 1st,~~ fall and spring term GPAs for scholarship student-athletes, meets the following level:

3.0+ Average Team GPA = \$1,500

If Coach qualifies for Grade Point Average Pay, it will be paid in conjunction with APR, if Coach is still employed by the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to on that date.
~~(amount)~~

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

- a) The greater of the following two:

Conference Championship: \$5,000

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<u>Qualify team for NCAA Tournament:</u>	<u>\$3,000</u>
b) <u>Top 25 National Ranking at End of Season:</u>	<u>\$2,500</u>
c) <u>NCAA Regional Coach of the Year:</u>	<u>\$3,000</u>
d) <u>NCAA National Coach of the Year:</u>	<u>\$5,000</u>
e) <u>Conference Coach of the Year:</u>	<u>\$3,000</u>
f) <u>The greatest of the following:</u>	
<u>Winning Record:</u>	<u>\$1,500 or</u>
<u>Amount of Wins:</u>	
<u>20 Wins</u>	<u>\$2,500 or</u>
<u>21 Wins</u>	<u>\$3,000 or</u>
<u>22 Wins</u>	<u>\$3,500 or computation of</u>
<u>Coach's Annual Salary during the fiscal year in which the</u>	
<u>championship and (bowl</u>	
<u>23 Wins</u>	<u>\$4,000 or other post</u>
<u>season) eligibility are achieved. The</u>	
<u>24+ Wins</u>	<u>\$4,500 or</u>
<u>Top 50 Team RPI at End of Season:</u>	<u>\$7,500</u>

If Coach qualifies for Athletic Incentive Pay under this Section, University
~~(College) shall determine the appropriate manner in which it shall~~will pay Coach on the
first regular pay ~~Coach any such~~date in February if Coach is still employed by the University
on that date.

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

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

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

~~3.2.4 Each year. ___ Coach shall be eligible to 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)'sUniversity'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 performappear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neitherNeither Coach nor any assistant coachescoach 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~~

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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 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.~~

~~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~~

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~~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 National Collegiate Athletic Association (the "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. 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~~

**BUSINESS AFFAIRS AND HUMAN RESOURCES
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ATTACHMENT 3

~~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.

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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) ~~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.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
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ATTACHMENT 3

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, for the breach of this Agreement the following sum:

(a) if the Agreement is terminated on or before January 31, 2017, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, 2017 and January 31, 2018 and inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 3

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 dent
1910 University Drive
Boise, Idaho 83725-1000

Coach: Shawn Garus

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ATTACHMENT 3

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.

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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 _____

Dr. Robert Kustra, President

Shawn Garus

Approved by the Board of ~~(Regents or Trustees)~~ on the _____ day of _____,
2014 _____, 2016.

BOISE STATE UNIVERSITY

Women's Volleyball APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2011-12	2012-13	2013-14	2014-15
Women's Volleyball	1000	979	1000	1000
<i>National % Rank by Sport</i>	<i>90-100</i>	<i>30-40</i>	<i>90-100</i>	<i>tba*</i>

REPORT YEAR

Raw Score for single year

Percentile Rank for Sport

* NCAA release May 2016

MULTI-YEAR (4-Year Rolling Average)

Women's Volleyball	948	957	994	1000
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Annual Team Grade PointAverage (Fall/Spring)

2011-12	2012-13	2013-14	2014-15
3.13	2.95	3.11	3.04

ATTACHMENT 5**Coach Shawn Garus Maximum Compensation Calculation - 2016-2018**

		Yr 1	Yr 2
3.1.1a	Annual Base Salary	\$ 100,000.00	\$ 100,000.00
3.2.1	Additional Pay based on Performance	\$ 26,000.00	\$ 26,000.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 131,000.00	\$ 131,000.00

Comparison of Liquidated Damages Clauses in MBB Contracts of Mountain West Conference and Pac 12 Schools						
Coach	School	Length of Contract	2015 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
Hilbert, Tom	Colorado State	7/1/14 - 12/31/18	\$ 200,000	Yes	Flat Rate	<p>d. Termination by Hilbert. At all times during the Term, Hilbert shall have the right to terminate this Agreement, without cause, at any time upon prior written notice to the University, except that Hilbert shall not, without good cause (such as would be cause for termination for breach by the University), give his notice of termination that is to take effect between July 1 and the last regular season game of the then-current CSU women's volleyball season. If such notice is given during the foregoing time frame, the termination effective date shall be determined at the sole discretion of the Director, but in no event later than the final game (to include any post-season tournament game) of that season.</p> <p>In the event that Hilbert so terminates this Agreement during the Term and accepts a coaching position at another university or for a professional or national team, Hilbert shall pay to the University, as liquidated damages because the Parties agree that the harm to the University cannot otherwise be reasonably calculated, the sum of One Million Dollars (\$1,000,000.00). This amount shall be payable in full on a lump-sum basis within ninety (90) days of the effective date of Hilbert's termination.</p>
Nelson, Jeff	New Mexico	7/1/14 - 6/30/17	\$ 129,406	Yes	Flat Rate	\$35,000 unless termination by coach happens in the 5th full year contract, no damages owed to University
Collins-Parker, Deitre	San Diego State	7/1/15 - 6/30/16	\$ 128,844	n/a		
Fredrick, Cindy	UNLV	7/1/15 - 6/30/16	\$ 126,322	Yes	Tied to base salary	Employee shall pay 1: any unpaid portion of the base guaranteed base salary or 2: six (6) months guaranteed base salary, whichever is less
Callihan, Chad	Wyoming	7/1/15 - 12/31/19	\$ 112,800	n/a		
Netherby-Sewell, Lauren	Fresno State	1/1/13 - 12/31/17	\$ 100,500	No		
Garus, Shawn	Boise State	2/28/16 - 1/31/18	\$ 100,000	Yes	Sliding Scale	Year 1: \$20,000; Year 2: \$10,000
DuBose, Grayson	Utah State	7/1/14 - 6/30/17	\$ 99,100	No		
Nelson, Lee	Nevada	7/1/2015	\$ 95,270	n/a		
Shepardson, Jolene	San Jose State	9/3/15 - 2/5/19	\$ 87,844	No		
McShane, Matt	Air Force	n/a	n/a	n/a		

Head Volleyball Coach Salary and Incentive Comparison in the Mountain West Conference			
Coach	School	2015 Base Salary	Incentives
Hilbert, Tom	Colorado State	\$ 200,000	Courtesy car or equivalent car stipend. Win the MW regular season championship pay is 1/12 of base salary. Win, if instituted, MW tournament championship pay is 1/12 of base salary. Qualify for the NCAA championship tournament pay is 1/12 of base salary. *Hilbert can only receive one payment of 1/12 per year. Advance to Sweet 16 of the NCAA championship tournament pay an additional \$15,000. Advance to Final 4 of the NCAA championship tournament pay an additional \$15,000. Win the NCAA championship tournament pay an additional \$25,000.
Nelson, Jeff	New Mexico	\$ 125,000	Courtesy car provided. Win conference regular season championship pay is one month salary. Win the NCAA tournament pay is one month salary. Reaching regionals pay is \$15,000. Final Four win pay is \$25,000. RPI below 100 pay is \$1,000. RPI below 50 pay is \$2,000. RPI below 25 pay is \$4,000. Average attendance of 1500 per game pay is \$1,000.
Collins-Parker, Deitre	San Diego State	\$ 127,334	\$1,500 personal services. No description.
Fredrick, Cindy	UNLV	\$ 90,000	Courtesy car provided. Win 20 or more games in regular season pay is 25% of one month base salary. Conference regular season champions and/or MW tournament champions pay is 50% of one month base salary. Qualify for NCAA Championship tournament pay is one month base salary. For each win in NCAA Championship tournament pay is 50% of one month base salary. Coach of the Year for MW Conference pay is 25% of one month base salary. District Coach of the Year pay is 25% of one month base salary. National Coach of the Year pay is 50% of one month base salary. APR score is 960 or more pay is 25% of one month base salary.
Callihan, Chad	Wyoming	\$ 102,000	\$10,800 personal services. \$15,000 contingent. No other description.
Netherby-Sewell, Lauren	Fresno State	\$ 100,500	Achieve annual APR at 950 for \$6,500 or 975 at \$10,000. Annual Team GPA of 3.0-3.199 for \$6,000 or 3.2+ for \$12,000. Regular season winning percentage of 70% is \$7,500 or 80% is \$10,000 or 90% is \$12,500. Games do not count exhibition or non-NCAA DI games with opponents outside of conference with RPI of 150 or above. Regular season co-champion is \$10,000. Regular season champion is \$15,000. Participate in 1st or 2nd round of NCAA tournament is \$15,000 or advance to Sweet 16 is \$20,000 or advance to Final Four is \$35,000 or National championship is \$50,000. Final ranking of Top 25 is \$7,500 or Top 10 is \$12,000. Conference Coach of the Year is \$5,000. AVCA Regional Coach of the Year is \$10,000 or AVCA National Coach of the Year is \$20,000.
Garus, Shawn	Boise State	\$ 100,000	See contract.
DuBose, Grayson	Utah State	\$ 90,000	\$2,100 annual car stipend. \$6,000 personal services. \$500 single year APR of 980 goal, \$500 for GPA of 3.5 or higher, \$1,000 for winning championship, \$1,000 for qualifying for post season competition and \$1,000 for Coach of the Year honors.
Nelson, Lee	Nevada	\$ 95,000	Courtesy car provided. No other description.
Shepardson, Jolene	San Jose State	\$ 85,334	\$2,500 personal services. No other description.
McShane, Matt	Air Force	n/a	No description.

BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016

UNIVERSITY OF IDAHO

SUBJECT

Multi-year contract for the Director of Athletics.

REFERENCE

August 2004	Original multi-year contract approved by the Idaho State Board of Education (Board).
August 2007	Addendum to extend contract term approved by the Board.
August 2011	Contract Extension approved by the Board.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

The University of Idaho (UI) seeks to extend the contract term for the Director of Athletics (Director), Robert Spear. The original contract was approved by the Board in August 2004 and was extended in August 2007 to 2008. In 2011 the Board approved a new five year contract expiring August 13, 2016. UI proposes a new contract so as to incorporate improvements and language changes that have become standard for all multi-year athletic contracts at the university. Compensation amounts for the Director are unchanged from the current contract terms other than salary increases as part of University wide CEC.

The proposed contract replaces and supersedes the 2011 contract and all addendums. The term of the proposed contract is four (4) years from the date of signature. This effects an approximate three and one-half (3.5) year extension beyond the existing contract term.

IMPACT

The annual base salary is currently \$181,958.40 paid from appropriated funds. The Director will receive supplemental compensation (media payment) of \$15,000 per year and a potential annual bonus of \$10,000 based on the athletic department APR performance. Total potential annual compensation (base salary and media payment) is \$206,958.40.

Liquidated damages for early termination by the Director (Section 5.3.3) are calculated at \$100,000 for termination prior to the next ensuing anniversary date (August 12, 2016); \$50,000 for termination prior to the 2017 anniversary date (August 12, 2017) and \$20,000 for termination prior to the 2018 anniversary date. Terminations after August 12, 2018 will not bear liquidated damages. The liquidated damages apply only if Director is subsequently employed as Athletic Director for any NCAA Division I institution at any time within one year from the

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

date of termination. These amounts and terms are the result of negotiations between the University and the Athletic Director.

ATTACHMENTS

Attachment 1 – Employment Contract – clean	Page 3
Attachment 2 – Employment Contract – redline	Page 15
Attachment 3 – Contract Comparison to Model – redline	Page 29
Attachment 4 – Max Compensation Calculation	Page 47
Attachment 5 – 4 Year APR History	Page 49
Attachment 6 – Athletic Director Salary Comparison	Page 50
Attachment 7 – Liquidated Damages Summary	Page 51

STAFF COMMENTS AND RECOMMENDATIONS

The proposed contract hews closely to the arrangements contained in the Athletic Director's previously-approved contract. The new contract conforms to the Board's multi-year contract template, including the Board's guidance on bonuses and liquidated damages. Staff recommends approval.

BOARD ACTION

I move to approve the University of Idaho's multi-year employment contract for Athletic Director, Robert Spear, for a term commencing upon execution of the contract after approval, and terminating on August 12, 2019 with provision for a one year extension to August 12, 2020, in substantial conformance to the form presented to the Board in attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University) and Robert Spear (Director).

ARTICLE 1

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

1.2. Reporting Relationship. Director shall report and be responsible directly to the University's President or the President's designee (collectively "President). Director shall abide by the reasonable instructions of the President and shall confer with the President on all major administrative matters.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in relation to the Program or the University as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time upon 14 days' written notice, to reassign Director to duties at the University other than as Director of the Program, provided that Director's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years commencing on February ___, 2016, and terminating, without further notice to Director, on February ___, 2020 unless sooner terminated in accordance with other provisions of this Agreement. This Agreement replaces and supersedes the Agreement between Director and University approved by the University's Board of Regents August 11, 2011 and all addendums thereto.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$181,958.40 payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President and approved by the University's Board of Regents ("Regents");
- 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. Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Director will be less than the salary stated in Paragraph 3.1.1(a) above.

3.2. Supplemental Compensation.

3.2.1 Director shall be eligible to receive supplemental compensation each year based on the academic achievement and behavior of all athletic department athletic team members as follows: If the annual departmental average National Collegiate Athletic Association ("NCAA") Academic Progress Rate ("APR") scores exceed 950 and no individual team fails to meet the NCAA postseason standard, and if Director continues to be employed as University's Athletic Director as of the ensuing July 1st, Director shall receive supplemental compensation of \$10,000. Any such supplemental compensation paid to Director shall be accompanied with a justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act. The determination shall also be based on the conduct of Athletic Department team members on the University campus, at authorized University activities, in the community, and elsewhere.

3.2.2 The Director shall receive the sum of \$15,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this

Agreement in compensation for participation in media programs and public appearances (collectively “Appearances”). Director’s right to receive such payment shall vest on January 1 of each fiscal year of this Agreement and is expressly contingent on Director’s compliance with University’s financial stewardship policies as set forth in University’s Administrative Procedures Manual Chapter 25. This sum shall be paid in two equal installments in January and July of each year. Agreements requiring the Director to participate in Appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Director. Director agrees to cooperate with the University in order for the Appearances to be successful and agrees to provide his services to and perform on the Appearances and to cooperate in their production, broadcasting, and telecasting. It is understood that Director shall not appear without the prior written approval of the President on any radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director shall not appear in any commercial endorsements that are broadcast on radio or television that conflict with those broadcast on the University’s designated media outlets.

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

3.4. Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund through the President’s Office at least one mutually agreeable professional development opportunity for Director in the area relevant to the Director’s duties, including fundraising, athletic administration, or higher education.

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

ARTICLE 4

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

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

4.1.2. Develop and implement programs and procedures with respect to the management and operation of the Department and the management, performance, evaluation, recruitment, and training of Department personnel;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and work with Department personnel to encourage Program participants to perform to their highest academic potential and to graduate in a timely manner;

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

4.2 Outside Activities. Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Director from devoting Director's full time and best efforts to the performance of Director's duties under this Agreement, that would otherwise

detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or the Program. Subject to the terms and conditions of this Agreement, Director may, with the prior written approval of the President, enter into separate arrangements for outside activities and endorsements that are consistent with Director's obligations under this Agreement. Director may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the President.

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

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

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

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

4.5 Scheduling. Director shall be responsible for the scheduling of athletic games and events but shall consult with the President as the President requests.

4.6 Other Opportunities. Director shall not, under any circumstances, interview for, negotiate for, or accept employment as a director of athletics 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 President. Such approval shall not unreasonably be withheld.

ARTICLE 5

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

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

- a) A deliberate or major violation of Director's duties under this Agreement or the refusal or unwillingness of Director to perform such duties in good faith and to the best of Director's abilities;
- b) The failure of Director to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) A deliberate or major violation, as determined by the University, by Director of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA;
- d) Ten (10) working days' absence of Director from duty without the University's consent;
- e) Any conduct of Director that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Director to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Director to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Director to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by any Department employee, any other employees for whom Director is administratively responsible, or a Participant in the Program; or

- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by any employees for whom Director is administratively responsible, or a Participant in the Program if Director knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

5.1.4 If found in violation of NCAA regulations, Director shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations.

5.2 Termination of Director for Convenience of University.

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

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

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

5.2.3 University has been represented by legal counsel, and Director has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that Director may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Director shall constitute adequate and reasonable compensation to Director for the damages and injury suffered by Director because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3 Termination by Director for Convenience.

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

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

5.3.3 If Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Director terminates this Agreement for Director's convenience, Director shall pay to the University, as liquidated damages and not as a penalty, the following sum: (a) if the Agreement is terminated on or before August 12, 2016, the sum of \$100,000.00; (b) if the Agreement is terminated between August 13, 2016 and August 12, 2017 inclusive, the sum of \$50,000.00; (c) if the Agreement is terminated between August 13, 2017 and August 12, 2018 inclusive, the sum of \$20,000.00. 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. The liquidated damages in this section 5.3.3 shall apply only if Director is subsequently employed as Athletic Director for any NCAA Division I institution at any time within one year from the date of such termination.

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

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

5.4 Termination due to Disability or Death of Director.

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

the University: Office of the President
University of Idaho
P.O. Box 443151
Moscow, Idaho 83844-3151

with a copy to: Office of University Counsel
University of Idaho
P.O. Box 443158
Moscow, ID 83844-3158

the Director: Robert Spear
Last known address on file with
University's Human Resource Services

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 1

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

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

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

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

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

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

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

UNIVERSITY

DIRECTOR

Chuck Staben
President

Date

Robert Spear
Director, Department of Athletics

Date

Approved by the Board of Regents on the ____ day of _____, 2016.

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University) and Robert Spear (Director).

ARTICLE 1

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

1.2. Reporting Relationship. Director shall report and be responsible directly to the University's President or the President's designee (collectively "President"). Director shall abide by the reasonable instructions of the President and shall confer with the President on all major administrative matters.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in relation to the Program or the University as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time upon 14 days' written notice, to reassign Director to duties at the University other than as Director of the Program, provided that Director's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~five~~four (54) years commencing on ~~August 13, 2011~~February, 2016, and terminating, without further notice to Director, on ~~August 12, 2016~~February, 2020 unless sooner terminated in accordance with other provisions of this Agreement. This Agreement replaces and supersedes the Agreement between Director and University approved by the University's Board of Regents August ~~12, 2004~~11, 2011 and all addendums thereto.

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

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$~~169,988.40~~181,958.40 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 Regents ("Regents");
- b) ~~Such~~The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) ~~Such~~The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Director will be less than the salary stated in Paragraph 3.1.1(a) above.

3.2. Supplemental Compensation.

3.2.1 Director shall be eligible to receive supplemental compensation each year based on the academic achievement and behavior of all athletic department athletic team members as follows: If the annual departmental average National Collegiate Athletic Association ("NCAA") Academic Progress Rate ("APR") scores exceed 950 and no individual team fails to meet the NCAA postseason standard, and if Director continues to be employed as University's Athletic Director as of the ensuing July 1st, Director shall receive supplemental compensation of \$10,000. Any such supplemental compensation paid to Director shall be accompanied with a justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho

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Public Records Act. The determination shall also be based on the conduct of Athletic Department team members on the University campus, at authorized University activities, in the community, and elsewhere.

3.2.2 The Director shall receive the sum of \$15,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively "Appearances"). Director's right to receive such payment shall vest on January 1 of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. This sum shall be paid in two equal installments in January and July of each year. Agreements requiring the Director to participate in Appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Director. Director agrees to cooperate with the University in order for the Appearances to be successful and agrees to provide his services to and perform on the Appearances and to cooperate in their production, broadcasting, and telecasting. It is understood that Director shall not appear without the prior written approval of the President on any radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director shall not appear in any commercial endorsements that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

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

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promotional appearances that contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.4. Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund [through the President's Office](#) at least one mutually agreeable professional development opportunity for Director in the area ~~of university advancement and~~ [relevant to the Director's duties, including fundraising, athletic administration, or higher education.](#)

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

ARTICLE 4

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

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

4.1.2. Develop and implement programs and procedures with respect to the management and operation of the Department and the management, performance, evaluation, recruitment, and training of Department personnel;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and work with Department personnel to encourage Program participants to perform to their highest academic potential and to graduate in a timely manner;

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Director's assistant and associate directors, any other employees for whom Director is administratively responsible, and the participants in the Program know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's Director of Compliance if Director has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws,

policies, rules or regulations. Director shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Faculty-Staff Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the conference of which the University is a member.

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

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

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

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

4.4 Hiring Authority. Director shall have the responsibility and the sole authority to recommend to the President the hiring and termination of Department personnel, but, except as delegated by the President, the decision to hire or terminate

shall be made by the President and shall, when necessary or appropriate, be subject to the approval of the University's Board of Regents.

4.5 Scheduling. Director shall be responsible for the scheduling of athletic games and events but shall consult with the President as the President requests.

4.6 Other Opportunities. Director shall not, under any circumstances, interview for, negotiate for, or accept employment as a director of athletics 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 President. Such approval shall not unreasonably be withheld.

ARTICLE 5

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

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

- a) A deliberate or major violation of Director's duties under this Agreement or the refusal or unwillingness of Director to perform such duties in good faith and to the best of Director's abilities;
- b) The failure of Director to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) A deliberate or major violation, as determined by the University, by Director of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA;
- d) Ten (10) working days' absence of Director from duty without the University's consent;
- e) Any conduct of Director that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;

- f) The failure of Director to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Director to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Director to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by any Department employee, any other employees for whom Director is administratively responsible, or a Participant in the Program; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by any employees for whom Director is administratively responsible, or a Participant in the Program if Director knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

5.1.4 If found in violation of NCAA regulations, Director shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations.

5.2 Termination of Director for Convenience of University.

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

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

5.2.3 University has been represented by legal counsel, and Director has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that Director may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such ~~sums~~liquidated damages by University and the acceptance thereof by Director shall constitute adequate and reasonable compensation to Director. ~~Such compensation is for the damages and injury suffered by Director because of such termination by University. The liquidated damages are~~ not, and shall not be construed to be, a penalty.

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5.3 Termination by Director for Convenience.

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

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

5.3.3 If Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Director terminates this Agreement for Director's convenience, Director shall pay to the University, as liquidated damages and not as a penalty, the following sum: (a) if the Agreement is terminated on or before August 12, ~~2012, 2016,~~ the sum of ~~\$5,000.00~~ 100,000.00; (b) if the Agreement is terminated between August 13, ~~2012~~ 2016 and August 12, ~~2013~~ 2017 inclusive, the sum of ~~\$2,500.00~~ 50,000.00; (c) if the Agreement is terminated between August 13, ~~2013 and August 12, 2014~~ 2017 and August 12, 2018 inclusive, the sum of ~~\$2,000.00~~; (d) ~~if the Agreement is terminated between August 14, 2013 and August 12, 2015 inclusive, the sum of \$1,500.00;~~ (e) ~~if the Agreement is terminated between August 13, 2015 and August 12, 2016 inclusive, the sum of \$1,000.00.~~ The applicable sum ~~20,000.00.~~ 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. The liquidated damages in this section 5.3.3 shall apply only if Director is subsequently employed as Athletic Director for any NCAA Division I institution at any time within one year from the date of such termination.

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

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

5.4 Termination due to Disability or Death of Director.

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

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

the University: Office of the President
University of Idaho
P.O. Box 443151
Moscow, Idaho 83844-3151

with a copy to: Office of University Counsel
University of Idaho
P.O. Box 443158
Moscow, ID 83844-3158

the Director: Robert Spear
Last known address on file with
University's Human Resource Services

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

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

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

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

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

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

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

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

UNIVERSITY

DIRECTOR

~~M. Duane Nellis~~ [Chuck Staben](#)

Date Robert Spear

Date

President

Director, Department of Athletics

Approved by the Board of Regents on the ____ day of _____, ~~201~~[2016](#).

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~~(MODEL ATHLETICS CONTRACT)~~EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between
~~_____ (the University (College)) of Idaho (University) and~~
~~_____ (Coach Robert Spear (Director)).~~

ARTICLE 1

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

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

1.3. Duties. ~~Coach~~Director shall manage and supervise the ~~Team~~Program and shall perform such other duties in relation to the Program or the University ~~(College)'s athletic program~~ as the ~~Director~~President may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time upon 14 days' written notice, to reassign ~~Coach~~Director to duties at the University ~~(College)~~ other than as ~~head coach~~Director of the ~~Team~~Program, provided that ~~Coach~~Director'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) section 3.2~~ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~_____ four (4)~~ years, commencing on February _____, 2016, and terminating, without further notice to ~~Coach~~Director, on February _____, 2020 unless sooner terminated in accordance with other provisions of this Agreement. This Agreement replaces and supersedes the Agreement between Director and University approved by the University's Board of Regents August 11, 2011 and all addendums thereto.

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

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~~the~~[University's](#) Board of ~~Education~~[Regents](#). This Agreement in no way grants to ~~Coach~~[Director](#) a claim to tenure in employment, nor shall ~~Coach~~[Director](#)'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~~[Director](#)'s services and satisfactory performance of this Agreement, the University ~~(College)~~ shall provide to ~~Coach~~[Director](#):

- a) An annual salary of \$~~_____~~ ~~per year,~~[181,958.40](#) 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 Board of ~~-(Regents ("Regents-or-Trustees)_____")~~;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University ~~(College)~~'s Department of Athletics (Department) provides generally to its employees of a comparable level. ~~Coach~~[Director](#) hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

[Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Regents' policy as the President may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Director will be less than the salary stated in Paragraph 3.1.1\(a\) above.](#)

~~3.2~~ 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 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)~~

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~~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~~3.2.1 Director shall be eligible to receive supplemental compensation ~~in an amount up to (amount or computation) each year~~ based on the academic achievement and behavior of ~~Team members. The determination of whether Coach will receive such~~all athletic department athletic team members as follows: If the annual departmental average National Collegiate Athletic Association ("NCAA") Academic Progress Rate ("APR") scores exceed 950 and no individual team fails to meet the NCAA postseason standard, and if Director continues to be employed as University's Athletic Director as of the ensuing July 1st, Director shall receive 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. of \$10,000. Any such supplemental compensation paid to ~~Coach~~Director shall be accompanied with a ~~detailed~~ justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of ~~(Regents or Trustees)~~ as a document available to the public under the Idaho Public Records Act.3.2.4 Each year Coach The determination shall also 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~~based on the conduct of Athletic Department team members on the University campus, at authorized University activities, in the community, and elsewhere.

3.2.2 The Director shall receive the sum of ~~(amount or computation)~~ \$15,000 from the University ~~(College)~~ or the University ~~(College)~~'s

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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~~ collectively "Appearances"). ~~Director'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) _____ payment shall vest on January 1 of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. This sum shall be paid in two equal installments in January and July of each year. Agreements requiring the ~~Coach~~ Director to participate in ~~Programs~~ Appearances 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~~ Director. Director agrees to cooperate with the University (~~College~~) in order for the ~~Programs~~ Appearances to be successful and agrees to provide his services to and perform on the ~~Programs~~ Appearances and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches Director shall not appear without the prior written approval of the ~~Director~~ President on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the ~~President~~ Director, ~~Coach~~ shall not appear in any commercial endorsements which that 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 3.3. Director agrees that the University (~~College~~) has the exclusive right to operate youth (Sport) camps on its campus using University (~~College~~) facilities. The University (~~College~~) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (~~College~~)'s camps in Coach's capacity as a University (~~College~~) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (~~College~~)'s football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University (~~College~~)'s summer football camps, the University (~~College~~) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the University (~~College~~). This amount shall be paid (terms of payment) _____.

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

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

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in any messages or promotional appearances ~~which~~that contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.4. Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund through the President's Office at least one mutually agreeable professional development opportunity for Director in the area relevant to the Director's duties, including fundraising, athletic administration, or higher education.

~~3.3-3.5~~ General Conditions of Compensation. All compensation provided by the University ~~-(College)~~ to CoachDirector is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which CoachDirector participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University ~~-(College)~~ to CoachDirector, 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. CoachDirector's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, CoachDirector, in addition to the obligations set forth elsewhere in this Agreement, shall:

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University ~~-(College)~~, the University ~~-(College)~~'s governing board, the conference, and the NCAA ~~-(or NAIA)~~; supervise and take appropriate steps to ensure that CoachDirector's assistant ~~coaches~~and associate directors, any other employees for whom CoachDirector is administratively responsible, and the ~~members of participants in the Team~~Program know, recognize, and comply with

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all such laws, policies, rules and regulations; and immediately report to the ~~Director~~President and to the Department's Director of Compliance if ~~Coach~~Director has reasonable cause to believe that any person or entity, including without limitation representatives of the University ~~(College)~~'s athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. ~~Coach~~Director shall cooperate fully with the University ~~(College)~~ and Department at all times. ~~The names or titles of employees whom Coach supervises are attached as Exhibit C.~~ The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University ~~(College)~~'s Faculty-Staff Handbook; (c) University ~~(College)~~'s Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~(Sport)~~ conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. ~~Coach~~Director shall not undertake any business, professional or personal activities, or pursuits that would prevent ~~Coach~~Director from devoting ~~Coach~~Director's full time and best efforts to the performance of ~~Coach~~Director'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~~ or the Program. Subject to the terms and conditions of this Agreement, ~~Coach~~Director 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 that~~ are consistent with ~~Coach~~Director's obligations under this Agreement. ~~Coach~~Director may not use the University ~~(College)~~'s name, logos, or trademarks in connection with any such arrangements without the prior written approval of the ~~Director and the Chief executive officer~~President.

~~4.3~~4.3. ~~NCAA (or NAIA) Rules.~~ In accordance with NCAA ~~(or NAIA)~~ rules, ~~Coach~~Director shall obtain prior written approval from the University ~~(College)~~'s ~~Chief executive officer's~~ President for all athletically related income and benefits from sources outside the University ~~(College)~~ and shall ~~report~~ provide a written detailed account of the source and amount of all such income and benefits to the ~~University (College)'s 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 University ~~(College)~~. Sources of such income include, but are not limited to, the following:

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

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In no event shall ~~Coach~~Director 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)~~.

4.4 Hiring Authority. ~~Coach~~Director shall have the responsibility and the sole authority to recommend to the ~~Director~~President the hiring and termination of ~~assistant coaches for the Team, but~~Department personnel, but, except as delegated by the President, the decision to hire or terminate ~~an assistant coach~~ shall be made by the ~~Director~~President 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~~Director shall be responsible for the scheduling of athletic games and events but shall consult with the President as the President requests.

~~4.7~~4.6 Other—Coaching Opportunities. ~~Coach~~Director shall not, under any circumstances, interview for, negotiate for, or accept employment as a ~~coach~~director of athletics 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~~President. Such approval shall not unreasonably be withheld.

ARTICLE 5

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

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

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

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~~Coach's assistant coaches, by~~ any ~~other~~ employees for whom ~~Coach~~Director is administratively responsible, or a ~~member of Participant in~~ the ~~Team~~Program if ~~Coach~~Director knew or should have known of the violation and could have prevented it by ordinary supervision.

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

5.1.3 In the event of any termination for good or adequate cause, the University ~~(College)~~'s obligation to provide compensation and benefits to ~~Coach~~Director, 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~~Director shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA ~~(NAIA)~~ enforcement procedures. ~~This section applies to violations occurring at the University (College) or at previous institutions at which the Coach was employed, including suspension without pay or termination of employment for significant or repetitive violations.~~

5.2 Termination of ~~Coach~~Director 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~~Director.

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

5.2.3 ~~The parties have both~~ University has been represented by, ~~or had the opportunity to consult with,~~ legal counsel, and Director has either been represented by legal counsel or has chosen to proceed without legal counsel in the contract negotiations ~~and.~~ The parties have bargained for and agreed to the foregoing ~~liquidated damages~~ provision, giving consideration to the fact that ~~the~~ ~~Coach~~Director 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

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damages by University ~~(College)~~ and the acceptance thereof by ~~Coach~~Director shall constitute adequate and reasonable compensation to ~~Coach~~Director for the damages and injury suffered by ~~Coach~~Director 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~~Director for Convenience.

5.3.1 ~~The Coach~~Director 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~~Director 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~~Director, 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~~Director 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~~Director terminates this Agreement for ~~his~~Director's convenience ~~he~~, Director shall pay to the University ~~(College)~~, as liquidated damages and not as a penalty, the following sum: (a) if the Agreement is terminated on or before August 12, 2016, the sum of \$100,000.00; (b) if the Agreement is terminated between August 13, 2016 and August 12, 2017 inclusive, the sum of \$50,000.00; (c) if the Agreement is terminated between August 13, 2017 and August 12, 2018 inclusive, the sum of \$20,000.00. 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. The liquidated damages in this section 5.3.3 shall apply only if Director is subsequently employed as Athletic Director for any NCAA Division I institution at any time within one year from the date of such termination.

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

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

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

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

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

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

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

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

~~5.7~~5.6 No Liability. The University ~~-(College)~~ shall not be liable to ~~Coach~~Director for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension ~~or reassignment~~ of ~~Coach~~Director, regardless of the circumstances.

~~5.8~~5.7 Waiver of Rights. Because ~~the Coach~~Director is receiving a multi-year contract and the opportunity to receive supplemental compensation, and because such

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contracts and opportunities are not customarily afforded to University ~~(College)~~ employees, if the University ~~(College)~~ suspends ~~or reassigns Coach~~ Director, or terminates this Agreement for good or adequate cause or for convenience, Coach Director 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 and Board or Regents of the University of Idaho Rules Manual (IDAPA 08) and Governing Policies and Procedures, ~~IDAPA 08.01.01 et seq.,~~ Manual, and the University ~~(College)~~ Faculty-Staff Handbook.

ARTICLE 6

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

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

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.

[Discussion Draft 2016-0202](#)

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~~ [Director](#) 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~~ [Director](#). [Director](#) further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University ~~(College)~~'s sole discretion.

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

the University ~~(College)~~: [Director](#): [Office](#) of ~~Athletics~~ [the President](#)

[University of Idaho](#)
[P.O. Box 443151](#)
[Moscow, Idaho 83844-3151](#)

with a copy to:

~~Chief executive officer~~ [Office of University Counsel](#)
[University of Idaho](#)
[P.O. Box 443158](#)
[Moscow, ID 83844-3158](#)

the ~~Coach~~ [Director](#):

[Robert Spear](#)
 Last known address on file with
 University ~~(College)~~'s Human Resource Services

Discussion Draft 2016-0202

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

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

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

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

UNIVERSITY-~~(COLLEGE)~~

~~COACH~~DIRECTOR

_____, ~~Chief executive officer~~

_____, Date

Date

Chuck Staben _____ Date
President

Robert Spear _____ Date
Director, Department of Athletics

Approved by the Board of ~~-(Regents or Trustees)-~~ on the ____ day of _____, 2010-2016.

Spear compensation calculation

3.1.1a	The annual base salary from appropriated funds	\$ 181,958.40
	Annual departmental average National Collegiate Athletic Association ("NCAA") Academic Progress Rate ("APR") scores exceed 950 and no individual team fails to meet the NCAA postseason standard.	
3.2.1		\$ 10,000.00
3.2.2	Media Payment	\$ 15,000.00
	Total potential annual compensation	\$ 206,958.40

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**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 5

University of Idaho – Department-wide APR

Academic Year	Points Earned	Points Possible	Bonus Points	Number of Athletes	Single Year APR	2-year APR	Multi-Year APR
2010-11	1016	1080	3	243	944		
2011-12	1201	1281	6	251	942		
2012-13	1187	1289	0	251	921		
2013-14	1302	1363	15	251	966	944	944
2014-15 ¹	1224	1265	16	259	980		

¹ Pending APR figures; Report not yet finalized or published

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 6

Summary of Conference AD Salaries

SUN BELT CONFERENCE			
School	Name	AD Salary	Year
Appalachian State	Doug Gillin		
Arkansas State	Terril Mohajir	290,000	2016
Georgia Southern	Tom Kleinlein	204,000	2015
Georgia State	Charlie Cobb	300,000	2014
U Arkansas Little Rock	Chasse Conque	172,000	2016
U Louisiana Monroe	Brian Wickstrom	145,000	2013
U South Alabama	Joel Erdmann	253,720.99	2015
Texas State	Larry Teis	275,000	2014
U Texas Arlington	Jim Baker	298,682	2014
Troy University	Jeremy McClain		
Hartwick College (private)		N/A	N/A
Howard University (private)		N/A	N/A
U Idaho	Rob Spear	181,958	2015
New Jersey Institute Tech	Lenny Kaplan		
New Mexico State	Mario Moccia		

BIG SKY CONFERENCE			
School	Name	AD Salary	Year
Eastern Wash	Bill Chaves	148,701	2014
Idaho State	Jeff Tingey	125,777.60	2015
Montana	Kent Haslam		
Montana State	Peter Fields		
North Dakota	Matthew Larsen	100,170	2015
Northern Arizona	Lisa Campos	193,532	2015
Northern Colorado	Darren Dunn		
Portland State	Mark Rountree	142,320	2014
Sacramento State	William Macriss	155,000	2015
Southern Utah	Ken Beazer	153,952	2014
Weber State	Jerry Bovee	206,004	2014
Idaho	Rob Spear	181,958.40	2015
Cal Poly	Donald Oberhelman	219,000	2015
UC Davis	Terrence Tumey	222,000	2014
Binghamton	Patrick Elliot	215,416	2014
Hartford (private)		N/A	N/A

**BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 18, 2016**

ATTACHMENT 7

Summary of Liquidated Damages Clauses in Big Sky AD Contracts
(not all institutions responded to our request for information)

School: University of Idaho

Salary: 165,048

Liquidated Damages Provision: AD receives compensation rest of salary for contract term for early termination without cause by University

5.2.2. In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Director, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Director obtains reasonably comparable employment, whichever occurs first. In addition,

If AD terminates contract during first year, \$5k, if during second year, \$2.5k, if during third year \$2k, if during fourth year, \$1.5k.

5.3.3. If the Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Director terminates this Agreement for his convenience and accepts a position as athletic director at another institution within six (6) months of termination of this Agreement, he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before August 15, 2005, the sum of \$5,000.00; (b) if the Agreement is terminated between August 16, 2005 and August 15, 2006 inclusive, the sum of \$2,500.00; (c) if the Agreement is terminated between August 16, 2006 and August 15, 2007 inclusive, the sum of \$2,000.00; (d) if the Agreement is terminated between August 16, 2007 and August 15, 2008 inclusive, the sum of \$1,500.00. The liquidated damages shall be due

.....

School: Eastern Washington

Salary: 148,701

Liquidated Damages provision: AD receives 9 month's salary for early termination without cause.

No provision requiring Coach to pay liquidated damages for leaving early.

IX. Termination for Convenience

You may be terminated for convenience without cause at the discretion of the President by written notice to you, accompanied by the payment of nine months' current salary as liquidated damages, subject to withholding and OASI contributions.

.....

School: Idaho State

Salary: 125,778

Liquidated Damages provision: AD receives rest of salary for contract term

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Director, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends;

If AD quits, must pay \$50k during first year, \$40k during second year, or \$30k during third year.

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

.....

School: University of Montana

Salary: 150,660

Liquidated Damages provision: No Liquidated Damages Provision

.....

School: Northern Arizona

Salary: 193,532

Liquidated Damages provision: AD receives 100% salary for fiscal year in which she is terminated, 75% for following fiscal year, and 50% for the next year.

16. Termination By University Without Cause: Liquidated Damages

This contract may be terminated by the University President at any time without cause. In such event, the University will pay to VP Campos as liquidated damages, in lieu of any and all other legal remedies or equitable relief: 100% of the Base Salary in the fiscal year of termination, 75% of the following fiscal year's Base Salary (if such fiscal year falls within the Contract Term), and 50% of the Base Salary for a single fiscal year thereafter (if such fiscal year falls within the Contract Term), with no additional payments due regardless of whether any additional years remain in the Contract Term. Payments shall be made in equal monthly installments over the remaining months of the Term, beginning one month after the date of termination.

If AD terminates contract, she must pay \$10,000. University President may waive this fee.

17. Termination by VP Campos

Termination by VP Campos at any time during the Term shall obligate VP Campos to pay to the University, in lieu of all other legal remedies and except as provided in Section 18, liquidated damages in the sum of Ten Thousand Dollars (\$10,000). At the sole discretion of the President, the University may elect to waive VP Campos' obligation under this Section. Such election shall not be deemed a waiver or modification of any other term or obligation of this contract. The parties acknowledge that the University may incur administrative, recruiting and resettlement costs in obtaining a replacement VP in addition to potentially increased compensation costs, which damages are difficult to determine with certainty. Accordingly, the parties agree to this liquidated damages provision. This provision shall not prejudice any right the University may have under Section 18.

School: Northern Colorado
Salary: 160,000
Liquidated Damages provision: None

School: Portland State
Salary: 155,000
Liquidated Damages provision: None

School: University of Montana
Salary: 131,194
Liquidated Damages provision: None

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