

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
FEBRUARY 14, 2019**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	<b>PRESIDENT EVALUATION PROCESS</b>	Information item
2	<b>AMENDMENT TO BOARD POLICY II.H.</b> Coaches and Athletic Directors – Second Reading	Motion to approve
3	<b>BOISE STATE UNIVERSITY</b> Amendments to Employment Agreements – Seven Men’s Football Assistant Coaches	Motion to approve
4	<b>BOISE STATE UNIVERSITY</b> Amendment to Multi-Year Employment Agreement – Athletic Director	Motion to approve
5	<b>UNIVERSITY OF IDAHO</b> Academic Transitional Leave	Motion to approve

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**SUBJECT**

Evaluation Process for Presidents Appointed by the Idaho State Board of Education (Board)

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**ALIGNMENT WITH STRATEGIC PLAN**

This agenda item is a non-strategic Board governance agenda item.

**BACKGROUND/DISCUSSION**

“Assessing the president’s performance is one of the board’s primary responsibilities and its importance is second only to selecting the president. The evaluation of the president is critical to the success of the president and the university. Assessments help to clarify the president’s responsibilities and board’s expectations.”<sup>1</sup>

Board Policy I.E. provides that “[t]he Presidents and Executive Director are evaluated by the Board annually. The performance evaluation is based upon the terms of any employment agreement, the duties outlined in the policy and mutually agreed upon goals.”

The Board’s May meeting is the venue for annual performance evaluations of the presidents whom it appoints.

**IMPACT**

Board Policy I.E. stipulates “[f]inal decisions with respect to compensation and employment actions with regard to chief executive officers are made by the Board.” Under the state’s compensation system, advancement in pay is based on performance. Therefore, any compensation adjustments for presidents are predicated on the outcome of the annual evaluation process.

**STAFF COMMENTS AND RECOMMENDATIONS**

The Board and institution president should jointly develop clear institution-specific goals and metrics for evaluation. Given the Board’s focus on operating as a system, it may be helpful to develop goals at a system level, which are mutually compatible with and supportive of, each individual institution.

The Board may also want to build in an expectation of a 360° review for presidents every 3-5 years as a best practice.

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<sup>1</sup> "Assessing The President’s Performance: A ‘How To’ Guide for Trustees". American Council of Trustees and Alumni, 2006, [https://www.goacta.org/publications/assessing\\_the\\_presidents\\_performance](https://www.goacta.org/publications/assessing_the_presidents_performance). Accessed 28 Jan 2019.

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To help ensure that the evaluation process is constructive and objective, the Board may want to consider developing written criteria for presidential evaluations. These criteria could be memorialized in a president's employment agreement or Board policy.

**BOARD ACTION**

This item is for informational purposes only.

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**SUBJECT**

Board Policy II.H. – Coaches and Athletic Directors - second reading

**REFERENCE**

June 2016	Idaho State Board of Education (Board) approved second reading of amendments to policy II.H. updating the incorporated by reference updates to the model contract and contract terms.
December 2018	Board approved first reading of amendments to policy II.H. and approved the model contract.

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**ALIGNMENT WITH STRATEGIC PLAN**

This agenda item is a non-strategic Board governance agenda item.

**BACKGROUND/DISCUSSION**

Board Policy II.H. incorporates by reference two model coach contracts the institutions may use. The model contracts are being proposed to be updated and thus requires a change in policy to reference the updated model contract. Changes to the model contract include:

- Consistency between language in single and multi-year contracts
- Disclosure of allegations of serious misconduct against the coach
- Updated template to minimize institution-specific changes to the contract

The proposed changes also increases the threshold for an assistant coach salary requiring Board approval. The current policy requires Board approval for assistant coaches making more than \$200,000 or having contracts that are equal to or more than three years. The proposed changes would increase that threshold to \$350,000 or a contract equal to or more than three years.

**IMPACT**

The proposed policy change updates the referenced Board approved model contract for coaches and increases the threshold of coach contracts requiring Board approval from \$200,000 to \$350,000.

**ATTACHMENTS**

Attachment 1 – Second reading Board Policy Section II.H.

**STAFF COMMENTS AND RECOMMENDATIONS**

The model contract was approved at the December 2018 Board meeting. The model contracts only needed one reading and approval. Only the policy itself that incorporates the model contract by reference needs two readings.



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Between the first and second readings, there was a change in the approval threshold. The amount was increased from \$200,000 to \$350,000 which requires the Board to take action on the contract approval.

Staff recommends approval.

**BOARD ACTION**

I move to approve the second reading of Board Governing Policy and Procedures II.H., Coaches and Athletic Directors, as presented in Attachment 1.

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

Idaho State Board of Education  
**GOVERNING POLICIES AND PROCEDURES**  
SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES  
Subsection: H. Coaches and Athletic Directors

~~June 2016~~ February 2019

1. Agreements Longer Than Three (3) Years

The chief executive officer of an institution is authorized to enter into a contract for the services of a coach or athletic director with that institution for a term of up to three (3) years. A contract with a term (whether fixed or rolling) of more than three (3) years, or with a total annual compensation amount of \$~~200~~350,000 or higher, is subject to approval by the Board as to the terms, conditions, and compensation there under, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Contracts shall define the entire employment relationship between the Board and a coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law.

- a. Each contract for the services shall follow the general form approved by the Board as a model contract. The ~~April 2016~~December 20, 2018 Board revised and approved multiyear model contract is adopted by reference into this policy. The model contracts for employment agreements may be found on the Board's website at <http://boardofed.idaho.gov/>.
- b. All such contracts must contain a liquidated damages clause provision in favor of the institution, applicable in the event that a coach or athletic director terminates the contract for convenience, in an amount which is a reasonable approximation of damages which might be sustained if the contract is terminated.
  - i. If a head coach resigns or is terminated and there is one or more assistant coach for the same sport on a multi-year contract, the liquidated damages clause for the assistant coach(es) may be waived.
- c. Contracts submitted for Board approval shall include the following supporting documentation (either in the agenda cover page or as an attachment; and shall be accompanied by the completed "Athletics Contracts Checklist" found on the Board's website at <http://boardofed.idaho.gov/>):
  - i. A summary of all supplemental compensation incentives;
  - ii. Quantification of maximum potential annual compensation (i.e. base salary plus maximum incentive pay);
  - iii. Employment agreement (clean version), employment agreement (redline to Board-approved model contract), and for current coaches a redline of proposed employment agreement to current employment agreement;
  - iv. In the case of National Collegiate Athletic Association (NCAA) institutions, a 4-year history of the institution's Academic Progress Rate (APR) raw scores

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and national average APR scores for the applicable sport;

- v. A schedule of base salaries and incentive payments of all other same sport coaches in the institution's conference; and
  - vi. Documentation on how the institution arrived at the proposed liquidated damages amount(s), and a summary of publically-available liquidated damages and buyout provisions for coaches of the same sport at all other public institutions in the conference.
- d. All contracts must be submitted for Board approval prior to the contract effective date.

## 2. Agreements For Three (3) Years Or Less

The chief executive officer of an institution is authorized to enter into a contract for the services of a coach or athletic director with that institution for a term of three (3) years or less and a total annual compensation amount less than \$~~200~~350,000 without Board approval. Each contract shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law. The ~~April 14, 2016~~ December 20, 2018 Board revised and approved model contract is adopted by reference into this policy. The model contracts for employment agreements may be found on the Board's website at <http://boardofed.idaho.gov/>.

## 3. Academic Incentives

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

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SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES  
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~~June 2016~~ February 2019

4. Part-time Coaches Excepted

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

5. Assistant Coaches

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

6. Annual Leave

- a. All existing contracts and accrued leave held by coaches at the institutions on ~~the effective date of this policy~~ April 17, 2014 shall be grandfathered under policy Section II.F. for purposes of accruing annual leave until the coach's contract renewal.
- b. Following ~~the effective date of this policy~~ April 17, 2014, the institutions shall have the authority to negotiate annual leave for all coach contract renewals and new hires using one of the two options below:
  - i. Annual leave may be earned and accrued consistent with non-classified employees as set forth in policy II.F.; or
  - ii. ~~Pursuant to section 59-1606(3), Idaho Code, coaches do not accrue leave, but~~ Coaches may take leave with prior written approval from the athletic director, subject to the terms of the contract. ~~Under this option, any accrued annual~~ Any such leave balance at the time of the coach's contract renewal shall be forfeited or paid off, and the new contract shall document the forfeiture or compensation of that leave.

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Employment agreements for seven assistant football coaches

**REFERENCE**

April 2016	Board approved a two-year contract for Kent Riddle
April 2017	Board approved a one-year, nine-month contract for Andrew Avalos
February 2018	The Idaho State Board of Education (Board) approved the following employment contracts for assistant football coaches: a single-year contract for Eric Kiesau a single-year contract for Bradley Bedell a single-year contract for Gabriel Franklin a new two-year contract for Kent Riddle a two-year revised contract for Andrew Avalos
October 2018	The Board approved a revised contract for Head Coach Bryan Harsin
December 2018	The Board approved a new model contract for single-year and multi-year coach contracts

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**ALIGNMENT WITH STRATEGIC PLAN**

Single and multi-year coach contracts are a non-strategic, Board governance agenda item

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is seeking to renew and/or enter new contracts for its football assistant coaching staff. Seven of those contracts meet the threshold for Board approval because they will provide annual compensation over \$200,000.

The contracts are similar to the standard issued by BSU and are in conformance with the template provided by the Board approved Model Agreement.

**IMPACT**

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

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**Andrew Avalos**

**Term:** Fixed term contract of two-years.

**Base Compensation:**

Year 1: \$350,000

Year 2: \$350,000

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

Year 1 (March 1, 2019 – February 29, 2020): \$100,000

Year 2 (March 1, 2020 – the last game of the regular season including the conference championship game (if applicable): \$50,000

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**Eric Kiesau**

**Term:** Fixed term contract of one-year

**Base Compensation:** \$250,000

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**Kent Riddle**

**Term:** Amendment to fixed term contract of two-years

**Base Compensation:**

Year 2: \$250,000

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

Year 2 (March 1, 2019 – the last game of the regular season including the conference championship game (if applicable): \$50,000

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**Bradley Bedell**

**Term:** Fixed term contract of one-year

**Base Compensation:** \$250,000

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**Gabriel Franklin**

**Term:** Fixed term contract of one-year

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**Base Compensation: \$210,000**

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**Lee Marks, Jr.**

**Term:** Fixed term contract of one-year

**Base Compensation: \$185,000**

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**Jeff Schmedding**

**Term:** Fixed term contract of one-year

**Base Compensation: \$175,000**

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**All Assistant Coaches:**

**Pay for Performance - Academic:**

APR between 955-959 – up to \$2,000 or  
APR between 960-964 – up to \$3,000 or  
APR between 965-969 – up to \$4,000 or  
APR 970 or higher – up to \$5,000.

**Pay for Performance - Athletic:**

- a) If the football team is the Mountain Division Champion, Coach will receive a \$5,000 bonus.
- b) If the football team participates in the Conference Championship Game, Coach will receive a \$5,000 bonus.
- c) If the football team is the Conference Champion, Coach will receive a \$5,000 bonus.

In addition,

- d) If the football team participates in a non-CFP bowl game, Coach will receive a \$5,000 bonus; and
- e) If the football team wins the non-CFP bowl game, Coach will receive a \$5,000 bonus; or
- f) If the football team participates in one of the six CFP (College Football Playoff) bowl games, Coach will receive a bonus up to 7.5% of his annual base salary.

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

**ATTACHMENTS**

- Attachment 1 – 2013-2017 APR Summary
- Attachment 2 – Chart – all Boise State Football Assistant Coach salaries
- Attachment 3 – Proposed Contract for Andrew Avalos

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- Attachment 4 – Redline of Avalos Proposed Contract to Model Agreement
- Attachment 5 – Redline of Avalos Proposed Contract to Current Agreement
- Attachment 6 – Avalos Maximum Compensation Calculation
- Attachment 7 – Base Salary and Incentive Comparison – D Coord
- Attachment 8 – Liquidated Damages Comparison – D Coord
- Attachment 9 – Proposed Contract for Eric Kiesau
- Attachment 10 – Redline of Kiesau Proposed Contract to Model Agreement
- Attachment 11 – Redline of Kiesau Proposed Contract to Current Agreement
- Attachment 12 – Kiesau Maximum Compensation Calculation
- Attachment 13 – Base Salary and Incentive Comparison – O Coord
- Attachment 14 – Proposed Contract Amendment for Kent Riddle
- Attachment 15 – Redline of Riddle Prop. Amended Contract to Model Agreement
- Attachment 16 – Redline of Riddle Prop. Amended Contract to Current Agreement
- Attachment 17 – Riddle Maximum Compensation Calculation
- Attachment 18 – Base Salary and Incentive Comparison for Assistants
- Attachment 19 – Proposed Contract for Bradley Bedell
- Attachment 20 – Redline of Bedell Proposed Contract to Model Agreement
- Attachment 21 – Redline of Bedell Proposed Contract to Current Agreement
- Attachment 22 – Bedell Maximum Compensation Calculation
- Attachment 23 – Proposed Contract for Gabriel Franklin
- Attachment 24 – Redline of Franklin Proposed Contract to Model Agreement
- Attachment 25 – Redline of Franklin Proposed Contract to Current Agreement
- Attachment 26 – Franklin Maximum Compensation Calculation
- Attachment 27 – Proposed Contract for Lee Marks, Jr.
- Attachment 28 – Redline of Marks Proposed Contract to Model Agreement
- Attachment 29 – Redline of Marks Proposed Contract to Current Agreement
- Attachment 30 – Marks Maximum Compensation Calculation
- Attachment 31 – Proposed Contract for Jeff Schmedding
- Attachment 32 – Redline of Schmedding Proposed Contract to Model Agreement
- Attachment 33 – Schmedding Maximum Compensation Calculation

**STAFF COMMENTS AND RECOMMENDATIONS**

Head Coach Bryan Harsin's contract was approved by the Board at the October 2018 meeting. Coach Harsin's contract provides at least \$2,200,000 for assistant coaches. These coaches are not paid with state funds.

Changes in Board Policy II.H. include a floor of value on a contract needing approval by the Board. A change in the value from \$200,000 to \$350,000 as proposed in II.H. would eliminate the future need for the Board to approve assistant coach contracts of less than three years or more than \$350,000.

Staff recommends approval.



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**BOARD ACTION**

I move to approve the request by Boise State University to enter into employment agreements with the following assistant football coaches: Andrew Avalos, Defensive Coordinator; Eric Kiesau, Co-Offensive Coordinator; Kent Riddle, Assistant Coach; Bradley Bedell, Assistant Coach; Gabriel Franklin, Assistant Coach; Lee Marks, Jr., Assistant Coach; and Jeff Schmedding, Assistant Coach; as presented in the Attachments 3, 9, 14, 19, 23, 27, and 31.

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

**BOISE STATE UNIVERSITY**

Football APR History and National Percentile Rank

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

	2013-14	2014-15	2015-16	2016-17
<b>Football</b>	977	991	968	968
<i>National % Rank by Sport</i>	<i>70-80</i>	<i>80-90</i>	<i>50-60</i>	<i>50-60</i>

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

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

<b>Football</b>	981	982	979	976
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## ASSISTANT FOOTBALL COACHING STAFF SALARIES AND POSITIONS - 2019

Coach Name	Contract	Title	Salary
Avalos, Andy	2 year	Defensive Coordinator	\$ 350,000
Hill, Zak	2 year	Offensive Coordinator	\$ 300,000
Riddle, Kent	Amendment	Assistant Coach	\$ 250,000
Bedell, Brad	Annual	Assistant Coach	\$ 250,000
Kiesau, Eric	Annual	Co-Offensive Coordinator	\$ 250,000
Franklin, Gabe	Annual	Assistant Coach	\$ 210,000
Marks, Lee	Annual	Assistant Coach	\$ 185,000
Schmedding, Jeff	Annual	Assistant Coach	\$ 175,000
Danielson, Spencer	Annual	Assistant Coach	\$ 160,000
Brown, Jalil	Annual	Assistant Coach	\$ 140,000
			<b>\$ 2,270,000</b>

\*approved through Board Feb 2018

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (the University) and Andrew Avalos (Coach).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the Defensive Coordinator of the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as Defensive Coordinator 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 Section 3.2 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of two (2) years, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 28, 2021 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$350,000 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 Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Each year Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.

- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.2.5 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. 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, 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 with the policies, rules and regulations of the University, the Board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Football conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third



parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;

- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the Board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

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

After Coach responds or fails to respond, the University shall notify Coach whether, and if so when, the action will be effective.

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

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

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

5.3 Termination of Coach for Convenience of University

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

5.3.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in Section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be 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 with the University 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 University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach further agrees to repay to University all compensation received from the University after the date other employment is obtained.

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

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

#### 5.4 Termination by Coach for Convenience.

5.4.1 Coach recognizes that Coach's promise to work for University (College) for the entire term of this Agreement is of the essence of this Agreement. Coach also recognizes that the University (College) 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 employment with the University before the end of the Agreement term.

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

5.4.3 If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, the following sum if the termination occurs between March 1, 2019 and February 29, 2020, the sum of one hundred thousand dollars (\$100,000) or if the termination occurs between March 1, 2020 and the last game of the regular season including the conference championship game (if applicable), the sum of fifty thousand dollars (\$50,000).The liquidated

damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

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

5.5 Termination due to Disability or Death of Coach.

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

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

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

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

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

5.8 Waiver of Rights. Because Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment related rights provided for in Board policy, IDAPA 08.01.01.et seq., and the University policies.

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective unless approved by the Board 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 Board, if required, 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 policies and University rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, 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. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University.

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. 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:                                  Andrew Avalos  
Last known address on file with  
University's Human Resource Services

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

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



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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings 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 Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

\_\_\_\_\_

\_\_\_\_\_

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

Andrew Avalos  
Defensive Coordinator  
Date: \_\_\_\_\_

\_\_\_\_\_

Martin E. Schimpf  
Interim University President  
Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.



~~(MODEL ATHLETICS MULTI-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State  
~~\_\_\_\_\_~~ (University ~~(the \_\_\_\_\_ University) College~~), and Andrew  
Avalos ~~\_\_\_\_\_~~ (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the Defensive Coordinator of manage and supervise the Team and shall perform such other duties in the University's University (College)'s athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as Defensive Coordinator 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 Section 3.2 Sections 3.2.1 through (depending on supplemental pay provisions used) shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) (\_\_\_\_) years, commencing on March 1, 2019\_\_\_\_\_ and terminating, without further notice to Coach, on February 28, 2021\_\_\_\_\_ unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$350,000~~ \$\_\_\_\_\_ 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 ~~President~~ Chief Executive Officer and approved by the Board;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements ~~\_\_\_\_\_ (except that in accordance with Board Policy II.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director)\_\_\_\_\_~~; and
- c) 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 Board. 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
- ~~d~~e) The opportunity to receive such employee benefits as the ~~University's~~ University (~~College~~)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands \_\_\_\_\_ and agrees that financial conditions may require the ~~President~~ Chief Executive Officer, in the ~~President's~~ Chief Executive Officer's discretion, to institute furloughs or to take such other actions consistent with Board policy as the ~~President~~ Chief Executive Officer may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Each year Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.
- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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

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

~~3.2.3 \_\_\_\_\_ Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the Chief Executive Officer in consultation with the Director. The determination shall be based on the 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 as a document available to the public under the Idaho Public Records Act.~~

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

~~3.2.5 \_\_\_\_\_ Coach shall receive the sum of (amount or computation) from the University (College) or the University (College)'s designated media~~

~~outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment).~~ [RK(4)]

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

~~Coach~~ agrees that the University ~~(College)~~ has the ~~priority~~exclusive right to operate ~~athletic youth (Sport)~~ camps and/or clinics on its campus using University ~~(College)~~ facilities.

- a. ~~If the University exercises its right to operate camps and/or clinics on campus, the University~~The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the ~~University (College)'s~~ camps and/or clinics 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 (Sport)~~ camps and/or clinics. 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 (Sport)~~ camps and/or clinics, the University ~~(College)~~ shall pay Coach ~~(amount) per year as supplemental compensation, during each year of employment as head (Sport) coach at the University (College). This amount shall be paid (terms of payment).~~
- b. ~~If the University allows~~(SUMMER CAMP OPERATED BY COACH) Coach ~~to may~~ operate camps and/or clinics~~a summer youth (Sport) camp~~ at the University, such operation shall be according to a written agreement which shall include (College) under the following conditions such as:
- i. ~~\_\_\_\_\_~~
    - a) ~~The summer youth camp operation reflects positively on the University (College) and the Department;~~
    - b) ~~The summer youth camp is operated by Coach~~ compliance~~directly or through a private enterprise owned and managed by Coach. 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 Coach or the private enterprise selects coaches to participate;~~
    - d) ~~Coach complies~~ with all NCAA<sub>2</sub> ~~(NAIA)~~, Conference, and University ~~(College)~~ rules and regulations related, directly or indirectly, to the operation of summer youth camps and/or clinics;

- e) ~~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) ~~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 Exhibit A.~~
- h) ~~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, Coach or the private enterprise shall defend and indemnify the State of Idaho, the University (College) and the Board 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 Coach or the private enterprise and not the University (College) while engaged in camp activities. 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. 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~~ ii. Payment for the University's facilities.  
 iii. Provision proof of liability insurance.

~~\_\_\_\_\_ 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 Coach after the effective date of such termination, suspension,~~

~~or reassignment, and the University (College) shall be released from all obligations relating thereto.~~

3.2.5 Footwear; Apparel; Equipment. ~~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. ~~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 (College). Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally related appearances as may be reasonably requested by the University (College). Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder Coach's duties and obligations as head (Sport) coach. In order to avoid entering into an agreement with a competitor of (Company Name), Coach shall submit all outside consulting agreements to the University (College) for review and approval prior to execution. Coach shall also report such outside income to the University (College) in accordance with Section 4.2 of this Agreement 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, except to the extent required by the terms and conditions of a specific fringe benefit program.



## ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws, and with the policies, rules and regulations of the University, ~~(College)~~, the Board, the conference, and the NCAA; ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University's~~ University (College)'s athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit AB. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy ~~University (College)'s (Faculty Staff) Handbook~~; (c) University (College)'s Administrative Procedures Manual; ~~(cd)~~ the policies of the Department; ~~(de)~~ NCAA ~~(or NAIA)~~ rules and regulations; and ~~(ef)~~ the rules and regulations of the Football(Sport) conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably otherwise detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, ~~(College)~~, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President ~~Chief Executive Officer~~, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3

~~of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's the University (College)'s name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld). Chief Executive Officer.~~

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

~~4.4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~

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

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

4.57 Disclosure of Serious Misconduct~~Misconduct~~. Coach warrants that prior to ~~the signing of~~ this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

~~4.8 Media Obligations. [RK(6)] Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post-season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

## ARTICLE 5

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

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

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

- d) Ten (10) working days' absence of Coach from duty without the ~~University's~~ University (College)'s consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University's~~ University (College)'s judgment, reflect adversely on the ~~University~~ (College) or its athletic programs;
- f) The failure of Coach to represent the ~~University~~ (College) and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the ~~University~~ (College) in any investigation of possible violations of any applicable law or the policies, rules or regulations of the ~~University~~ (College), the Board, the conference, or the NCAA; ~~(NAIA)~~;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the ~~University~~ (College), the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the ~~University~~ (College), the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.57 of this Agreement.<sup>[RK(7)]</sup>

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 the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the ~~University~~ (College) shall notify Coach whether, and if so when, the action will be effective.

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

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

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

## 5.3 Termination of Coach for Convenience of University ~~(College)~~.

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

5.3.2 In the event that University ~~(College)~~ terminates this Agreement for its own convenience, University ~~(College)~~ shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in Section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University ~~(College)~~ until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be 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 with the University ~~(College)~~ health insurance plan and group life insurance as if 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 University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. [RK(8)] Coach further agrees to repay to University all compensation received from the University ~~(College)~~ after the date other employment is obtained.

5.32.3 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 employment with University ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University ~~(College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University ~~(College)~~. The liquidated damages are not, and shall not be construed to be, a penalty.

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

#### 5.4 Termination by Coach for Convenience.

5.43.1 Coach recognizes that Coach's promise to work for University (College) for the entire term of this Agreement is of the essence of this Agreement. Coach also recognizes that the University (College) 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 employment with the University ~~(College)~~ before the end of the Agreement term.

~~5.43.2~~ Coach 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 notice is given to the University ~~(College)~~.

5.43.3 If 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 Coach terminates this Agreement for convenience, Coach shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum if the termination occurs between March 1, 2019 and February 29, 2020, the sum of one hundred thousand dollars (\$100,000) or if the termination occurs between March 1, 2020 and the last game of the regular season including the conference championship game (if applicable), the sum of fifty thousand dollars (\$50,000). ~~:-~~. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.43.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision,



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

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

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

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

5.54.2 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 ~~(College)~~ and due to ~~Coach's~~ estate or beneficiaries thereunder.

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

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

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

5.87 Waiver of Rights. Because 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 provided for in Board policy, IDAPA 08.01.01, et seq., and the University ~~policies(College) (Faculty Staff) Handbook.~~

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective unless approved by the Board 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 Board, if required, the ~~President~~Chief Executive Officer, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board policies and University ~~(College)'s~~ rules regarding financial exigency.

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University. ~~(College).~~

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. 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  
~~(College):~~—Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

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

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the ~~University's~~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 the Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

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

\_\_\_\_\_  
Andrew Avalos  
Defensive Coordinator  
Date:

\_\_\_\_\_  
Martin E. Schimpf  
Interim University President  
Date:

**University (College)**

**Coach**

Signature:\_\_\_\_\_  
Printed Name:\_\_\_\_\_  
Chief Executive Officer  
Date:\_\_\_\_\_

Signature:\_\_\_\_\_  
Printed Name:\_\_\_\_\_  
Date:\_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February,  
2019, 20.

~~[\*Note: Multiyear employment agreements requiring Board approval are defined Board  
Policy II.H.]~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into ~~this \_\_\_\_\_ day \_\_\_\_\_ of February, 2018 (“Effective Date”)~~ by and between Boise State University (~~the “University”~~) and Andrew Avalos (~~the “Coach”~~).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the Defensive Coordinator ~~offer~~ the Team and shall perform such other duties in the University’s athletic program as the ~~Director~~~~Head Coach~~ may assign and as may be described elsewhere in this Agreement. ~~The Coach shall, to the best of Coach’s ability, and consistent with~~ University ~~shall have the right, at any time, to reassign Coach to policies and procedures, perform all~~ duties ~~and responsibilities customarily associated with the University other than as Defensive Coordinator 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 Section 3.2 shall cease~~ ~~Position~~.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed ~~\_~~term appointment of ~~two (2) years~~~~one year, nine months~~, commencing on March 1, 201~~9~~~~8~~ and terminating, without further notice to Coach, on February 28, ~~2021~~~~2019~~ (~~the “Term”~~), unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) ~~An annual~~A base salary ~~in the amount of~~ \$3350,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the ~~Head Coach and~~ Director and ~~President and~~ approved by the ~~University's~~ Board of Trustees;
- ~~bb) A one time bonus payment of \$20,000, which shall be paid after execution of this Agreement.~~
- e) The opportunity to receive such employee benefits ~~calculated on the "base salary"~~ as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and;
- ~~cd)~~ 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
- ~~de)~~ 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.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 ~~3.2~~ Supplemental Compensation. Each year Coach shall be eligible to receive~~may earn~~ supplemental compensation as follows:

3.2.1: Athletic Achievement Incentive Pay.

- a) If the ~~Teamfootball team~~ is the Mountain Division Champion, Coach ~~maywill~~ receive a \$5,000 bonus.
- ~~b)a~~ If the ~~Teamfootball team~~ participates in the Conference Championship Game, Coach ~~maywill~~ receive a \$5,000 bonus.
- ~~e)a~~ If the ~~Teamfootball team~~ is the Conference Champion, Coach ~~maywill~~ receive a \$5,000 bonus.

In addition,

- ~~d)a~~ If the ~~Teamfootball team~~ participates in a non-CFP bowl game, Coach ~~maywill~~ receive a \$5,000 bonus; **and**
- ~~e)a~~ If the ~~Teamfootball team~~ wins the non-CFP bowl game, Coach ~~maywill~~ receive a \$5,000 bonus; **or**
- ~~f)a~~ If the ~~Teamfootball team~~ participates in one of the six CFP (College Football Playoff) bowl games, Coach ~~maywill~~ receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in ~~the following~~ February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach ~~maywill~~ receive a sum of \$2,000; **or**
- ~~b)a~~ If the annual APR rating for 2019-2020 is between 960-964, Coach ~~maywill~~ receive a sum of \$3,000; **or**
- ~~e)a~~ If the annual APR rating for 2019-2020 is between 965-969, Coach ~~maywill~~ receive a sum of \$4,000 **or**
- ~~d)a~~ If the annual APR rating for 2019-2020 is 970 or higher, Coach ~~maywill~~ receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

a. If the University exercises its right to operate camps and/or clinics on campus, the

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

~~3.2.5. Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinicsCamps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics.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 and/or clinicsCamps, the University shall pay Coach supplemental compensation.~~

b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:

- i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
- ii. Payment for the University's facilities.
- iii. Provision proof of liability insurance.

3.2.5 Footwear; Apparel; Equipment. ~~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~~ interests to the University in accordance with Section 4.23 of this Agreement. 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~~ section 3.1.1 and paid from the University to Coach, except to the extent required by the terms and conditions of a specific fringe benefit program.

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws, and with the policies, rules and regulations of the University, the ~~University's Board of Trustees~~, the conference, ~~of which the University is a member (the "Conference")~~, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other ~~any~~ employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the ~~Director~~ Head Coach and to the ~~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's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. 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 Football conference of which the University is a member~~Conference.~~

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 unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University, ~~the Department,~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, ~~(such approval not to be unreasonably withheld),~~ who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use, the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

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

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

4.5 Disclosure of Serious Misconduct. ~~Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.~~

## ARTICLE 5

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

5.1.1. ~~In addition to the definitions contained in applicable rules and regulations, 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 ~~A~~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 ~~c~~Conference, or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or ~~NAIA 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 ~~c~~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 ~~c~~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 ~~c~~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.
  - j) ~~The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.~~

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

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

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

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

## 5.3- Termination of Coach for Convenience of University-

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

5.3.2- In the event that ~~the~~ University terminates this Agreement for its own convenience, ~~the~~ University shall be obligated to pay ~~to~~ Coach, as liquidated damages and not a penalty, the ~~"base salary"~~ set forth in Section 3.1.1(a), excluding all deductions required by law, on the regular paydays of ~~the~~ University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. ~~In, 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 with the University 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 received from paid by the University after the date Coach obtains other employment, to which Coach is obtained, not entitled under this provision.~~

5.3.3- The parties have both been represented by, or had the opportunity to consult with, legal counsel in the contract negotiations and have bargained for and agreed to the foregoing

liquidated damages provision, giving consideration to the fact that Coach may lose certain benefits, supplemental compensation, or outside compensation relating to ~~Coach's~~ employment with ~~the~~ University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by ~~the~~ University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by ~~the~~ University. The liquidated damages are not, and shall not be construed to be, a penalty.

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

5.4. Termination by Coach for Convenience.

5.4.1. ~~Coach recognizes that Coach's promise to work for the University (College) for the entire term of this Agreement is of the essence of this Agreement. Coach also recognizes that the University (College) 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 Agreement term/contract Term.~~

~~5.4.2. Coach may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days when mutually agreed upon 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.~~~~

~~5.4.3. If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, the following sum if the termination occurs between March 1, 2019 and February 29, 2020, the sum of one hundred thousand dollars (\$100,000) or if the termination occurs between March 1, 2020-2018 and the last game of the regular season including the conference championship game (if applicable), the sum of fiftytwenty-five thousand dollars (\$~~5025~~,000). The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. ~~Provided, however, if Coach terminates this Agreement following the death or disability of the Head Coach, such termination will not be considered termination by Coach for convenience, and therefore no liquidated damages shall be owed by Coach to the University.~~~~

~~5.4.4. The parties have both been represented by, or had the opportunity to consult~~

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

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

5.5: Termination ~~d~~Due to Disability or Death of Coach.

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

5.5.2: If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to Coach's estate or beneficiaries ~~t~~hereunder.

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

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

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



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

## ARTICLE 6

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

6.2- University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the ~~t~~Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the ~~Director~~Head Coach.

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

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

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

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

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

~~6.9 Confidentiality. This Agreement and~~~~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 ~~by~~at the ~~University. 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: \_\_\_\_\_  
Andrew Avalos  
Last known address on file with  
University's Human Resource Services

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

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



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

6.13. Non-Use of Names and Trademarks. Coach shall not, without the University’s prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of ~~his~~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 ~~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 the ~~University’s~~ Board ~~of Trustees~~, if required under ~~Section II.H. of~~ Board Policy II.H.

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

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

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

Andrew Avalos \_\_\_\_\_  
Defensive Coordinator Andrew Avalos

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Martin E. Schimpf  
Interim University

~~Dr. Robert Kustra~~, President

Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 20198.

**Coach Andrew Avalos Maximum Compensation Calculation - 2019-2021**

		<u>Yr 1</u>	<u>Yr 2</u>
3.1.1a	Annual Base Salary	\$ 350,000.00	\$ 350,000.00
3.2.1	Additional Pay based on Performance	\$ 41,250.00	\$ 41,250.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 396,250.00	\$ 396,250.00

**ATTACHMENT 7**

**Football Defensive Coordinator Salary and Incentive Comparisons in the Mountain West Conference**

Coach	School	Base Salary	Incentives
John Rudzinski	Air Force	NA	NA
Andrew Avalos	Boise State	\$350,000	<p>3.2.1 Athletic Achievement Incentive Pay.</p> <ul style="list-style-type: none"> <li>a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.</li> <li>b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.</li> <li>c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.</li> </ul> <p>In addition,</p> <ul style="list-style-type: none"> <li>d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; <b>and</b></li> <li>e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; <b>or</b></li> <li>f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.</li> </ul> <p>If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.</p> <p>3.2.2. Academic Achievement Incentive Pay.</p> <ul style="list-style-type: none"> <li>a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; <b>or</b></li> <li>b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; <b>or</b></li> <li>c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 <b>or</b></li> <li>d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.</li> </ul>
John Jancek	Colorado State	\$333,125	NA
Bert Watts	Fresno State	NA	NA
Corey Batoon	Hawaii	\$203,688	<p><b>4. <u>PERFORMANCE INCENTIVES.</u> Coach shall only be eligible for performance and/or supplemental pay pursuant to University of Hawai’i Executive Policies unless, in lieu of such performance and/or supplemental pay, the University offers and Coach accepts other incentives that are set forth in writing and attached to and made a part of this Agreement.</b></p>
Jeff Casteel	Nevada	\$238,702	NA

**ATTACHMENT 7**

**Football Defensive Coordinator Salary and Incentive Comparisons in the Mountain West Conference**

Kevin Cosgrove	New Mexico	\$200,000	c. <b>Incentive Payments:</b> An incentive payment is a direct cash payment over and above the Coach's base salary, in an amount to be determined by the DIA subject to the approval of the Executive Vice President for Administration and subject to availability of funds. Coach is eligible for an incentive payment upon achieving performance criteria established by the DIA in his exclusive discretion, and which are subject to annual review and revision by the DIA. Coach will be eligible for such incentive salary payments after completing the Contract Employment Year in which the incentive is earned. Incentive payments, if any, will be paid no later than <b>sixty (60)</b> days after the end of such Contract Employment Year. Coach understands and agrees that incentive payments, if any, are taxable compensation to him and that Coach is solely responsible for the tax consequences associated therewith.
Zach Arnett	San Diego State	NA	NA
Derrick Odum	San Jose State	\$311,052	Employee will receive \$3,000 if the football team has at least a .500 record (i.e., 6-6) before the bowl game and participates in a bowl game. to be paid as follows: \$1,500 to be paid within 30 days of the bowl game and \$1,500 to be paid in July following the bowl game if Employee is still employed at the University.
Tim Skipper	UNLV	\$250,000	NA
Frank Maile	Utah State	\$235,000	1.5. <b>Incentive Compensation.</b> Coach will be paid cash incentive of \$19,167 based on the Team's appearance in a bowl game, as long as Coach coaches in that game. This payment will not be added to Coach's salary and will be paid by a third party. Coach will not receive benefits from Utah State University on this payment. Coach will also be responsible for all federal, state, and local tax obligations for this payment.
Scottie Hazleton	Wyoming	\$350,000	4. <b>INCENTIVE COMPENSATION.</b> The Employee shall receive a lump sum amount of \$50,000 in immediately available funds if the Employee remains employed as Assistant Football Coach (Defensive Coordinator) at the University through the last competition of the 2018 season including a Bowl Game (if applicable). For example, if the University of Wyoming football program participates in a Bowl Game on December 24, 2018, the Employee must remain employed through that date to receive the lump sum (\$50,000) amount.

**Liquidated Damages  
Football Defensive Coordinators in Mountain West Conference**

Coach	School	Length of Contract	2018 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
John Rudzinski	Air Force	NA	NA	NA	NA	NA
Andrew Avalos	Boise State	3/1/19-2/28/21	\$350,000	Yes	Sliding Scale	5.4.3 If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, the following sum if the termination occurs between March 1, 2019 and February 29, 2020, the sum of one hundred thousand dollars (\$100,000) or if the termination occurs between March 1, 2020 and the last game of the regular season including the conference championship game (if applicable), the sum of fifty thousand dollars (\$50,000).The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.
John Jancek	Colorado State	At will	\$333,125	NA	NA	NA
Bert Watts	Fresno State	NA	NA	NA	NA	NA
Corey Batoon	Hawaii	1/3/18 - 3/31/19	\$203,688	No		None
Jeff Casteel	Nevada	At will	\$238,702	NA	NA	NA
Kevin Cosgrove	New Mexico	1/1/18 - 12/31/19	\$200,000	Yes	Sliding Scale	<p>9. <b>Termination by Request of Coach:</b> Coach may terminate this Agreement at any time upon <b>thirty (30) days' notice</b> to the DIA. In the event that Coach terminates this Agreement pursuant to this Section, the University shall have no further liability except for base salary and benefits accrued to the date of termination.</p> <p>Coach understands and agrees that termination of this Agreement pursuant to this Section prior to the expiration of the Contract Term of this Agreement will cause irreparable harm to the reputation and athletic programs of the University in an amount not capable of precise calculation or quantification. Therefore, if Coach terminates this Agreement without cause and within the first contract year of the term of this Agreement (<b>January 1, 2018 – December 31, 2018</b>), then Coach shall pay the University liquidated damages, and not as a penalty, the sum of <b>Twenty Thousand Dollars (\$20,000.00)</b> within <b>sixty (60) days</b> of the termination of this Agreement.</p> <p>If Coach terminates this Agreement without cause and within the second contract year of the term of this Agreement (<b>January 1, 2019 – December 31, 2019</b>), then Coach shall pay the University liquidated damages, and not as a penalty, the sum of <b>Ten Thousand Dollars (\$10,000.00)</b> within sixty (60) days of the termination of this Agreement.</p>
Zach Arnett	San Diego State	NA	NA	NA	NA	NA
Derrick Odum	San Jose State	12/22/16 - 12/31/18	\$311,052	No	NA	None
Tim Skipper	UNLV	At will	\$250,000	NA	NA	NA
Frank Maile	Utah State	4/1/18 - 2/29/20	\$235,000	Yes	Flat Rate	4.2. <b>Termination for Convenience by Coach.</b> Subject to the terms of this Agreement, at any time during the Term, Coach may terminate this Agreement <i>for convenience</i> by providing written notification of the same to USU. Termination will be effective upon USU's receipt of said notice. Termination by the Coach <i>for convenience</i> shall waive any and all compensation otherwise due under this Agreement. In the event this Agreement is terminated by Coach <i>for convenience</i> , Coach shall repay to USU liquidated damages in an amount of twenty thousand dollars (\$20,000.00).
Scottie Hazleton	Wyoming	1/1/18 - 2/29/20	\$350,000	No	NA	None

\*Sliding Scale, Flat Rate, Tied to years in contract

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (the University) and Eric Kiesau (Coach).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the Co-Offensive Coordinator of the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as assistant 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 Section 3.2 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) months, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 29, 2020 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$250,000 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 Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.



- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. 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.

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

#### ARTICLE 4

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

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

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

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 with the policies, rules and regulations of the University, the Board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Football conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;

- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the Board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

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

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

5.3 Termination due to Disability or Death of Coach.

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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, 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 Board policy, IDAPA 08.01.01.et seq., and the University policies.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, 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 policies and University rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, 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. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University.

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:                               Eric Kiesau  
  Last known address on file with  
  University's Human Resource Services

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



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

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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings 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 Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

\_\_\_\_\_

\_\_\_\_\_

Curt Apsey  
Director of Athletics

Eric Kiesau  
Co-Offensive Coordinator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Martin E. Schimpf  
Interim University President

Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.

[Kiesau Contract](#)  
[2019 to 2020](#)  
[2](#)

~~(MODEL ATHLETICS SINGLE-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State ~~(University~~ (the University)College); and Eric Kieseau \_\_\_\_\_ (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the Co-Offensive Coordinator ofmanage and supervise the Team and shall perform such other duties in the University'sUniversity (College)'s athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as assistanthead 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 Section 3.2Sections 3.2.1 through (depending on supplemental pay provisions used) shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12(—)) months, commencing on March 1, 2019 \_\_\_\_\_ and terminating, without further notice to Coach, on February 29, 2020 \_\_\_\_\_ unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$250,000~~ \$\_\_\_\_\_ 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 ~~President~~ Chief Executive Officer and approved by the Board;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; ~~(, provided, however, in accordance with Board Policy H.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director~~<sup>[RK(1)]</sup>; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the ~~University's~~ University (~~College~~)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

~~Coach understands~~<sup>[RK(2)]</sup> and agrees that financial conditions may require the ~~President~~ Chief Executive Officer, in the ~~President's~~ Chief Executive Officer's discretion, to institute furloughs or to take such other actions consistent with Board policy as the ~~President~~ Chief Executive Officer may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. ~~Each year~~ Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If in an amount up to (amount or computation) based on the academic achievement and behavior of Team is the Mountain Division Champion, members. The determination of whether Coach may will receive a \$5,000 bonus.
- b) If such supplemental compensation and the timing of the Team participates in payment(s) shall be at the Conference Championship Game, Coach may receive a \$5,000 bonus.
- c) If discretion of the Team is Chief Executive Officer in consultation with the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; and
- e) If Director and approved by the Board. The determination shall be based on the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; or
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for Athletic Achievement Incentive Pay under this Section, all athletes, but particularly those who entered the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the (College) as academically at risk students; the conduct of Team members on the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; or
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; or
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 or
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

3.2 \_\_\_\_\_ (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 as a document available to the public under the Idaho Public Records Act.

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. 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. 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 (College). ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name)~~

product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~(Company Name)~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name)~~, or make other educationally related appearances as may be reasonably requested by the ~~University (College)~~. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head ~~(Sport) coach~~. In order to avoid entering into an agreement with a competitor of ~~(Company Name)~~, 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 ~~Section 4.2 of this Agreement~~~~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.

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

#### ARTICLE 4

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

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

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

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

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



such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy~~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 Football(Sport) conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably otherwise detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, ~~(College)~~, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President~~Chief Executive Officer~~, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's~~the University (College)'s~~ name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).~~Chief Executive Officer.~~

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

~~4.4.4 Hiring Authority.~~ ~~Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~

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

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

4.57 Disclosure of Serious Misconduct<sup>[RK(3)]</sup>. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

~~4.8 Media Obligations<sup>[RK(4)]</sup>. Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

## ARTICLE 5

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

5.1.1<sup>[RK(5)]</sup> In addition to the definitions contained in applicable rules and regulations, University ~~(College)~~ and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:



- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University; ~~(College);~~
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference or the NCAA, ~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the ~~University's~~ ~~University (College)'s~~ consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University's~~ ~~University (College)'s~~ judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA; ~~(NAIA);~~
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.57 of this Agreement.<sup>[RK(6)]</sup>

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 the Director's designee shall provide Coach with

notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University ~~(College)~~ shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

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

5.3.2 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 ~~(College)~~ and due to Coach's estate or beneficiaries thereunder.

5.3.3 If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the University's ~~University (College)'s~~ disability insurance carrier, or becomes unable to perform the essential functions of the Position ~~position of head coach~~,

all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University. ~~(College)~~.

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

5.54 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.

5.65 Waiver of Rights. Because Coach is receiving 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<sup>[JM7]</sup>, 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 provided for in Board policy, IDAPA 08.01.01. et seq., and the University ~~policies~~ ~~(College)~~ ~~(Faculty Staff) Handbook~~.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, the ~~President~~ ~~Chief Executive Officer~~, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board policies and University ~~(College)~~ rules regarding financial exigency.

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University. ~~(College)~~.

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  
~~(College)~~: Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

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

Coach: Eric Kiesau  
Last known address on file with  
University's University (College)'s Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's 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 the Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

Curt Apsey  
Director of Athletics  
Date:

Eric Kiesau  
Co-Offensive Coordinator  
Date:

Martin E. Schimpf \_\_\_\_\_

Interim University President \_\_\_\_\_

Date: \_\_\_\_\_

**University (College)**

**Coach**

Signature: \_\_\_\_\_

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

Chief Executive Officer

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

\*Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019. \_\_\_\_\_.

~~[\*Note: One (1) year employment agreements requiring Board approval are defined in Board Policy Section H.H.]~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into ~~this \_\_\_\_\_ day of February, 2018~~ (“Effective Date”) by and between Boise State University (~~the “University”~~), and Eric Kiesau (~~“Coach.”~~).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as the Co-Offensive Coordinator of~~Assistant Coach for~~ the Team and shall perform such other duties in the University’s athletic program as the Director~~Head Coach~~ may assign and as may be described elsewhere in this Agreement. The Coach shall, to the best of Coach’s ability, and consistent with University shall have the right, at any time, to reassign Coach to policies and procedures, perform all duties at and responsibilities customarily associated with the University other than as assistant 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 Section 3.2 shall cease~~Position~~.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed -term appointment of twelve (12) months, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 29, 2020~~28, 2019~~ (the “Term”) unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual base salary in the amount of \$2510,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Head Coach and Director and President and approved by the University's Board of Trustees;
- ~~bb) A one-time bonus payment of \$10,000, which shall be paid after execution of this Agreement.~~
- e) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and;
- ~~cd)~~ 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
- ~~de)~~ The opportunity to receive such employee benefits as the University's Department of Athletics (Department 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.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 ~~3.2~~ Supplemental Compensation. Coach shall be eligible to receive~~may earn~~ supplemental compensation as follows:

3.2.1: Athletic Achievement Incentive Pay.



- a) If the Team is the Mountain Division Champion, Coach [maywill](#) receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach [maywill](#) receive a \$5,000 bonus.
- c) If the Team is the Conference Champion, Coach [maywill](#) receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach [maywill](#) receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach [maywill](#) receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach [maywill](#) receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in ~~the following~~ February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach [maywill](#) receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach [maywill](#) receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach [maywill](#) receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach [maywill](#) receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee Coach agrees that the University has the priority exclusive right to operate athletic camps and/or clinics (“Camps”) on its campus using University facilities.

a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach’s capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach’s participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.

b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:

- i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
- ii. Payment for the University’s facilities.
- iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of 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 interest to the University in accordance with Section 4.2 of this Agreement. 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.

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

## ARTICLE 4

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

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

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and ~~wellbeing~~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 with 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~~Head Coach and to the ~~Department's~~University's Director of ~~NCAA~~ Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. ~~Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A.~~ 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~~ policies 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 Football conference of which the University is a member~~Conference~~.

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

arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA. ~~University's Board of Trustees, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (e.g., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.~~

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

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

- a) A deliberate or major 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 ~~c~~Conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the ~~University's Board of Trustees~~, the ~~c~~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 ~~c~~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 ~~c~~Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) [The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.](#)

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

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.



5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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 policy, IDAPA of Education Rules (ID. ADMIN. CODE r. 08.01.01, et seq.,) and the Governing Policies and Procedures, and University pPolicies.~~

## 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, if required of Trustees,~~ the ~~President, Director~~ and the ~~Director Head Coach~~; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board ~~policies of Trustees~~ and University's ~~rules or policies~~ regarding ~~furloughs or~~ financial exigency.

6.2 University Property. All personal property ~~(excluding vehicle(s) provided through the courtesy car program),~~ material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the ~~t~~Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the ~~Director Head Coach.~~

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

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

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

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

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 Non-Confidentiality. ~~This Agreement 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 by at the University. ~~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: Eric Kiesau  
Last known address on file with  
University's Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of ~~his~~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 ~~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 the ~~University's~~ Board ~~of Trustees~~ if required under ~~Section II.H. of~~ Board Policy II.H.

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

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Eric Kiesau  
Co-Offensive Coordinator  
Date: \_\_\_\_\_

\_\_\_\_\_  
Martin E. Schimpf  
Interim University

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

Approved by the Idaho State Board of Education Trustees on the \_\_\_\_\_ day of February, 2019.

**Coach Eric Kiesau Maximum Compensation Calculation - 2019-2020**

		<u>Yr 1</u>
3.1.1a	Annual Base Salary	\$ 250,000.00
3.2.1	Additional Pay based on Performance	\$ 33,750.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 288,750.00

**Salary and Incentive Comparisons  
Offensive Coordinators in the Mountain West Conference**

Coach	School	Base Salary	Incentives
Mike Thiessen	Air Force	-	NA
Zak Hill	Boise State	\$ 300,000	<p>§.2 <u>Supplemental Compensation.</u> Coach may earn supplemental compensation as follows:</p> <p style="padding-left: 40px;">3.2.1. Athletic Achievement Incentive Pay.</p> <p style="padding-left: 80px;">a) If the football team is the Mountain Division Champion, Coach will receive a \$5,000 bonus.</p> <p style="padding-left: 80px;">b) If the football team participates in the Conference Championship Game, Coach will receive a \$5,000 bonus.</p> <p style="padding-left: 80px;">c) If the football team is the Conference Champion, Coach will receive a \$5,000 bonus.</p> <p style="padding-left: 40px;">In addition,</p> <p style="padding-left: 80px;">d) If the football team participates in a non-CFP bowl game, Coach will receive a \$5,000 bonus; <b>and</b></p> <p style="padding-left: 80px;">e) If the football team wins the non-CFP bowl game, Coach will receive a \$5,000 bonus; <b>or</b></p> <p style="padding-left: 80px;">f) If the football team participates in one of the six CFP (College Football Playoff) bowl games, Coach will receive a bonus up to 7.5% of his annual base salary.</p> <p style="padding-left: 40px;">If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in the following February if Coach is still employed by the University on that date.</p> <p style="padding-left: 40px;">3.2.2. Academic Achievement Incentive Pay.</p> <p style="padding-left: 80px;">a) If the annual Academic Progress Rate (“APR”) rating is between 955-959, Coach will receive a sum of \$2,000; <b>or</b></p> <p style="padding-left: 80px;">b) If the annual APR rating is between 960-964, Coach will receive a sum of \$3,000; <b>or</b></p> <p style="padding-left: 80px;">c) If the annual APR rating is between 965-969, Coach will receive a sum of \$4,000 <b>or</b></p> <p style="padding-left: 80px;">d) If the annual APR rating is 970 or higher, Coach will receive a sum of \$5,000.</p>

**Salary and Incentive Comparisons  
Offensive Coordinators in the Mountain West Conference**

Eric Kiesau	Boise State	\$ 250,000	<p>3.2 <u>Supplemental Compensation.</u> Coach shall be eligible to receive supplemental compensation as follows:</p> <p>3.2.1 Athletic Achievement Incentive Pay.</p> <p>a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.</p> <p>b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.</p> <p>c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.</p> <p>In addition,</p> <p>d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; <b>and</b></p> <p>e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; <b>or</b></p> <p>f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.</p> <p>If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.</p> <p>3.2.2. Academic Achievement Incentive Pay.</p> <p>a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; <b>or</b></p> <p>b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; <b>or</b></p> <p>c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 <b>or</b></p> <p>d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.</p>
Dave Johnson	Colorado State	\$ -	NA
Kalen DeBoer	Fresno State	\$ 310,000	NA
Brian Smith	Hawaii	\$ 203,688	<p>4. <u>PERFORMANCE INCENTIVES.</u> Coach shall only be eligible for performance and/or supplemental pay pursuant to University of Hawai'i Executive Policies unless, in lieu of such performance and/or supplemental pay, the University offers and Coach accepts other incentives that are set forth in writing and attached to and made a part of this Agreement.</p>
Matt Mumme	Nevada	\$ 203,322	NA
Calvin Magee	New Mexico	\$ 220,000	NA

**Salary and Incentive Comparisons  
Offensive Coordinators in the Mountain West Conference**

Jeff Horton	San Diego State	\$ 219,576	NA
Kevin McGiven	San Jose State	\$ 60,864	NA
Barney Cotton	UNLV	\$ 229,517	NA
David Yost	Utah State	\$ 300,000	NA
Brent Vigen	Wyoming	\$ 300,000	<p><b>5. <u>ACHIEVEMENT AWARDS.</u></b>                      The Associate Head Coach for Football will be eligible for Achievement Awards and Exceptional Achievement Awards pursuant to the terms and conditions described in the by-laws of the Cowboy Joe Club in force at the time the awards are made.</p>



~~(MODEL ATHLETICS MULTI-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of February, 2018 ("Effective Date") by and between Boise State \_\_\_\_\_ (University ("the University")) ~~(College)~~, and Kent Riddle ("~~\_\_\_\_\_~~ (Coach)").

ARTICLE 1

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

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

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

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) ~~(\_\_\_\_\_)~~ years, commencing on March 1, 2018 ~~\_\_\_\_\_~~ and terminating, without further notice



to Coach, on February 29, 2020 (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 ~~(College)~~ and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the ~~University's Idaho State~~ Board of ~~Trustees, Education (Board)~~. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this Agreement count in any way toward tenure at the University. ~~(College)~~.

### ARTICLE 3

#### 3.1 Regular Compensation.

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

- a) ~~An annual~~ salary in the amount of ~~\$250,000\$~~ \_\_\_\_\_ per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the ~~Head Coach and Director and Chief Executive Officer and~~ approved by the ~~University's Board of Trustees~~;
- b) A one-time bonus payment of \$10,000, which shall be paid after execution of this Agreement.
- ~~b) The opportunity to receive such employee benefits as the University (College) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements [RK(1)] (except that in accordance with Board Policy II.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director) [RK(2)]; and~~
- 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

(College)'s

- 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.

~~Coach understands [REDACTED] and agrees that financial conditions may require the Chief Executive Officer, in the Chief Executive Officer's discretion, to institute furloughs or to take such other actions consistent with Board policy as the Chief Executive Officer may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach may be less than the salary stated in Section 3.1.1(a) above.~~

### 3.2—Supplemental Compensation. Coach may earn

~~3.2.1.3.2 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 as follows: in an amount equal to (amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

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

~~3.2.3~~

#### 3.2.1. Athletic Achievement Incentive Pay.

- a) If the football team is the Mountain Division Champion, 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 a \$5,000 bonus.

- b) If the football team participates in the Conference Championship Game, Coach will receive a \$5,000 bonus.
- c) If the football team is the Conference Champion, Coach will receive a \$5,000 bonus.

In addition,

- d) If the football team participates in a non-CFP bowl game, Coach will receive a \$5,000 bonus, **and**
- e) If the football team wins the non-CFP bowl game, Coach will receive a \$5,000 bonus; **or**
- f) If the football team participates in one of the six CFP (College Football Playoff) bowl games, Coach will receive a bonus up to 7.5% of his annual base salary.

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

### 3.2.2. Academic Achievement Incentive Pay.

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

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

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

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

~~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 report~~able~~ 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

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

~~3.2.5~~ ~~Coach shall receive the sum of (amount or computation) from the University (College) or the University's University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment).~~ [RK(4)]

~~3.2~~ 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 ~~6~~ **(SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))** Coach agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. Coach shall not appear without the prior written approval of the Head Coach and the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior

written approval of the Head Coach and Director, Coach shall not appear in any commercial endorsements.

3.2.5 Coach agrees that the University (College) has the exclusive right to operate athletic youth (Sport) 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 Camps in Coach's 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 Camps. University (College)'s (Sport) 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. University (College)'s summer (Sport) camps, the University (College) shall pay Coach (amount) per year as supplemental compensation, during each year of 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. 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 Coach or the private enterprise selects coaches to participate;
- d) — 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) — 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) — 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 Exhibit A.~~
- h) ~~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, Coach or the private enterprise shall defend and indemnify the State of Idaho, the University (College) and the Board 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 Coach or the private enterprise and not the University (College) while engaged in camp activities. 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. 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 Coach after the effective date of such termination, suspension, or reassignment, and the University (College) shall be released from all obligations relating thereto.~~

3.2.67 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 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/University (College). Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally related appearances as may be reasonably requested by the University (College). Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder Coach's duties and obligations as head (Sport) coach. In order to avoid entering into an agreement with a competitor of (Company Name), Coach shall submit all outside consulting agreements to the University (College) for review and approval prior to execution. Coach shall also report such outside income to the University (College) in accordance with NCAA (or NAIA) rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including (Company Name), and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.~~

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

#### ARTICLE 4

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

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

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

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



4.1.4. Know, recognize, and comply with all applicable laws, and ~~with~~ the policies, rules and regulations of the University, ~~(College)~~, the University's Board of Trustees, the conference of which the University is a member (the "Conference"), and the NCAA; ~~(or NAIA)~~; supervise and take appropriate steps to ensure that any 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 Head Coach~~Director~~ and to the University's~~Department's~~ Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's~~University (College)'s~~ athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. ~~The names or titles of employees whom Coach supervises are attached as Exhibit B.~~ 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~~policies~~; (b) the University's Policy Manual~~University (College)'s (Faculty-Staff) Handbook~~; (c) University (College)'s Administrative Procedures Manual; (d) the policies of the Department; (d) NCAA rules and regulations; and (e) NCAA (or NAIA) rules and regulations; and (f) ~~the rules and regulations of the~~ Conference~~(Sport) conference of which the University (College) is a member.~~

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

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

~~4.44.4 Hiring Authority.~~ ~~Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Head Coach and the Director. Such approval shall not unreasonably be withheld. Without first giving 48 hours prior written notice to the Head Coach and the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

~~4.7 Disclosure of Serious Misconduct.~~ ~~Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.~~

~~4.8 Media Obligations.<sup>(RK)(c)</sup> Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post-season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

#### 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 policies, the regulations, University (College) and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this aAgreement 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 (College);
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules, or regulations of the University (College), the University's Board of Trustees, 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 National Association of Intercollegiate Athletics (“NAIA”)NAIA member institution;

- d) Ten (10) working days’<sup>2</sup> absence of Coach from duty without the University’sUniversity (College)’s consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University’sUniversity (College)’s judgment, reflect adversely on the University (College) or its athletic programs;
- f) The failure of Coach to represent the University (College) and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA (NAIA) or the University (College) in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, (College), the University’s Board of Trustees, the Conference, or the NCAA; (NAIA);
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, (College), the University’s Board of Trustees, the Conference, or the NCAA; (NAIA), by one of Coach’s assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) —i) A violation of any applicable law or the policies, rules or regulations of the University, (College), the University’s Board of Trustees, the Conference, or the NCAA; (NAIA), by one of Coach’s assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.7 of this Agreement.<sup>[RK(7)]</sup>

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University (College) as follows: before the effective date of the suspension, reassignment, or termination, the Head Coach, Director, or the Head

Coach's or the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University ~~(College)~~ shall notify Coach whether, and if so when, the action will be effective.

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

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

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

## 5.3 Termination of Coach for Convenience of University ~~(College)~~.

5.32.1 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.

5.32.2 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 ~~s~~Section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University ~~(College)~~ until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, ~~provided however, in, 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 ~~s~~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 with the University (College)~~ health insurance plan and group life insurance as if 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. [RK(8)] Coach further agrees to repay to ~~the~~ University all compensation ~~paid by received from~~ the University ~~(College)~~ after the date ~~Coach obtains~~ other employment, ~~to which Coach is not entitled under this provision.~~ ~~obtained.~~

5.3.2.3 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, ~~(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by ~~the~~ University ~~(College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by ~~the~~ University, ~~(College)~~. The liquidated damages are not, and shall not be construed to be, a penalty.

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

#### 5.4- Termination by Coach for Convenience.

5.4.1 Coach recognizes that Coach's promise to work for ~~the~~ University ~~(College)~~ for the entire term of this Agreement is of the essence of this Agreement. Coach also recognizes that the University ~~(College)~~ 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 ~~(College)~~ before the end of the ~~contract Term Agreement term~~.

5.4.2 Coach may terminate this Agreement for convenience during its

term by giving prior written notice to the University. ~~(College)~~. Termination shall be effective when mutually agreed upon ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season bowl competition) so as to minimize the impact on the program. ~~(College)~~.

5.4.3 ~~3~~ — If 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 Coach terminates this Agreement for convenience, Coach shall pay to the University, ~~(College)~~, as liquidated damages and not a penalty, the following sum if the termination occurs between March 1, 2018 and February 28, 2019, the sum of one-hundred thousand dollars (\$100,000) or if the termination occurs between March 1, 2019 and the last game of the regular season and conference championship game (if applicable), the sum of fifty thousand dollars (\$50,000). The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. Provided, however, if Coach terminates this Agreement following the death or disability of the Head Coach, such termination will not be considered termination by Coach for convenience, and therefore no liquidated damages shall be owed by Coach to the University.

5.4.3.4 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 ~~s~~Section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University, ~~(College)~~.

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

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

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



5.54.2 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 ~~(College)~~ and due to ~~Coach's~~ estate or beneficiaries thereunder.

5.54.3 If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the ~~University's~~ ~~University (College)'s~~ disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that 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 ~~(College)~~.

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

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

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

## ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved ~~of by~~ the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this Agreement shall be subject to: the approval of the University's Board of Trustees, the Director ~~Chief Executive Officer~~, and the Head Coach ~~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 policies and University's University (College)'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's University (College)'s direction or for the University's University (College)'s use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. ~~(College).~~ Within twenty-four (24) hours of the expiration of the Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Head Coach 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~~ district court in Ada County, Boise, 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 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 ~~6.9 Confidentiality. This Agreement and~~ all documents and reports Coach is required to produce under this Agreement may be released and made available to the public ~~at by the University's sole discretion. University (College).~~

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  
~~(College):~~ — Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

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

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's ~~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 Coach's official University ~~(College)~~ duties.

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

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

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

Curt Apsey, Director of Athletics      Date

Kent Riddle      Date

Dr. Robert Kustra, President      Date

**University (College)**

**Coach**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

~~Chief Executive Officer~~

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by the ~~Idaho State Board of Education~~ on the \_\_\_\_\_ day of February, 2018.

~~[\*Note: Multiyear employment agreements requiring Board approval are defined Board Policy II.H.]~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into this \_\_\_\_\_ day of February, 2018 (“Effective Date”) by and between Boise State University (“the University”) and Kent Riddle (“Coach”).

### ARTICLE 1

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

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

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

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years, commencing on March 1, 2018 and terminating, without further notice to Coach, on February 29, 2020 (the “Term”), unless sooner terminated in accordance with other provisions of this Agreement.

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

### ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount of \$2~~5~~90,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Head Coach and Director and approved by the University's Board of Trustees;
- b) A one-time bonus payment of \$10,000, which shall be paid after execution of this Agreement.
- 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. Athletic Achievement Incentive Pay.

- a) If the football team is the Mountain Division Champion, Coach will receive a \$5,000 bonus.
- b) If the football team participates in the Conference Championship Game, Coach will receive a \$5,000 bonus.
- c) If the football team is the Conference Champion, Coach will receive a \$5,000 bonus.

In addition,

- d) If the football team participates in a non-CFP bowl game, Coach will receive a \$5,000 bonus, **and**

- e) If the football team wins the non-CFP bowl game, Coach will receive a \$5,000 bonus; **or**
- f) If the football team participates in one of the six CFP (College Football Playoff) bowl games, Coach will receive a bonus up to 7.5% of his annual base salary.

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

#### 3.2.2. Academic Achievement Incentive Pay.

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

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

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

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

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

3.2.4 Coach may receive the compensation hereunder from the University or the University’s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, “Programs”). Agreements requiring Coach to participate in Programs related to Coach’s duties as an employee of the University are the property of the University. The University shall have the exclusive right to negotiate and contract with

all producers of media productions and all parties desiring public appearances by Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. Coach shall not appear without the prior written approval of the Head Coach and the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Head Coach and Director, Coach shall not appear in any commercial endorsements.

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

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

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

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's Board of Trustees, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that any employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Head Coach and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) Governing Policies and Procedures and Rule Manual of the University's Board of Trustees; (b) the University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Conference.

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

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

and amount of all such income and benefits to the Director whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to the University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's Board of Trustees, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (e.g., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

4.4 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Head Coach and the Director. Such approval shall not unreasonably be withheld. Without first giving 48 hours prior written notice to the Head Coach and the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;



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

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Head Coach, Director, or the Head Coach's

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

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

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

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

## 5.3 Termination of Coach for Convenience of University.

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

5.3.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross

compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform the University within ten (10) business days of obtaining other employment and to advise the University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to the University all compensation paid by the University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

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

#### 5.4 Termination by Coach for Convenience.

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

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

5.4.3 If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, the following sum if the termination occurs between March 1, 2018 and February 28, 2019, the sum of one-hundred thousand dollars (\$100,000) or if the termination occurs between March 1, 2019 and the last game of the regular season and conference championship game (if applicable), the sum of fifty thousand dollars (\$50,000). The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. Provided, however, if Coach terminates this Agreement following the death or disability of the Head Coach, such termination will not be considered termination by Coach for convenience, and therefore no liquidated damages shall be owed by Coach to the University.

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

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

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

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

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

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

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

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

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

## ARTICLE 6

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

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



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: Kent Riddle  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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

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

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

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Kent Riddle      Date

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

Approved by the Board on the \_\_\_\_\_ day of February, 2018.



**Coach Kent Riddle Maximum Compensation Calculation - 2019-2020**

		<u>Yr 1</u>
3.1.1a	Annual Base Salary	\$ 250,000.00
3.2.1	Additional Pay based on Performance	\$ 33,750.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 288,750.00

## Mountain West Conference Football Assistant Base Salaries

School	Air Force	Boise State	Colorado State	Fresno State	Hawaii	Nevada	New Mexico	San Diego State	San Jose State	UNLV	Utah State	Wyoming
Offensive Coordinator	Mike Thiessen	Zak Hill	Dave Johnson	Kalen DeBoer	Brian Smith	Matt Mumme	Calvin Magee	Jeff Horton	Kevin McGiven	Barney Cotton	David Yost	Brent Vigen
Offensive Coordinator Salary	NA	\$300,000	NA	\$310,000	\$203,688	\$203,322	\$225,000	\$219,576	\$60,864	\$229,517	\$300,000	\$300,000
Defensive Coordinator	John Rudzinski	Andy Avalos	John Jancek	Bert Watts	Corey Batoon	Jeff Casteel	Kevin Cosgrove	Zach Arnett	Derrick Odum	Tim Skipper	Frank Maile	Scottie Hazleton
Defensive Coordinator Salary	NA	\$350,000	\$333,125	NA	\$203,688	\$238,702	\$200,000	NA	\$311,052	\$250,000	\$235,000	\$350,000
Assistant Coach Name 3	Steed Lobotzke	Kent Riddle	Ronnie Letson	Jamar Cain	Rick Logo	Angus McClure	Saga Tuitele	Mike Schmidt	Joe Bernadrri	Garin Justice	Keith Patterson	Scott Fuchs
Assistant Coach Salary	NA	\$250,000	\$215,250	NA	\$165,000	\$195,700	\$170,000	NA	\$128,136	\$216,300	\$290,000	\$180,000
Assistant Coach Name 4	Ben Miller	Brad Bedell	Keith Gilmore	Jamie Christian	Mark Weber	Dave Lockwood	Apollo Wright	Hunkie Cooper	Alonzo Carter	Travis Burkett	Luke Wells	Mike Grant
Assistant Coach Salary	NA	\$250,000	\$205,000	NA	\$165,000	\$143,170	\$165,000	NA	\$127,896	\$154,500	\$155,000	\$150,000
Assistant Coach Name 5	Ron Vanderlinden	Eric Kiseau	Alvis Whitted	J.D. Williams	Andre Allen	Eric Scott	Stan Eggen	Blane Morgan	Ryan Gunderson	Al Simmons	Steve Farmer	Jake Dickert
Assistant Coach Salary	NA	\$250,000	\$184,500	NA	\$165,000	\$106,090	\$150,000	NA	\$128,136	\$154,500	\$155,000	\$150,000
Assistant Coach Name 6	Jake Campbell	Gabe Franklin	Bryan Applewhite	Ryan Grubb	Craig Stutzmann	David White	Scott Baumgartner	Ernie Lawson	Joe Seumalo	Cedric Cormier	Jovon Bouknight	Pete Kaligis
Assistant Coach Salary	NA	\$210,000	\$179,375	NA	\$165,000	\$106,090	\$148,125	NA	\$118,680	\$141,230	\$155,000	\$150,000
Assistant Coach Name 7	Matt Weikert	Lee Marks	Joe Cox	Kirby Moore	Abe Elimimian	Timmy Chang	Jordan Peterson	Doug Deakin	Bojay Filimoteua	Ron O'Dell	Stacy Collins	Michael Bath
Assistant Coach Salary	NA	\$185,000	\$179,375	NA	\$165,000	\$106,090	\$149,500	NA	\$111,516	\$139,640	\$145,000	\$150,000
Assistant Coach Name 8	Taylor Stubblefield	Jeff Schmedding	Eric Lewis	Scott Thompson	Mark Banker	Jason Kaufusi	Clay Davie	Kevin McGarry	Kevin Cummings	Tony Samuel	Julius Brown	AJ Cooper
Assistant Coach Salary	NA	\$175,000	\$179,375	NA	\$165,000	\$106,090	\$90,000	NA	\$110,520	\$137,917	\$135,000	\$150,000
Assistant Coach Name 9	Jordan Eason	Spencer Danielson	Chase Gibson	Lucas Gingold	Jacob Yoro	Tommy Perry	Perry Eliano	Demetrius Sumler	Aric Williams	Steve Irvin	DeAndre Smith	John Richardson
Assistant Coach Salary	NA	\$160,000	\$153,750	NA	\$165,000	\$106,090	\$75,000	NA	\$110,520	\$135,960	\$75,000	\$150,000
Assistant Coach Name 10	Nick Jones	Jalil Brown	George Helow	Kenwick Thompson	Michael Ghobrial	Mike Chamoures	Archie McDaniel	Richard Sanchez	Fred Guidici	Eric Brown	Uani Unga	Gordie Haug
Assistant Coach Salary	NA	\$140,000	\$87,125	NA	\$165,000	NA	NA	NA	\$104,520	NA	\$60,000	\$82,042

Pulled from 12/20/2018 WinAD data

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (the University) and Bradley Bedell (Coach).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as assistant 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 Section 3.2 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) months, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 29, 2020 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$250,000 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 Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.

- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. 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.

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

#### ARTICLE 4

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

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

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

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 with the policies, rules and regulations of the University, the Board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Football conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;



- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the Board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

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

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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, 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 Board policy, IDAPA 08.01.01.et seq., and the University policies.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, 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 policies and University rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, 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. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University.

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:                             Bradley Bedell  
  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.

[Bedell Contract](#)  
[2019 to 2020](#)  
[2](#)

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

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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings 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 Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

\_\_\_\_\_

\_\_\_\_\_

Curt Apsey  
Director of Athletics

Bradley Bedell  
Assistant Coach, Football

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Martin E. Schimpf  
Interim University President

Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.

[Bedell Contract](#)  
[2019 to 2020](#)  
[2](#)



~~(MODEL ATHLETICS SINGLE-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State ~~(University~~ (the University)College), and Bradley Bedell\_\_\_\_\_ (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of~~manage and supervise~~ the Team and shall perform such other duties in the University's~~University (College)'s~~ athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as assistant~~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 Section 3.2~~Sections 3.2.1 through (depending on supplemental pay provisions used)~~ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12)~~(12)~~ months, commencing on March 1, 2019\_\_\_\_\_ and terminating, without further notice to Coach, on February 29, 2020\_\_\_\_\_ unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$250,000~~ \$\_\_\_\_\_ 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 ~~President~~ Chief Executive Officer and approved by the Board;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; ~~(, provided, however, in accordance with Board Policy H.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director [RK(1)]; and~~
- c) 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 Board. 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
- de) The opportunity to receive such employee benefits as the ~~University's~~ University (College)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands [RK(2)] and agrees that financial conditions may require the ~~President~~ Chief Executive Officer, in the ~~President's~~ Chief Executive Officer's discretion, to institute furloughs or to take such other actions consistent with Board policy as the ~~President~~ Chief Executive Officer may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. ~~Each year~~ Coach shall be eligible to receive supplemental compensation as follows:



### 3.2.1 Athletic Achievement Incentive Pay.

- a) If in an amount up to (amount or computation) based on the academic achievement and behavior of Team is the Mountain Division Champion, members. The determination of whether Coach may will receive a \$5,000 bonus.
- b) If such supplemental compensation and the timing of the Team participates in payment(s) shall be at the Conference Championship Game, Coach may receive a \$5,000 bonus.
- c) If discretion of the Team is Chief Executive Officer in consultation with the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; and
- e) If Director and approved by the Board. The determination shall be based on the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; or
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All American, and conference academic recognition; progress toward graduation for Athletic Achievement Incentive Pay under this Section, all athletes, but particularly those who entered the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the (College) as academically at risk students; the conduct of Team members on the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; or
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; or
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 or
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

3.2 ~~(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 as a document available to the public under the Idaho Public Records Act.

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. 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. 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 ~~(College)~~. Coach recognizes that the University ~~(College)~~ is negotiating or has entered into an agreement with ~~(Company Name)~~ to supply the University ~~(College)~~ with athletic

footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally related appearances as may be reasonably requested by the University (College). Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head (Sport) coach. In order to avoid entering into an agreement with a competitor of (Company Name), 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 Section 4.2 of this Agreement ~~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.

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

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws, and with the policies, rules and regulations of the University, ~~(College)~~, the Board, the conference, and the NCAA; ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has

reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University's~~ University (College)'s athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy ~~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 Football(Sport) conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would ~~unreasonably otherwise~~ detract from those duties in any manner, or that, in the reasonable opinion of the University, ~~the Department, (College);~~ would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President ~~Chief Executive Officer~~, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's ~~the University (College)'s~~ name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld). ~~Chief Executive Officer.~~

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

~~4.4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the~~

~~decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~

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

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

4.57 Disclosure of Serious Misconduct<sup>[RK(3)]</sup>. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

~~4.8 Media Obligations~~<sup>[RK(4)]</sup>. ~~Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

## ARTICLE 5

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

5.1.1<sup>[RK(5)]</sup> In addition to the definitions contained in applicable rules and regulations, University ~~(College)~~ and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University; ~~(College);~~
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, ~~(College),~~ the Board, the conference or the NCAA, ~~(NAIA),~~ including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the ~~University's~~ ~~University (College)'s~~ consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University's~~ ~~University (College)'s~~ judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, ~~(College),~~ the Board, the conference, or the NCAA; ~~(NAIA);~~
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, ~~(College),~~ the Board, the conference, or the NCAA, ~~(NAIA),~~ by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, ~~(College),~~ the Board, the conference, or the NCAA, ~~(NAIA),~~ by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.57 of this Agreement.<sup>[RK(6)]</sup>

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 the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University ~~(College)~~ shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

~~5.3.1~~ 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 ~~University (College)~~'s disability insurance carrier, becomes unable to perform the essential functions of the Position ~~position of head coach~~, or dies.

~~5.3.2~~ 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 ~~(College)~~ and due to Coach's estate or beneficiaries thereunder.

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

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

5.54 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.

5.65 Waiver of Rights. Because Coach is receiving 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<sup>[JM7]</sup>, 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 provided for in Board policy, IDAPA 08.01.01. et seq., and the University ~~policies~~ ~~(College)~~ ~~(Faculty Staff) Handbook~~.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, the ~~President~~ ~~Chief Executive Officer~~, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board policies and University ~~(College)~~ rules regarding financial exigency.

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



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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University. ~~(College)~~.

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  
~~(College)~~: Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

Coach: Bradley Bedell  
Last known address on file with  
University's University (College)'s Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's 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 the Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

Curt Apsey  
Director of Athletics  
Date:

Bradley Bedell  
Assistant Coach, Football  
Date:

\_\_\_\_\_  
Martin E. Schimpf  
Interim University President  
Date: \_\_\_\_\_

**University (College)**

**Coach**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Chief Executive Officer  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\*Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019. \_\_\_\_\_.

~~[\*Note: One (1) year employment agreements requiring Board approval are defined in Board Policy Section H.H.]~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into ~~this \_\_\_\_\_ day of February, 2018~~ (“Effective Date”) by and between Boise State University (~~the “University”~~), and Bradley Bedell (~~the “Coach”~~).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as ~~an~~the Assistant Coach ~~offer~~ the Team and shall perform such other duties in the University’s athletic program as the ~~Director~~Head Coach may assign and as may be described elsewhere in this Agreement. ~~The University Coach~~ shall have the right, at any time, to reassign Coach to duties at the University other than as assistant coach of the Team, provided that best of Coach’s compensation ability, 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 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 twelve (12) months, commencing on March 1, 201~~9~~<sup>8</sup> and terminating, without further notice to Coach, on February ~~29, 2020~~<sup>28, 2019</sup> (the “Term”) unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual base salary ~~in the amount of~~ \$250,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the ~~Head Coach and~~ Director and President and approved by the ~~University's Board of Trustees~~;
- ~~bb) A one-time bonus payment of \$10,000, which shall be paid after execution of this Agreement.~~
- e) The opportunity to receive such employee benefits ~~calculated on the "base salary"~~ as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and;
- ~~cd)~~ 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
- ~~de)~~ The opportunity to receive such employee benefits as the University's Department of Athletics (~~Department~~ "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.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

~~3.2~~ 3.2 ~~Supplemental Compensation.~~ Coach shall be eligible to receive ~~may earn~~ supplemental compensation as follows:

3.2.1: Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach maywill receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach maywill receive a \$5,000 bonus.
- c) If the Team is the Conference Champion, Coach maywill receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach maywill receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach maywill receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach maywill receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in ~~the following~~ February 2020 if Coach is still employed by the University on that date.

#### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach maywill receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach maywill receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach maywill receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach maywill receive a sum of \$5,000.

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

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

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



## ARTICLE 4

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

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

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and ~~wellbeing~~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 with 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~~Head Coach and to the ~~Department's~~University's Director of ~~NCAA~~ Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. ~~Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A.~~ 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~~ policies 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 Football conference of which the University is a member~~Conference~~.

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



arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA. ~~University's Board of Trustees, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (e.g., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.~~

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

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

- a) A deliberate or major 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 ~~c~~Conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the ~~University's Board of Trustees~~, the ~~c~~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 ~~c~~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 ~~c~~Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) [The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.](#)

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

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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 policy, IDAPA of Education Rules (ID. ADMIN. CODE r. 08.01.01, et seq.,) and the Governing Policies and Procedures, and University pPolicies.~~

## 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, if required of Trustees,~~ the ~~President, Director~~ and the ~~Director Head Coach~~; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board ~~policies of Trustees~~ and University's ~~rules or policies~~ regarding ~~furloughs or~~ financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the ~~t~~Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the ~~Director Head Coach.~~

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

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

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

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

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 Non-Confidentiality. ~~This Agreement 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 by at the University. ~~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: Bradley Bedell  
Last known address on file with  
University's Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of ~~his~~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 ~~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 the ~~University's~~ Board ~~of Trustees~~ if required under ~~Section II.H. of~~ Board Policy II.H.

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

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Bradley Bedell  
Assistant Coach, Football  
Date: \_\_\_\_\_

\_\_\_\_\_  
Martin E. Schimpf  
Interim University

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

Approved by the Idaho State Board of Education Trustees on the \_\_\_\_\_ day of February, 2019.

**Coach Bradley Bedell Maximum Compensation Calculation - 2019-2020**

		<u>Yr 1</u>
3.1.1a	Annual Base Salary	\$ 250,000.00
3.2.1	Additional Pay based on Performance	\$ 33,750.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 288,750.00



## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (the University) and Gabriel Franklin (Coach).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as assistant 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 Section 3.2 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) months, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 29, 2020 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$210,000 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 Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.

- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. 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.

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

#### ARTICLE 4

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

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

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

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 with the policies, rules and regulations of the University, the Board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Football conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;

- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the Board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

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



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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University.



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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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, 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 Board policy, IDAPA 08.01.01.et seq., and the University policies.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, 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 policies and University rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, 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. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University.

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

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

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

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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings 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 Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

\_\_\_\_\_

\_\_\_\_\_

Curt Apsey  
Director of Athletics

Gabriel Franklin  
Assistant Coach, Football

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Martin E. Schimpf  
Interim University President

Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.

[Franklin Contract](#)  
[2019 to 2020](#)  
[2](#)

~~(MODEL ATHLETICS SINGLE-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State ~~(University~~ (the University) College), and Gabriel Franklin \_\_\_\_\_ (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of ~~manage and supervise~~ the Team and shall perform such other duties in the University's ~~University (College)'s~~ athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as assistant ~~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 Section 3.2 ~~Sections 3.2.1 through (depending on supplemental pay provisions used)~~ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) ~~( )~~ months, commencing on March 1, 2019 \_\_\_\_\_ and terminating, without further notice to Coach, on February 29, 2020 \_\_\_\_\_ unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$210,000~~ \$\_\_\_\_\_ 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 ~~President~~ Chief Executive Officer and approved by the Board;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; ~~(, provided, however, in accordance with Board Policy H.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director [RK(1)]; and~~
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the ~~University's~~ University (College)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands [RK(2)] and agrees that financial conditions may require the ~~President~~ Chief Executive Officer, in the ~~President's~~ Chief Executive Officer's discretion, to institute furloughs or to take such other actions consistent with Board policy as the ~~President~~ Chief Executive Officer may determine to be necessary to meet such challenges. In the event of a furlough or other action, the actual salary paid to Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. ~~Each year~~ Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If in an amount up to (amount or computation) based on the academic achievement and behavior of Team is the Mountain Division Champion, members. The determination of whether Coach may will receive a \$5,000 bonus.
- b) If such supplemental compensation and the timing of the Team participates in payment(s) shall be at the Conference Championship Game, Coach may receive a \$5,000 bonus.
- c) If discretion of the Team is Chief Executive Officer in consultation with the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; and
- e) If Director and approved by the Board. The determination shall be based on the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; or
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for Athletic Achievement Incentive Pay under this Section, all athletes, but particularly those who entered the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the (College) as academically at risk students; the conduct of Team members on the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; or
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; or
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 or
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

3.2 \_\_\_\_\_ (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 as a document available to the public under the Idaho Public Records Act.

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. 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. 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 (College). ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name)~~



product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~(Company Name)~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name)~~, or make other educationally related appearances as may be reasonably requested by the ~~University (College)~~. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head ~~(Sport) coach~~. In order to avoid entering into an agreement with a competitor of ~~(Company Name)~~, 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 ~~Section 4.2 of this Agreement~~~~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.

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

#### ARTICLE 4

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

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

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

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

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



such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy~~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 Football(Sport) conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably otherwise detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, ~~(College)~~, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President~~Chief Executive Officer~~, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's~~the University (College)'s~~ name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).~~Chief Executive Officer.~~

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

~~4.4.4 Hiring Authority.~~ ~~Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~

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

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

4.57 Disclosure of Serious Misconduct<sup>[RK(3)]</sup>. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

~~4.8 Media Obligations<sup>[RK(4)]</sup>. Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

## ARTICLE 5

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

5.1.1<sup>[RK(5)]</sup> In addition to the definitions contained in applicable rules and regulations, University ~~(College)~~ and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University; ~~(College);~~
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference or the NCAA, ~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the ~~University's~~ ~~University (College)'s~~ consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University's~~ ~~University (College)'s~~ judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA; ~~(NAIA);~~
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) ~~The failure of Coach to disclose Serious Misconduct as required in Section 4.57 of this Agreement.~~<sup>[RK(6)]</sup>

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 the Director's designee shall provide Coach with

notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University ~~(College)~~ shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

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

5.3.2 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 ~~(College)~~ and due to Coach's estate or beneficiaries thereunder.

5.3.3 If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the University's ~~University (College)'s~~ disability insurance carrier, or becomes unable to perform the essential functions of the Position ~~position of head coach~~,

all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University. ~~(College)~~.

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

5.54 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.

5.65 Waiver of Rights. Because Coach is receiving 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<sup>[JM7]</sup>, 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 provided for in Board policy, IDAPA 08.01.01. et seq., and the University ~~policies(College) (Faculty Staff) Handbook~~.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, the ~~President~~ ~~Chief Executive Officer~~, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board policies and University ~~(College)~~ rules regarding financial exigency.

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University. ~~(College)~~

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  
~~(College)~~: Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

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



Coach: Gabriel Franklin  
Last known address on file with  
University's University (College)'s Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's 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 the Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

Curt Apsey  
Director of Athletics  
Date:

Gabriel Franklin  
Assistant Coach, Football  
Date:

Martin E. Schimpf \_\_\_\_\_

Interim University President \_\_\_\_\_

Date: \_\_\_\_\_

**University (College)**

**Coach**

Signature: \_\_\_\_\_

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

Chief Executive Officer

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

\*Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019. \_\_\_\_\_.

~~[\*Note: One (1) year employment agreements requiring Board approval are defined in Board Policy Section H.H.]~~



## EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into ~~this \_\_\_\_\_ day of February, 2018~~ (“~~Effective Date~~”) by and between Boise State University (~~the “University”~~), and Gabriel Franklin (~~the “Coach”~~).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as ~~an~~the Assistant Coach ~~offer~~ the Team and shall perform such other duties in the University’s athletic program as the ~~Director~~Head Coach may assign and as may be described elsewhere in this Agreement. ~~The University Coach~~ shall have the right, at any time, to reassign Coach to duties at the University other than as assistant coach of the Team, provided that best of Coach’s compensation ability, 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 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 twelve (12) months, commencing on March 1, 201~~9~~8 and terminating, without further notice to Coach, on February ~~29, 2020~~28, 2019 (the “~~Term~~”) unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual base salary ~~in the amount of~~ \$210,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the ~~Head Coach and~~ Director and President and approved by the ~~University's Board of Trustees~~;
- ~~bb) A one-time bonus payment of \$10,000, which shall be paid after execution of this Agreement.~~
- e) The opportunity to receive such employee benefits ~~calculated on the "base salary"~~ as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and;
- ~~cd)~~ 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
- ~~de)~~ The opportunity to receive such employee benefits as the University's Department of Athletics (~~Department~~ "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.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

~~3.2~~ 3.2 ~~Supplemental Compensation.~~ Coach shall be eligible to receive ~~may earn~~ supplemental compensation as follows:

3.2.1: Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach [maywill](#) receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach [maywill](#) receive a \$5,000 bonus.
- c) If the Team is the Conference Champion, Coach [maywill](#) receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach [maywill](#) receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach [maywill](#) receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach [maywill](#) receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in ~~the following~~ February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach [maywill](#) receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach [maywill](#) receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach [maywill](#) receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach [maywill](#) receive a sum of \$5,000.

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

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

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



## ARTICLE 4

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

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

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and ~~wellbeing~~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 with 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~~Head Coach and to the ~~Department's~~University's Director of ~~NCAA~~ Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. ~~Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A.~~ 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~~ policies 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 Football conference of which the University is a member~~Conference~~.

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

arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA. ~~University's Board of Trustees, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (e.g., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.~~

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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



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

- a) A deliberate or major 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 ~~c~~Conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the ~~University's Board of Trustees~~, the ~~c~~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 ~~c~~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 ~~c~~Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) [The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.](#)

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

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.



5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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 policy, IDAPA of Education Rules (ID. ADMIN. CODE r. 08.01.01, et seq.,) and the Governing Policies and Procedures, and University pPolicies.~~

## 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, if required of Trustees,~~ the ~~President, Director~~ and the ~~Director Head Coach~~; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board ~~policies of Trustees~~ and University's ~~rules or policies~~ regarding ~~furloughs or~~ financial exigency.

6.2 University Property. All personal property ~~(excluding vehicle(s) provided through the courtesy car program),~~ material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the ~~t~~Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the ~~Director Head Coach.~~

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

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

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

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

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 Non-Confidentiality. ~~This Agreement 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 by at the University. ~~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: Gabriel Franklin  
Last known address on file with  
University's Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of ~~his~~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 ~~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 the ~~University's~~ Board ~~of Trustees~~ if required under ~~Section II.H. of~~ Board Policy II.H.

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

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

UNIVERSITY

COACH

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

\_\_\_\_\_  
Gabriel Franklin  
Assistant Coach, Football  
Date: \_\_\_\_\_

\_\_\_\_\_  
Martin E. Schimpf  
Interim University

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

Approved by the Idaho State Board of Education Trustees on the \_\_\_\_\_ day of February, 2019.

**Coach Gabriel Franklin Maximum Compensation Calculation - 2019-2020**

		<u>Yr 1</u>
3.1.1a	Annual Base Salary	\$ 210,000.00
3.2.1	Additional Pay based on Performance	\$ 30,750.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 245,750.00

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Boise State University (the University) and Lee Marks, Jr. (Coach).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as assistant 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 Section 3.2 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) months, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 29, 2020 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$185,000 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 Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.

- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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



3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. 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.

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

## ARTICLE 4

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

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

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

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 with the policies, rules and regulations of the University, the Board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Football conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval

not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;

- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the Board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

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

5.1.3 In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable

for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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, 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 Board policy, IDAPA 08.01.01.et seq., and the University policies.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, 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 policies and University rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, 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. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University.

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:                                      Lee Marks, Jr.  
   Last known address on file with  
   University's Human Resource Services

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

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

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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings 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 Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

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

\_\_\_\_\_  
Lee Marks, Jr.  
Assistant Coach, Football  
Date: \_\_\_\_\_

\_\_\_\_\_  
Martin E. Schimpf  
Interim University President  
Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.



~~(MODEL ATHLETICS SINGLE-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State ~~(University~~ (the University)College), and Lee Marks, Jr. ~~\_\_\_\_\_~~ (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of ~~manage and supervise~~ the Team and shall perform such other duties in the University's ~~University (College)'s~~ athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as assistant ~~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 Section 3.2 ~~Sections 3.2.1 through (depending on supplemental pay provisions used)~~ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) ~~(12)~~ months, commencing on March 1, 2019 ~~\_\_\_\_\_~~ and terminating, without further notice to Coach, on February 29, 2020 ~~\_\_\_\_\_~~ unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$185,000~~ \$\_\_\_\_\_ 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 ~~President~~ Chief Executive Officer and approved by the Board;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; ~~(, provided, however, in accordance with Board Policy H.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director);~~ and
- ~~c) 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 Board. 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~~
- ~~de) The opportunity to receive such employee benefits as the University's ~~University~~ (~~College~~)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.~~

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

3.2 Supplemental Compensation. ~~Each year~~ Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If in an amount up to (amount or computation) based on the academic achievement and behavior of Team is the Mountain Division Champion, members. The determination of whether Coach may will receive a \$5,000 bonus.
- b) If such supplemental compensation and the timing of the Team participates in payment(s) shall be at the Conference Championship Game, Coach may receive a \$5,000 bonus.
- c) If discretion of the Team is Chief Executive Officer in consultation with the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; and
- e) If Director and approved by the Board. The determination shall be based on the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; or
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for Athletic Achievement Incentive Pay under this Section, all athletes, but particularly those who entered the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the (College) as academically at risk students; the conduct of Team members on the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; or
- b) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; or
- c) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 or
- d) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

3.2 \_\_\_\_\_ (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 as a document available to the public under the Idaho Public Records Act.

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. 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. 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 (College). ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name)~~

product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~(Company Name)~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name)~~, or make other educationally related appearances as may be reasonably requested by the ~~University (College)~~. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head ~~(Sport) coach~~. In order to avoid entering into an agreement with a competitor of ~~(Company Name)~~, 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 ~~Section 4.2 of this Agreement~~~~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.

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

#### ARTICLE 4

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

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

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

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

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

such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy~~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 Football(Sport) conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would unreasonably otherwise detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, ~~(College)~~, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President~~Chief Executive Officer~~, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's~~the University (College)'s~~ name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).~~Chief Executive Officer.~~

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

~~4.4.4 Hiring Authority.~~ ~~Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~



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

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

4.57 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

~~4.8 — Media Obligations. Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University; ~~(College);~~
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference or the NCAA, ~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the ~~University's~~ ~~University (College)'s~~ consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University's~~ ~~University (College)'s~~ judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA; ~~(NAIA);~~
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.57 of this Agreement.

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 the Director's designee shall provide Coach with



notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University ~~(College)~~ shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

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

5.3.2 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 ~~(College)~~ and due to Coach's estate or beneficiaries thereunder.

5.3.3 If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the University's ~~University (College)'s~~ disability insurance carrier, or becomes unable to perform the essential functions of the Position ~~position of head coach~~,

all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University. ~~(College)~~.

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

5.54 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.

5.65 Waiver of Rights. Because Coach is receiving 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, 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 provided for in Board policy, IDAPA 08.01.01.et seq., and the University ~~policies~~ ~~(College)~~ ~~(Faculty Staff) Handbook~~.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, the ~~President~~ ~~Chief Executive Officer~~, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board policies and University ~~(College)~~ rules regarding financial exigency.

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University. ~~(College)~~.

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  
~~(College)~~: Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

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

Coach: Lee Marks, Jr.  
Last known address on file with  
University's University (College)'s Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's 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 the Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

Curt Apsey  
Director of Athletics  
Date:

Lee Marks, Jr.  
Assistant Coach, Football  
Date:

Martin E. Schimpf \_\_\_\_\_

Interim University President \_\_\_\_\_

Date: \_\_\_\_\_

**University (College)**

**Coach**

Signature: \_\_\_\_\_

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

Chief Executive Officer

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

\*Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019. \_\_\_\_\_.

~~[\*Note: One (1) year employment agreements requiring Board approval are defined in Board Policy Section H.H.]~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into ~~this \_\_\_\_\_ day of April, 2018~~ (“Effective Date”) by and between Boise State University (~~the “University”~~), and Lee Marks, Jr. (~~the “Coach.”~~).

### ARTICLE 1

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

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

1.3. Duties. Coach shall serve as ~~an~~the Assistant Coach ~~offer~~ the Team and shall perform such other duties in the University’s athletic program as the ~~Director~~Head Coach may assign and as may be described elsewhere in this Agreement. ~~The University Coach shall have the right, at any time, to reassign Coach to duties at the University other than as assistant coach of the Team, provided that best of Coach’s compensation ability, 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 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 ~~twelve (12)~~ten (10) months, commencing on ~~March 1, 2019~~ April 22, 2018 and terminating, without further notice to Coach, on February ~~29, 2020~~28, 2019 (the “Term”) unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual base salary in the amount of \$1,875,000 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Head Coach and Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and;
- c) 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department 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.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 ~~3.2~~ Supplemental Compensation. Coach shall be eligible to receive~~may earn~~ supplemental compensation as follows:

## 3.2.1- Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may will receive a \$5,000 bonus.

- b) If the Team participates in the Conference Championship Game, Coach [maywill](#) receive a \$5,000 bonus.
- c) If the Team is the Conference Champion, Coach [maywill](#) receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach [maywill](#) receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach [maywill](#) receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach [maywill](#) receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in ~~the following~~ February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

- a) If the annual Academic Progress Rate (“APR”) rating [for 2019-2020](#) is between 955-959, Coach [maywill](#) receive a sum of \$2,000; **or**
- b) If the annual APR rating [for 2019-2020](#) is between 960-964, Coach [maywill](#) receive a sum of \$3,000; **or**
- c) If the annual APR rating [for 2019-2020](#) is between 965-969, Coach [maywill](#) receive a sum of \$4,000 **or**
- d) If the annual APR rating [for 2019-2020](#) is 970 or higher, Coach [maywill](#) receive a sum of \$5,000.

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

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

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

                     Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation [based on the factors listed](#)



above and such justification shall be separately reportable to the Board ~~of Trustees~~ as a document available to the public under the Idaho Public Records Act.

3.2.4. EmployeeCoach agrees that the University has the priorityexclusive right to operate athletic camps and/or clinics (“Camps”) on its campus using University facilities.

a. If the University exercises its right to operate camps and/or clinics on campus, the ~~The~~ University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics~~Camps~~ in Coach’s capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics~~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 and/or clinics~~Camps~~, the University shall pay Coach supplemental compensation.

b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:

- i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
- ii. Payment for the University’s facilities.
- iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of ~~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 incomeinterest to the University in accordance with Section 4.2 of this Agreement. 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.

3.4 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 Ssection 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

#### ARTICLE 4

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

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

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and ~~wellbeing~~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 with 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~~Head Coach and to the ~~Department's~~University's Director of ~~NCAA~~ Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. ~~Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A.~~ 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~~ policies 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 Football conference of which the University is a member~~Conference~~.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests

to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA. University's Board of Trustees, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (e.g., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

5.1.1 In addition to the definitions contained in applicable rules and regulationspolicies, 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 ~~c~~Conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the ~~University's Board of Trustees~~, the ~~c~~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 ~~c~~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 ~~c~~Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension,

reassignment, or termination, the ~~Head Coach, Director or the Head Coach's~~ or the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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 policy, IDAPA of Education Rules (ID. ADMIN. CODE r. 08.01.01, et seq.) and the Governing Policies and Procedures, and University pPolicies.~~

## 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, if required of Trustees,~~ the ~~President, Director~~ and the ~~Director Head Coach~~; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board ~~policies of Trustees~~ and University's ~~rules or policies~~ regarding ~~furloughs or~~ financial exigency.

6.2 University Property. All personal property ~~(excluding vehicle(s) provided through the courtesy car program),~~ material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the ~~t~~Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the ~~Director Head Coach.~~

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



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

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

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

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 Non-Confidentiality. ~~This Agreement 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 ~~by~~ at the University. ~~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: Lee Marks, Jr.

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

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of ~~his~~ 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 ~~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 the ~~University's~~ Board ~~of Trustees~~ if required under ~~Section II.H. of~~ Board Policy II.H.

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

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

UNIVERSITY

COACH



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

\_\_\_\_\_  
Lee Marks, Jr.  
Assistant Coach, Football  
Date: \_\_\_\_\_

\_\_\_\_\_  
Martin E. Schimpf  
Interim University

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

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.

**Coach Lee Marks Maximum Compensation Calculation - 2019-2020**

		<u>Yr 1</u>
3.1.1a	Annual Base Salary	\$ 185,000.00
3.2.1	Additional Pay based on Performance	\$ 28,875.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 218,875.00

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State University (the University) and Jeff Schmedding (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as assistant 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 Section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) months, commencing on March 1, 2019 and terminating, without further notice to Coach, on February 29, 2020 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$175,000 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 Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- c) 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 Board. 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
- d) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach 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 Board 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 Coach may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) If the Team is the Mountain Division Champion, Coach may receive a \$5,000 bonus.
- b) If the Team participates in the Conference Championship Game, Coach may receive a \$5,000 bonus.

- c) If the Team is the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; **and**
- e) If the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; **or**
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies for Athletic Achievement Incentive Pay under this Section, the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

#### School year 2018-2019

- a) If the annual Academic Progress Rate (“APR”) rating for 2018-2019 is between 955-959, Coach may receive a sum of \$1,000; **or**
- b) If the annual APR rating for 2018-2019 is between 960-964, Coach may receive a sum of \$1,500; **or**
- c) If the annual APR rating for 2018-2019 is between 965-969, Coach may receive a sum of \$2,000 **or**
- d) If the annual APR rating for 2018-2019 is 970 or higher, Coach may receive a sum of \$2,500.

#### School year 2019-2020

- e) If the annual Academic Progress Rate (“APR”) rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; **or**
- f) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; **or**
- g) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 **or**
- h) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

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

3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
  - ii. Payment for the University's facilities.
  - iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. 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.

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

#### ARTICLE 4

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

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

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

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 with the policies, rules and regulations of the University, the Board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Football conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best

efforts to the performance of Coach's duties under this Agreement, that would unreasonably detract from those duties in any manner, or that, in the reasonable opinion of the University, the Department, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the Board, the conference, or the NCAA.

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

4.5 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

## ARTICLE 5

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

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



- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the Board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the Board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.5 of this Agreement.

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 the Director's designee shall provide Coach with

notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

5.3.1 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.

5.3.2 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 thereunder.

5.3.3 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, all salary and other benefits shall terminate,

except that Coach shall be entitled to receive any compensation due or unpaid and any disability related benefits to which he is entitled by virtue of employment with the University.

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

5.5 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.

5.6 Waiver of Rights. Because Coach is receiving 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, 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 Board policy, IDAPA 08.01.01.et seq., and the University policies.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, 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 policies and University rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the courtesy car program), material, and articles of information, including, without limitation, keys, credit cards, 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. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University.

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: Jeff Schmedding  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings 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 Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

\_\_\_\_\_

\_\_\_\_\_

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

Jeff Schmedding  
Assistant Coach, Football  
Date: \_\_\_\_\_

\_\_\_\_\_

Martin E. Schimpf  
Interim University President  
Date: \_\_\_\_\_

Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019.

~~(MODEL ATHLETICS SINGLE-YEAR CONTRACT)~~  
~~(template adopted by Idaho State Board of Education, \_\_\_\_\_, 2018)~~

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between Boise State ~~(University~~ (the University)College), and Jeff Schmedding\_\_\_\_\_ (Coach).

ARTICLE 1

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

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

1.3. Duties. Coach shall serve as an Assistant Coach of ~~manage and supervise~~ the Team and shall perform such other duties in the University's~~University (College)'s~~ athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as assistant~~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 Section 3.2~~Sections 3.2.1 through (depending on supplemental pay provisions used)~~ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed term appointment of twelve (12) ~~(12)~~ months, commencing on March 1, 2019\_\_\_\_\_ and terminating, without further notice to Coach, on February 29, 2020\_\_\_\_\_ unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$175,000~~ \$\_\_\_\_\_ 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 ~~President~~ Chief Executive Officer and approved by the Board;
- b) The opportunity to receive such employee benefits as the University (~~College~~) provides generally to non-faculty exempt employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; ~~(, provided, however, in accordance with Board Policy H.H.6.b.ii, University (College) and Coach agree that Coach shall not accrue any annual leave hours, and may take leave (other than sick leave) only with prior written approval of the Director);~~ and
- ~~c) 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 Board. 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~~
- ~~d)~~ e) The opportunity to receive such employee benefits as the ~~University's~~ University (~~College~~)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

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

3.2 Supplemental Compensation. ~~Each year~~ Coach shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.



- a) If in an amount up to (amount or computation) based on the academic achievement and behavior of Team is the Mountain Division Champion, members. The determination of whether Coach may will receive a \$5,000 bonus.
- b) If such supplemental compensation and the timing of the Team participates in payment(s) shall be at the Conference Championship Game, Coach may receive a \$5,000 bonus.
- c) If discretion of the Team is Chief Executive Officer in consultation with the Conference Champion, Coach may receive a \$5,000 bonus.

In addition,

- d) If the Team participates in a non-CFP bowl game, Coach may receive a \$5,000 bonus; and
- e) If Director and approved by the Board. The determination shall be based on the Team wins the non-CFP bowl game, Coach may receive a \$5,000 bonus; or
- f) If the Team participates in one of the six CFP (College Football Playoff) bowl games, Coach may receive a bonus up to 7.5% of his annual base salary.

If Coach qualifies following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for Athletic Achievement Incentive Pay under this Section, all athletes, but particularly those who entered the University will pay Coach on the first regular pay date in February 2020 if Coach is still employed by the (College) as academically at risk students; the conduct of Team members on the University on that date.

### 3.2.2. Academic Achievement Incentive Pay.

#### School year 2018-2019

- a) If the annual Academic Progress Rate ("APR") rating for 2018-2019 is between 955-959, Coach may receive a sum of \$1,000; or
- b) If the annual APR rating for 2018-2019 is between 960-964, Coach may receive a sum of \$1,500; or
- c) If the annual APR rating for 2018-2019 is between 965-969, Coach may receive a sum of \$2,000 or
- d) If the annual APR rating for 2018-2019 is 970 or higher, Coach may receive a sum of \$2,500.

#### School year 2019-2020

- e) If the annual Academic Progress Rate ("APR") rating for 2019-2020 is between 955-959, Coach may receive a sum of \$2,000; or

- f) If the annual APR rating for 2019-2020 is between 960-964, Coach may receive a sum of \$3,000; or
- g) If the annual APR rating for 2019-2020 is between 965-969, Coach may receive a sum of \$4,000 or
- h) If the annual APR rating for 2019-2020 is 970 or higher, Coach may receive a sum of \$5,000.

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

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

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

3.2 (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 as a document available to the public under the Idaho Public Records Act.

### 3.2.4. Employee agrees that the University has the priority right to operate athletic camps and/or clinics on its campus using University facilities.

- a. If the University exercises its right to operate camps and/or clinics on campus, the University shall allow Coach the opportunity to earn supplemental compensation by assisting with the camps and/or clinics in Coach’s capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the camps and/or clinics. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach’s participation in the camps and/or clinics, the University shall pay Coach supplemental compensation.
- b. If the University allows Coach to operate camps and/or clinics at the University, such operation shall be according to a written agreement which shall include conditions such as:
  - i. Coach compliance with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;

- ii. Payment for the University's facilities.
- iii. Provision proof of liability insurance.

3.3 Footwear; Apparel; Equipment. 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. 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 (College). ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally related appearances as may be reasonably requested by the University (College).~~ Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head (Sport) coach. ~~In order to avoid entering into an agreement with a competitor of (Company Name), 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 Section 4.2 of this Agreement ~~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.

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

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws, and with the policies, rules and regulations of the University, ~~(College)~~, the Board, the conference, and the NCAA; ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University's~~ ~~University (College)'s~~ athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A. The applicable laws, policies, rules, and regulations include: (a) Board policies; (b) ~~University's Policy~~ 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 ~~Football(Sport)~~ conference of which the University ~~(College)~~ is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would ~~unreasonably otherwise~~ detract from those duties in any manner, or that, in the reasonable opinion of the University, ~~the Department, (College)~~, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Head Coach and the Director, who may consult with the ~~President~~ Chief Executive Officer, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's ~~the University (College)'s~~ name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld). ~~Chief Executive Officer.~~

4.3 Outside Income. ~~NCAA (or NAIA) Rules:~~ In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) ~~University (College)'s Chief Executive Officer~~ for all athletically-related and other business-related income and benefits from sources outside the

University ~~(College)~~ and shall report the source and amount of all such income and benefits in accordance with the University (College)'s Chief Executive Officer whenever reasonably requested, but in no event less than annually before the Department's Outside Income Reporting Form, close of business on June 30th of each year or the last regular University (College) work day preceding June 30th. The report shall be in a format reasonably satisfactory to University ~~(College)~~. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University ~~(College)~~ booster club, University ~~(College)~~ alumni association, University ~~(College)~~ foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA. ~~(or NAIA).~~

~~4.44.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Chief Executive Officer and the Board.~~

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

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

4.57 Disclosure of Serious Misconduct. Coach warrants that prior to the signing of this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused, investigated, convicted of or pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where Coach was employed. "Serious misconduct" is defined as any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury.

~~4.8 — Media Obligations. Coach must fully participate in media programs and public appearances (Programs) through the date of the Team's last regular season or post season competition. Agreements requiring Coach to participate in Programs related to Coach's 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 Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide Coach's services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call in show, or interview show) or a regularly scheduled news~~

~~segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

## ARTICLE 5

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

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

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



conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

- i) A violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the Board, the conference, or the NCAA, ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose Serious Misconduct as required in Section 4.57 of this Agreement.

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 the Director's designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, the University ~~(College)~~ shall notify Coach whether, and if so when, the action will be effective.

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

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

5.1.5. 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.

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

In the event of the resignation or termination of the Head Coach, Coach's employment contract may be terminated at the sole discretion of the University, at any time following the resignation or termination, upon thirty (30) days' prior written notice. Provided, however, in the event the Head Coach becomes disabled or is deceased during Coach's Term of employment, Coach's employment contract will continue until the last day of February following such disability or death; provided, however, if Coach otherwise becomes employed prior to the last day of February following such disability or death, this Agreement will automatically terminate and no further compensation shall be owed by the University to Coach.

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

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

5.32.2 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 ~~(College)~~ and due to Coach's estate or beneficiaries thereunder.

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

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

5.54 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.

5.65 Waiver of Rights. Because Coach is receiving 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, 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 provided for in Board policy, IDAPA 08.01.01.et seq., and the University ~~policies(College)~~ (Faculty Staff) Handbook.

## ARTICLE 6

6.1 Approval. This Agreement shall not be effective until and unless 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 Board, if required, the ~~President~~Chief Executive Officer, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board policies and University ~~(College)~~ rules regarding financial exigency.



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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. 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. This Agreement and all documents and reports Coach is required to produce under this Agreement may be released and made available to the public by the University. (College).

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  
~~(College):~~ Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

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

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

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

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

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

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

6.13 Non-Use of Names and Trademarks. Coach shall not, without the University's~~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 the Board if required under Board Policy II.H.

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.

UNIVERSITY

COACH

Curt Apsey  
Director of Athletics

Jeff Schmedding  
Assistant Coach, Football

Date:

Date:

Martin E. Schimpf  
Interim University President

Date:

**University (College)**

**Coach**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\*Approved by the Idaho State Board of Education on the \_\_\_\_\_ day of February, 2019. \_\_\_\_\_.

~~[\*Note: One (1) year employment agreements requiring Board approval are defined in Board Policy Section H.H.]~~

**Coach Jeff Schmedding Maximum Compensation Calculation - 2019-2020**

		<u>Yr 1</u>
3.1.1a	Annual Base Salary	\$ 175,000.00
3.2.1	Additional Pay based on Performance	\$ 28,125.00
3.2.2	Additional Pay based on Academic Achievement	\$ 5,000.00
	Total Maximum potential annual compensation under Employment Agreement	\$ 208,125.00

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 14, 2019**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Contract extension for Athletic Director

**REFERENCE**

June 2015

Idaho State Board of Education (Board) approved five year contract for Athletic Director Curt Apsey at a Special Board Meeting on June 23, 2015

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**ALIGNMENT WITH STRATEGIC PLAN**

Athletic contracts are a non-strategic, Board governance agenda item.

**BACKGROUND/DISCUSSION**

Boise State University (BSU) is requesting approval of a one year extension to Athletic Director Curt Apsey's employment contract. Mr. Apsey's current contract was approved by the Board in June of 2015 and is slated to expire in July 2020. The proposed extension would extend the term of the agreement through July of 2021.

The terms of the proposed extension remain unchanged from the current agreement. The liquidated damages provision of the proposed agreement mirrors that of the existing agreement in that if Mr. Apsey terminates the agreement for convenience in its final year, he will owe BSU \$50,000.

Although unchanged by the proposed extension, the contract's incentive payment schedule follows:

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

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

Athletic incentive pay shall be based on the National Association of Directors of Collegiate Athletics (NACDA) Director's Cup National Sports Award final year end rankings:

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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<u>Department Rank</u>	<u>Incentive Pay</u>
Top 25	\$15,000
Top 40	\$10,000
Top 60	\$ 5,000

For Football Bowl Game Appearances:

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

Additional Incentive Compensation: The following are cumulative; however, the total payment of the additional incentives listed below has an annual cap of \$50,000:

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

**IMPACT**

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

**ATTACHMENTS**

- Attachment 1 – Proposed Contract Amendment
- Attachment 2 – Redline to Current Contract with Proposed Amendment
- Attachment 3 – Maximum Compensation Calculation
- Attachment 4 – APR Summary
- Attachment 5 – Base Salary and Incentive Comparison
- Attachment 6 – Liquidated Damages Comparison

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**STAFF COMMENTS AND RECOMMENDATIONS**

The proposed contract only makes a change to the term of the contract. The maximum compensation has not been amended from the original contract to this proposed version.

Mr. Apsey currently has a liquidated damages provision of \$100,000 in his contract. Under the original contract that amount would be reduced to \$50,000 on July 1, 2019. Under the proposed contract, the liquidated damages would remain at \$100,000 until July 1, 2020.

Staff recommends approval.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a one year extension of Athletic Director Curt Apsey's employment contract as presented in Attachment 1.

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

**EMPLOYMENT AGREEMENT**

This Employment Agreement (this “Agreement”) is entered into by and between Boise State University (the “University”), and Curt Apsey (“Athletic Director”).

ARTICLE 1

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

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

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

ARTICLE 2

2.1 Term. This Agreement is for a fixed-term appointment commencing on February \_\_\_\_, 2019 and terminating, without further notice to either party, on July 31, 2021 (the “Term”) unless terminated sooner in accordance with other provisions of this Agreement.

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



ARTICLE 3

3.1 Compensation.

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

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

3.1.2 Base Salary: The University shall pay Athletic Director a Base Salary of \$360,000 per year (prorated for partial years) of this Agreement. Additionally, the Base Salary may increase annually (not to exceed 10% annually) at the sole discretion of the President after determination by the President that the annual goals the President sets for Athletic Director are successfully achieved. Provided, however, that any such increases shall be subject to the approval of the University’s Board of Trustees.

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

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

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

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

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

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

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

- (d) Additional Incentive Compensation

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

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

3.1.4 Subject to and according to the policy of its Board of Trustees, the University annually shall provide or make arrangements through the athletic department trade-out program

one (1) full-size automobile for business and personal use by Athletic Director or members of his immediate family. Athletic Director shall supply gasoline for personal use. All other costs of operating the vehicles shall be paid by the University.

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

3.2 Media. Agreements requiring Athletic Director to participate in media programs related to his duties as an employee of the University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media products and all parties desiring public appearances by Athletic Director. Athletic Director agrees to cooperate with the University in order for the programs to be successful and agrees to provide his services to and perform on the programs and to cooperate in their production, broadcasting and telecasting. It is understood that neither Athletic Director nor any assistant Department employees shall appear without prior written approval of the President on any competing radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Athletic Director shall not appear in any commercial endorsements.

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

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

#### ARTICLE 4

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

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

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to enable them to compete successfully and reasonably protect their health, safety, and well-being;

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

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

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

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

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

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

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

Director accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's Board of Trustees, the conferences in which the University is a member, or the NCAA.

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

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

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

## ARTICLE 5

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

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

- a) A deliberate or material violation of Athletic Director's duties under this Agreement or the refusal or unwillingness of Athletic Director to perform such duties in good faith and to the best of Athletic Director's abilities;
- b) The failure of Athletic Director to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or material violation by Athletic Director of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, including

but not limited to any such violation by Athletic Director which may have occurred during the employment of Athletic Director at another NCAA or NAIA member institution;

- d) Ten (10) working days' absence of Athletic Director from duty without the University's consent;
- e) Any conduct of Athletic Director that constitutes moral turpitude or that, in the reasonable and good faith determination of the President, would be prejudicial to the best interests of the University or the Program;
- f) The failure of Athletic Director to represent the University and the Program positively in public and private forums;
- g) The failure of Athletic Director to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, the conference, or the NCAA;
- h) The failure of Athletic Director to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, by one of Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, by one of Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program if Athletic Director knew or reasonably should have known of the violation and could have prevented it by ordinary supervision.

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

5.1.3 In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Athletic Director, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall

not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources. However, any amounts due or earned (whether monetary or other benefits) by Athletic Director as of the time of termination for good and adequate cause shall still be paid to Athletic Director by the University.

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

5.2 Termination of Athletic Director for Convenience of University.

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

5.2.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay Athletic Director, as liquidated damages and not a penalty, only the remaining, unpaid Base Salary (plus any increases) set forth in section 3.1.2, reduced by all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends. Provided, however, in the event Athletic Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Athletic Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.2 (before deductions required by law) by the gross compensation paid to Athletic Director under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Athletic Director will be entitled to continue his health insurance plan and group life insurance (but no other 3.1.1 compensation) as if he remained a University employee until the Term of this Agreement ends or until Athletic Director obtains employment or any other employment providing Athletic Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Athletic Director shall not be entitled to any other form or amount of 3.1.3 (unless earned and vested prior to date of notice of termination), 3.1.4, or 3.1.5 compensation after the University's date of notice of termination pursuant to 5.2.1. Athletic Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Athletic Director specifically agrees to inform the University within ten (10) business days of obtaining other employment, and to advise the University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end. Athletic Director agrees not to accept employment for compensation at less than the fair value of Athletic Director's services, as determined by all circumstances existing at the time of employment. Athletic Director further agrees to repay to the University all compensation paid to

him by the University after the date he obtains other employment, to which he is not entitled under this provision.

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

### 5.3 Termination by Athletic Director for Convenience.

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

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

5.3.3 If Athletic Director terminates this Agreement for his convenience he shall pay to the University, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as Athletic Director through July 31, 2021, and as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated between February \_\_\_\_, 2019 and June 30, 2020 inclusive, the sum of One Hundred Thousand Dollars (\$100,000); and (b) if the Agreement is terminated after June 30, 2020, the sum of Fifty Thousand Dollars (\$50,000). The liquidated damages shall be due and payable within sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight percent (8%) per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations, or had the opportunity to do so, and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Athletic Director, in addition to potentially increased compensation costs if Athletic Director terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties



further agree that the payment of such liquidated damages by Athletic Director and the acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for the damages and injury suffered by it because of such termination by Athletic Director. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Athletic Director terminates this Agreement because of a material breach by the University.

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

5.4 Termination due to Disability or Death of Athletic Director.

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

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

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

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

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

5.6 No Liability. Other than what Athletic Director is or shall be entitled to under this Agreement, the University shall not be liable to Athletic Director for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may

ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Athletic Director, regardless of the circumstances.

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

## ARTICLE 6

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

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

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

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

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

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

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

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

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

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

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

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

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

with a copy to:                      Bennett H. Speyer, Esquire  
1000 Jackson Street  
Toledo, Ohio 43604

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

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

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

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

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

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

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

UNIVERSITY

ATHLETIC DIRECTOR

\_\_\_\_\_  
Martin E Schimpf, Interim President Date

\_\_\_\_\_  
Curt Apsey

\_\_\_\_\_  
Date

Approved by the Board of Trustees on the \_\_\_\_ day of February, 2019.

## EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is entered into by and between Boise State University (the “University”), and Curt Apsey (“Athletic Director”) ~~on the 1<sup>st</sup> day of August, 2015.~~

### ARTICLE 1

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

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

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

### ARTICLE 2

2.1 Term. This Agreement is for a fixed-term appointment ~~of five (5) years,~~ commencing on ~~August 1 February~~, 201~~59~~ and terminating, without further notice to either party, on July 31, 202~~01~~ (the “Term”) unless terminated sooner in accordance with other provisions of this Agreement.

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

ARTICLE 3

3.1 Compensation.

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

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

3.1.2 Base Salary: The University shall pay Athletic Director a Base Salary of \$~~360,310~~<sup>31,050</sup> per year (prorated for partial years) of this Agreement. Additionally, the Base Salary may increase annually (not to exceed 10% annually) at the sole discretion of the President after determination by the President that the annual goals the President sets for Athletic Director are successfully achieved. Provided, however, that any such increases shall be subject to the approval of the University’s Board of Trustees.

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

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

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

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

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

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

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

- (d) Additional Incentive Compensation

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

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

3.1.4 Subject to and according to the policy of its Board of Trustees, the University annually shall provide or make arrangements through the athletic department trade-out program

one (1) full-size automobile for business and personal use by Athletic Director or members of his immediate family. Athletic Director shall supply gasoline for personal use. All other costs of operating the vehicles shall be paid by the University.

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

3.2 Media. Agreements requiring Athletic Director to participate in media programs related to his duties as an employee of the University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media products and all parties desiring public appearances by Athletic Director. Athletic Director agrees to cooperate with the University in order for the programs to be successful and agrees to provide his services to and perform on the programs and to cooperate in their production, broadcasting and telecasting. It is understood that neither Athletic Director nor any assistant Department employees shall appear without prior written approval of the President on any competing radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Athletic Director shall not appear in any commercial endorsements.

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

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

#### ARTICLE 4

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

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

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to enable them to compete successfully and reasonably protect their health, safety, and well-being;



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

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

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

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

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

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

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

Director accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's Board of Trustees, the conferences in which the University is a member, or the NCAA.

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

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

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

## ARTICLE 5

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

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

- a) A deliberate or material violation of Athletic Director's duties under this Agreement or the refusal or unwillingness of Athletic Director to perform such duties in good faith and to the best of Athletic Director's abilities;
- b) The failure of Athletic Director to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or material violation by Athletic Director of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, including

but not limited to any such violation by Athletic Director which may have occurred during the employment of Athletic Director at another NCAA or NAIA member institution;

- d) Ten (10) working days' absence of Athletic Director from duty without the University's consent;
- e) Any conduct of Athletic Director that constitutes moral turpitude or that, in the reasonable and good faith determination of the President, would be prejudicial to the best interests of the University or the Program;
- f) The failure of Athletic Director to represent the University and the Program positively in public and private forums;
- g) The failure of Athletic Director to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, the conference, or the NCAA;
- h) The failure of Athletic Director to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, by one of Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's Board of Trustees, its conferences, or the NCAA, by one of Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program if Athletic Director knew or reasonably should have known of the violation and could have prevented it by ordinary supervision.

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

5.1.3 In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Athletic Director, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall

not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources. However, any amounts due or earned (whether monetary or other benefits) by Athletic Director as of the time of termination for good and adequate cause shall still be paid to Athletic Director by the University.

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

5.2 Termination of Athletic Director for Convenience of University.

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

5.2.2 In the event that the University terminates this Agreement for its own convenience, the University shall be obligated to pay Athletic Director, as liquidated damages and not a penalty, only the remaining, unpaid Base Salary (plus any increases) set forth in section 3.1.2, reduced by all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends. Provided, however, in the event Athletic Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Athletic Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.2 (before deductions required by law) by the gross compensation paid to Athletic Director under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Athletic Director will be entitled to continue his health insurance plan and group life insurance (but no other 3.1.1 compensation) as if he remained a University employee until the Term of this Agreement ends or until Athletic Director obtains employment or any other employment providing Athletic Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Athletic Director shall not be entitled to any other form or amount of 3.1.3 (unless earned and vested prior to date of notice of termination), 3.1.4, or 3.1.5 compensation after the University's date of notice of termination pursuant to 5.2.1. Athletic Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Athletic Director specifically agrees to inform the University within ten (10) business days of obtaining other employment, and to advise the University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end. Athletic Director agrees not to accept employment for compensation at less than the fair value of Athletic Director's services, as determined by all circumstances existing at the time of employment. Athletic Director further agrees to repay to the University all compensation paid to

him by the University after the date he obtains other employment, to which he is not entitled under this provision.

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

### 5.3 Termination by Athletic Director for Convenience.

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

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

5.3.3 If Athletic Director terminates this Agreement for his convenience he shall pay to the University, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as Athletic Director through July 31, 2020<sup>1</sup>, and as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) ~~if the Agreement is terminated on or before June 30, 2017, the sum of Two Hundred Thousand Dollars (\$200,000);~~ (b) if the Agreement is terminated between ~~July 1 February~~, 2017<sup>7</sup> and June 30, 2020<sup>19</sup> inclusive, the sum of One Hundred Thousand Dollars (\$100,000); and (c) if the Agreement is terminated after June 30, 2020<sup>19</sup> inclusive, the sum of Fifty Thousand Dollars (\$50,000). The liquidated damages shall be due and payable within sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight percent (8%) per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations, or had the opportunity to do so, and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Athletic Director, in addition to

potentially increased compensation costs if Athletic Director terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Athletic Director and the acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for the damages and injury suffered by it because of such termination by Athletic Director. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Athletic Director terminates this Agreement because of a material breach by the University.

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

#### 5.4 Termination due to Disability or Death of Athletic Director.

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

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

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

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

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

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

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

## ARTICLE 6

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

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

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

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

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





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

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

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

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

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

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

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

UNIVERSITY

ATHLETIC DIRECTOR

~~Robert Kustra~~ Martin E Schimpf, Interim  
President \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Curt Apsey \_\_\_\_\_ Date \_\_\_\_\_

Approved by the Board of Trustees on the \_\_\_\_ day of ~~June~~ February, 2015~~9~~.

## Athletic Director Curt Apsey Maximum Compensation Calculation - 2019-2021

			2018-2019	2019-2020	2020-2021
3.1.2	Annual Base Salary		\$ 360,000	\$ 360,000	\$ 360,000
3.1.3	Additional Pay based on Performance		\$ 80,000	\$ 80,000	\$ 80,000
3.1.3	Additional Pay based on Academic Achievement		\$ 40,000	\$ 40,000	\$ 40,000
	<b>Total Maximum potential annual compensation under Employment Agreement</b>		<b>\$ 480,000</b>	<b>\$ 480,000</b>	<b>\$ 480,000</b>

**BOISE STATE UNIVERSITY**

Athletic Department Academic Progress Rate (APR) History

<b>SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES</b>				
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	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
<b>Athletic Department</b>	974	991	981	991

<b>MULTI-YEAR APR (4-Year Rolling Average)</b>				
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<b>Athletic Department</b>	976	982	980	983
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*2016-17 data released by NCAA in May 2018*

**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

Athletic Director	School	Base Salary	Incentives																		
NA	Air Force	NA	NA																		
Curt Apsey	Boise State	\$ 360,000	<p>3.1.3. In addition to the Base Salary, the University shall pay Athletic Director Incentive Compensation as set forth below. Such payments shall be made within forty-five (45) days of the occurrence of the event (or in the case of the grade point average, after all finalized grades are posted) where the incentive criteria was met and Athletic Director must remain continuously employed through the payment date to receive such payments.</p> <p>(a) For Overall Department Athletic Performance: For the National Association of Directors of Collegiate Athletics (NACDA) Director's Cup National Sports Award final year end rankings:</p> <table border="1"> <thead> <tr> <th><u>Department Rank</u></th> <th><u>Incentive Pay</u></th> </tr> </thead> <tbody> <tr> <td>Top 25</td> <td>\$15,000</td> </tr> <tr> <td>Top 40</td> <td>\$10,000</td> </tr> <tr> <td>Top 60</td> <td>\$5,000</td> </tr> </tbody> </table> <p>For Academic Performance: As long as the annual departmental average National Collegiate Athletic Association ("NCAA") Academic Progress Rate ("APR") scores meet the following levels, the following applicable incentive payments will be paid by the University:</p> <table border="1"> <thead> <tr> <th><u>Department APR Score</u></th> <th><u>Incentive pay</u></th> </tr> </thead> <tbody> <tr> <td>970-979</td> <td>\$10,000</td> </tr> <tr> <td>980-989</td> <td>\$15,000</td> </tr> <tr> <td>990-999</td> <td>\$20,000</td> </tr> <tr> <td>1000</td> <td>\$25,000</td> </tr> </tbody> </table> <p>(b) For Football Bowl Game Appearances: If the University men's football team plays in an NCAA approved post-season bowl game, the following incentive payments will be made:</p>	<u>Department Rank</u>	<u>Incentive Pay</u>	Top 25	\$15,000	Top 40	\$10,000	Top 60	\$5,000	<u>Department APR Score</u>	<u>Incentive pay</u>	970-979	\$10,000	980-989	\$15,000	990-999	\$20,000	1000	\$25,000
<u>Department Rank</u>	<u>Incentive Pay</u>																				
Top 25	\$15,000																				
Top 40	\$10,000																				
Top 60	\$5,000																				
<u>Department APR Score</u>	<u>Incentive pay</u>																				
970-979	\$10,000																				
980-989	\$15,000																				
990-999	\$20,000																				
1000	\$25,000																				

**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

			<p style="text-align: center;">by the University:</p> <p style="text-align: center;">College Football Playoff (CFP) New Year's Six game = \$30,000 Non CFP bowl game = \$20,000</p> <p>(c) Additional Incentive Compensation:</p> <ol style="list-style-type: none"><li>1. If the single semester grade point average for the student-athletes collectively in a given semester is 3.0 or higher, Athletic Director shall receive \$7,500 per semester, not to exceed \$15,000 per academic year. This payment may be earned for the fall and spring semesters only, summer or intersession times are not considered except when intersession classes are transcribed as part of the fall or spring semester.</li><li>2. If the Football team wins or ties for the conference divisional championship, Athletic Director shall receive \$7,500.</li><li>3. If the Football teams wins a conference football championship game, Athletic Director shall receive \$10,000.</li><li>4. If the men's basketball team either reaches 18 regular season wins or reaches postseason play, Athletic Director shall receive \$10,000.</li><li>5. If the women's soccer team, the women's volleyball team, the women's basketball team, the women's gymnastics team, or the women's softball team reaches postseason play, Athletic Director shall receive \$7,500. The maximum payment per year is \$7,500 whether one or all five teams reach postseason competition.</li></ol> <p>(d) Each of the above incentives are intended to reward the achievement of each individual occurrence and are cumulative, provided that the cumulative total of payments made pursuant to section 3.1.3(d).1 through 3.1.3(d).5 shall in no event exceed \$50,000 annually.</p>
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**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

Joe Parker	Colorado State	\$ 410,000	Courtesy Car, Country Club Membership		
			<b>Achievement</b>		<b>Compensation</b>
			At least half of CSU's intercollegiate athletics teams record a perfect score for the Academic Progress Rate (for an individual academic year)	\$5,000	
			CSU's intercollegiate athletics teams have the Highest Graduation Rate (based on the Graduation Success Rate for an individual academic year) in the Conference (collectively, based on only those sports for which CSU has a team)	\$5,000	
			CSU's intercollegiate athletics teams have a combined cumulative Grade Point Average of 3.25 or higher (for an individual academic year)	\$5,000	
			CSU's Football Program Wins the Conference Championship	\$5,000	
			CSU's Men's Basketball Program is Selected to Play in the NCAA Championship Tournament	\$5,000	
			CSU's Women's Basketball Program is Selected to Play in the NCAA Championship Tournament	\$5,000	
			CSU's Volleyball Program is Selected to Play in the NCAA Championship Tournament	\$5,000	
			CSU Wins a Team Conference Championship in any Women's or Men's Sport other than Football, Basketball or Volleyball (limited to one such award per year)	\$5,000	
			Total Ticket Revenue for the Department's Programs Exceeds the Prior Year's Revenue	\$5,000 for 10% increase \$10,000 for 20% increase or above	
			Total Annual Giving to the CSU Ram Club Exceeds the Prior Year's Amount	\$5,000 for 10% increase	
			<b>Achievement</b>		<b>Compensation</b>
At least half of CSU's intercollegiate athletics teams record a perfect score for the Academic Progress Rate (for an individual academic year)	\$5,000				
CSU's intercollegiate athletics teams have the Highest Graduation Rate (based on the Graduation Success Rate for an individual academic year) in the Conference	\$5,000				

**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

			<table border="1"> <tr> <td>(collectively, based on only those sports for which CSU has a team)</td> <td></td> </tr> <tr> <td>Total Ticket Revenue for the Department's Programs Exceeds the Prior Year's Revenue</td> <td>\$5,000 for 10% increase \$10,000 for 20% increase or above</td> </tr> </table>	(collectively, based on only those sports for which CSU has a team)		Total Ticket Revenue for the Department's Programs Exceeds the Prior Year's Revenue	\$5,000 for 10% increase \$10,000 for 20% increase or above
(collectively, based on only those sports for which CSU has a team)							
Total Ticket Revenue for the Department's Programs Exceeds the Prior Year's Revenue	\$5,000 for 10% increase \$10,000 for 20% increase or above						
Terry Tumey	Fresno State	NA	NA				
Doug Knuth	Nevada	\$ 295,000	<p><b>5.04. <u>Automobiles.</u></b></p> <p>The University, as additional compensation to the Employee, shall make arrangements for and provide to the Employee, on a loan basis, one (1) automobile for the use of the Employee for so long as the Employee serves as the Director of Athletics. The University further agrees to provide appropriate liability and comprehensive automobile insurance to cover the Employee in his use and operation of said automobile. Employee shall be responsible for all other expenses involved in the use and operation by Employee of said automobile.</p>				

**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

Eddie Nunez	New Mexico	\$ 300,000	<p align="center">Car Donor program, Country Club membership,</p> <p>c. <u>Incentive Payments</u>: An incentive payment is a direct cash payment over and above Mr. Nuñez's base salary, in an amount to be determined by the President of the University in his exclusive discretion and subject to availability of funds. In no event shall the incentive payment exceed Thirty-Five Thousand Dollars and no cents (\$35,000.00) in any Contract Employment Year. Mr. Nuñez is eligible for an incentive payment upon achieving specified performance criteria established annually by the President associated with departmental fiscal goals, academic and athletic performance goals for the Athletics Department. Mr. Nuñez will be eligible for such incentive salary payments after completing the Contract Employment Year in which the incentive is earned. Incentive payments, if any, will be paid no later than sixty (60) days after the end of such Contract Employment Year. Mr. Nuñez understands and agrees that incentive payments, if any, may be taxable compensation to him, and that he is solely responsible for any and all tax consequences associated with this compensation</p> <p>5. <u>RETENTION BONUS</u>: Subject to the terms and conditions of this Agreement, University will pay to Mr. Nuñez an annual retention bonus of Forty Thousand Dollars and no cents (\$40,000.00) for each Contract Employment Year that Mr. Nuñez is employed under this Agreement. The Parties agree that the first installment of the Retention Bonus will not be paid until Mr. Nuñez has completed three (3) Contract Employment Years as the Director of Intercollegiate Athletics. At that time, and no later than sixty (60) days following the end of the third Contract Employment Year, Mr. Nuñez will be paid a sum totaling One Hundred Twenty Thousand Dollars and no cents (\$120,000.00) minus all required deductions. Should Mr. Nuñez fail to complete three (3) Contract Employment Years as the Director of Intercollegiate Athletics, he will forfeit the entire Retention Bonus and no amount of the Retention Bonus will be owed by the University.</p> <p>For each completed Contract Employment Year that Mr. Nuñez is the Director of Intercollegiate Athletics pursuant to this Agreement following the completion of the third Contract Employment Year, Mr. Nuñez will be paid the sum of Forty Thousand Dollars and no cents (\$40,000.00) minus all required deductions no later than sixty days following the end of that Contract Employment Year. For any year in which Mr. Nuñez does not complete the Contract Employment Year as the Director of Intercollegiate Athletics, the Retention Bonus will be forfeited and no portion will be owed by the University. Mr. Nuñez understands and agrees that the Retention Bonus is taxable compensation to him, and that Mr. Nuñez is solely responsible for the tax consequences associated therewith.</p>
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**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

John David Wicker	San Diego State	\$ 264,468	<ul style="list-style-type: none"> <li>• Car: University will supply either two courtesy cars or a per-car allowance of \$750 per month through an authorized auxiliary organization. You are responsible for all gas and maintenance of the vehicles.</li> <li>• Country Club Membership: Athletics maintains a membership at Bernardo Heights Country Club for approved university business. Any personal use of the membership must be paid directly by you.</li> <li>• Supplemental Base: \$90,000 annually, payable monthly through an authorized auxiliary organization of SDSU. This compensation is for services, including, but not limited to, radio, television and other media events and public appearances, annual balanced budgets and fundraising and development activities. This supplement will be reviewed no later than July 1, 2018 by the Vice President of Business and Financial Affairs to determine if the amount should be continued or modified.</li> <li>• Incentive compensation: \$85,000 maximum for achieving athletic and, academic performance and financial goals. Categories will include Student Athlete Academic Performance, Postseason Play, Athletic Director's Cup and Annual Budget Performance.</li> <li>• Deferred Compensation/Longevity Bonus Fund. On each anniversary date of this contract, the University will set aside \$50,000 in deferred compensation for you. It will be fully vested as of June 30, 2021 and there will be no partial vesting. You will be responsible for any and all taxes associated with this benefit.</li> </ul>
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**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

<p>Marie Tuite</p>	<p>San Jose State</p>	<p>\$ 345,108</p>	<p><b>1. Athletic Team Performance</b></p> <p>A. Overall performance in the National Association of College Director of Athletics Director's Cup:</p> <table border="0"> <tr> <td>Top 100</td> <td>\$20,000</td> </tr> <tr> <td>Top 150</td> <td>\$17,500</td> </tr> <tr> <td>Top 200</td> <td>\$15,000</td> </tr> <tr> <td>Top 250</td> <td>\$12,500</td> </tr> </table> <p>B. Conference Championships/Conference Finish:</p> <table border="0"> <tr> <td>Football – Conference Champion</td> <td>One Month's Salary</td> </tr> <tr> <td>Basketball – Men's Conference Champion</td> <td>One Month's Salary</td> </tr> <tr> <td>Basketball – Women's Conference Champion</td> <td>One Month's Salary</td> </tr> <tr> <td>All Other Sports – Conference Champion</td> <td>\$10,000 per Championship</td> </tr> <tr> <td>All Sports – 2<sup>nd</sup> Place Conference Finish</td> <td>\$ 5,000 per Sport</td> </tr> <tr> <td>All Sports – 3<sup>rd</sup> Place Conference Finish</td> <td>\$ 2,500 per Sport</td> </tr> </table> <p>C. Post Season Appearances (If Not Conference Champions):</p> <table border="0"> <tr> <td>Football Bowl Appearance</td> <td>\$15,000</td> </tr> <tr> <td>NCAA Basketball Tournament Appearance (Men or Women)</td> <td>\$15,000 + \$10,000 per win</td> </tr> <tr> <td>NIT Basketball Tournament Appearance (Men or Women)</td> <td>\$10,000 + \$5,000 per win</td> </tr> </table> <p>D. Final National Rankings:</p> <table border="0"> <tr> <td>Top 25 Final National Ranking Any Sport</td> <td>\$10,000</td> </tr> <tr> <td>Top 26-50 Final National Ranking Any Sport</td> <td>\$ 5,000</td> </tr> </table> <p>E. BCS Game – If the Football Team appears in a BCS game, the incentive payment is set at one month's salary and is exempt from the incentive plan cap as described in Section 4 of this Addendum.</p> <p><b>2. Academic Progress Rate (APR)</b></p> <p>A. Annual Divisional Average NCAA APR:</p> <table border="0"> <tr> <td>970 and Above</td> <td>\$27,500</td> </tr> <tr> <td>965-969</td> <td>\$25,000</td> </tr> <tr> <td>960-964</td> <td>\$22,500</td> </tr> <tr> <td>955-959</td> <td>\$20,000</td> </tr> <tr> <td>950-954</td> <td>\$17,500</td> </tr> <tr> <td>945-949</td> <td>\$15,000</td> </tr> <tr> <td>940-944</td> <td>\$12,500</td> </tr> <tr> <td>935-939</td> <td>\$10,000</td> </tr> </table> <p>B. Any sport that earns an APR Recognition Award (Top 10% Nationally) = \$15,000 per sport.</p>	Top 100	\$20,000	Top 150	\$17,500	Top 200	\$15,000	Top 250	\$12,500	Football – Conference Champion	One Month's Salary	Basketball – Men's Conference Champion	One Month's Salary	Basketball – Women's Conference Champion	One Month's Salary	All Other Sports – Conference Champion	\$10,000 per Championship	All Sports – 2 <sup>nd</sup> Place Conference Finish	\$ 5,000 per Sport	All Sports – 3 <sup>rd</sup> Place Conference Finish	\$ 2,500 per Sport	Football Bowl Appearance	\$15,000	NCAA Basketball Tournament Appearance (Men or Women)	\$15,000 + \$10,000 per win	NIT Basketball Tournament Appearance (Men or Women)	\$10,000 + \$5,000 per win	Top 25 Final National Ranking Any Sport	\$10,000	Top 26-50 Final National Ranking Any Sport	\$ 5,000	970 and Above	\$27,500	965-969	\$25,000	960-964	\$22,500	955-959	\$20,000	950-954	\$17,500	945-949	\$15,000	940-944	\$12,500	935-939	\$10,000
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**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

Desiree Reed-Francois	UNLV	\$ 360,500
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NA

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**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

John Hartwell	Utah State	\$ 445,000	<p>a. Academic Achievement – incentive of \$15,000 for meeting two (2) or more of the following:</p> <ul style="list-style-type: none"> <li>• All sport programs must achieve an Academic Performance Rate (APR), as determined by the NCAA, of 960 or higher.</li> <li>• 50% of student athletes (as an average of spring and fall semesters) achieve a GPA of 3.00 or higher.</li> <li>• The student athlete graduation success rate for the immediately prior year is 80% or higher.</li> </ul> <p>b. Game Guarantees – incentive of \$7,500 for game guarantees for any year in which guarantees for football are \$1,200,000 or more; and incentive of \$2,500 for each football game in which an institution that is a member of a "Power Five" Conference plays in Logan, Utah (including the University of Utah).</p> <p>c. Budget Management – incentive of \$15,000 for managing within the approved budget under the following criteria:</p> <ul style="list-style-type: none"> <li>• Establish a budget for each head coach in March of each year for the upcoming fiscal year and submit this preliminary budget to the Vice President for Business and Finance.</li> <li>• In conjunction with the Vice President for Business and Finance, submit a final balanced budget for approval by the Board of Trustees prior to the beginning of the fiscal year.</li> <li>• Manage the finances of the Athletics Department to end each fiscal year within the approved budget.</li> </ul> <p>d. Fund Raising incentive</p> <ul style="list-style-type: none"> <li>• \$5,000 for each increment of \$2,500,000 Director generates in cash, pledges and commitment letters from external sources in each fiscal year.</li> <li>• The amount raised shall be directly attributable to the efforts of the AD and/or the athletic development staff.</li> </ul> <p>6. Director shall have the full-time use of a donated vehicle or alternatively will be provided a monthly car stipend of \$500 (\$6,000 annually). Director shall also receive a car insurance allowance of \$75 per month (\$900 annually) and a gasoline credit allowance of \$125 per month. Car allowances are deemed to be for business purposes and are a taxable benefit.</p>
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**Salary and Incentive Comparisons**

**Athletic Directors in Mountain West Conference**

month. Car allowances are deemed to be for business purposes and are a taxable benefit to the Director. Director may not separately claim reimbursement for business mileage expenses from the University, but may document and claim any uncompensated business mileage or vehicle expenses separately on his personal income tax return.

**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

Tom Burman	Wyoming	\$ 200,004	<p><b>3. Housing Allowance</b> During the term of Employee's appointment as Director, Employee shall receive an annual housing allowance of \$36,000 per year paid monthly at the rate of \$3,000 per month paid from non-state, non-tuition/fee dollars. This housing allowance shall not be considered as salary and shall not be recognized as compensation qualified for participation in the Wyoming State Retirement System or TIAA.</p> <p><b>4. Courtesy Car</b> During the term of Employee's appointment as Director, Employee shall be entitled to the use of one vehicle available through the Department of Intercollegiate Athletics courtesy car program.</p> <p><b>9. Academic Performance Incentives.</b> If, in any qualifying year during the term of this Agreement:</p> <p style="padding-left: 40px;">a. At the conclusion of the full academic year, including the following summer, the annual student-athlete GPA is:</p> <p style="padding-left: 80px;">i. Above a 2.8 GPA, Employee will receive \$23,000;</p> <p style="padding-left: 80px;">ii. Above a 2.9 GPA, Employee will receive \$28,750;</p> <p style="padding-left: 80px;">iii. Above a 3.0 GPA, Employee will receive \$34,500.</p> <p style="padding-left: 40px;">b. For purposes of this incentive, the following provisions apply:</p> <p style="padding-left: 80px;">i. All student-athletes on each annual "team" shall be included in the calculation.</p> <p style="padding-left: 80px;">ii. The annual "team" shall be defined as the official squad list that is sent to the Mountain West Conference prior to the 1<sup>st</sup> date of competition.</p> <p style="padding-left: 80px;">iii. The annual student-athlete GPA shall be calculated using the following parameters:</p> <p style="padding-left: 120px;">The annual student-athlete GPA shall be calculated at the end of the full academic year including the following summer. For example, when calculating the annual student-athlete GPA for the 2017-2018 academic year, the fall 2017, spring 2018 and summer 2018 term GPAs will be utilized.</p> <p style="padding-left: 120px;">The exception to this rule will be that the summer term <i>prior to</i> the academic year will be included in the calculation for any newcomers (including those newcomers receiving an athletic scholarship and those not receiving an athletic scholarship) who took summer school prior to initial enrollment. Thus, when calculating the annual student-athlete GPA for the 2017-2018 academic year, the summer 2017 (only for newcomers taking summer school prior to initial enrollment), the fall 2017, spring 2018 and summer 2018 term GPAs will be utilized.</p>
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**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

GPA's will be utilized.

The annual student-athlete GPA will be calculated using the Quality (GPA) Hours and Quality Points earned for each term as outlined above.

- iv. The annual student-athlete shall be calculated by the Office of Academic Support (OAS).
- c. For each UW Athletics team that receives an Academic Progress Rate ("APR") score above "cut score" as determined by the NCAA legislation, the Employee shall receive \$2,300 per sport.

**10. Athletic Performance Incentives**

If, in any qualifying year during the term of this Agreement:

- a. The University of Wyoming football team receives a post-season bowl bid, the Employee shall receive an incentive award of \$23,000 for an accepted bid.
- b. The University of Wyoming football team is ranked in the Top 25 in the USA Today-Coaches Poll or the AP Poll; the University of Wyoming men's basketball team is ranked in the Top 25 in the USA Today-Coaches Poll, the AP Poll, or the Ratings Percentage Index (RPI); or the University of Wyoming women's basketball team is ranked in the Top 25 in the USA Today-Coaches Poll, the AP Poll, or the Ratings Percentage Index (RPI), the Employee shall receive an incentive of \$28,750 for each ranked team. This ranking can occur at any time (e.g., preseason, during the season, etc.).
- c. The University of Wyoming men's basketball team, women's basketball team, women's volleyball team, or women's soccer team is selected to receive an invitation to the post-season NCAA tournament, the Employee shall receive an incentive award of \$11,500 for each such accepted invitation.
- d. The University of Wyoming men's basketball team, women's basketball team, or women's volleyball team is selected to receive an invitation to any post-season tournament, the Employee shall receive an incentive award of \$5,750 for each such accepted invitation.
- e. For each MWC (or applicable conference) team that finishes in the top four (4) of the Mountain West Conference (or applicable conference), Employee will receive \$2,875 per finish. This is based on regular season finish in the following sports: football, men's basketball, women's basketball, women's volleyball and women's soccer. The incentive is based upon conference championship/tournament finish in all other sports.

**11. Marketing Incentive**

The University shall calculate total annual revenue based upon all "ticketed" athletics events where the revenue for the event is maintained by the University. This would not include any post-season UW athletic events hosted by UW where the funds are diverted back to a third party (e.g., NIT, WNIT, etc.). Total gross sales will be computed for all sports and if the total ticket revenue at the end of the year is greater than \$3,000,000, Employee will receive \$34,500. If the total ticket revenue is greater than \$3,300,000, Employee will receive \$46,000. If the total ticket revenue exceeds \$3,750,000, Employee will receive \$57,500.



**Salary and Incentive Comparisons  
Athletic Directors in Mountain West Conference**

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**Liquidated Damages  
Athletic Directors in Mountain West Conference**

Athletic Director	School	Length of Contract	2018-19 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
NA	Air Force	NA	NA	NA	NA	NA
Curt Apsey	Boise State	2/14/2019 - 7/31/2019	\$ 360,000	Yes	Sliding Scale	5.3.3 If Athletic Director terminates this Agreement for his convenience he shall pay to the University, as a repayment of compensation, benefits and perquisites paid to him under this Agreement in anticipation by the University that he would serve as Athletic Director through July 31, 2021, and as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated between February 14, 2019 and June 30, 2020 inclusive, the sum of One Hundred Thousand Dollars (\$100,000); and (b) if the Agreement is terminated after June 30, 2020, the sum of Fifty Thousand Dollars (\$50,000). The liquidated damages shall be due and payable within sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight percent (8%) per annum until paid.
Joe Parker	Colorado State	4/15/2016 - 4/5/2020	\$ 410,000	Yes	Sliding Scale	<p>In the event that the Parker so terminates this Agreement during the Term, because the Parties agree that the harm to the University cannot otherwise be reasonably calculated, Parker shall pay to the University as liquidated damages, and not as a penalty, the following amounts (referred to as "Liquidated Damages"):</p> <ul style="list-style-type: none"> <li>(i) \$1,000,000 if such termination occurs between the Effective Date and April 5, 2016;</li> <li>(ii) \$750,000 if such termination occurs during the contract year of April 6, 2016 and April 5, 2017;</li> <li>(iii) \$500,000 if such termination occurs during the contract year of April 6, 2017 and April 5, 2018;</li> <li>(iv) \$250,000 is such termination occurs during the contract year of April 6, 2018 and April 5, 2019; and</li> <li>(v) \$150,000 if such termination occurs during the contract year of April 6, 2019 and April 5, 2020.</li> </ul> <p>These amounts shall be payable in full on a lump-sum basis within thirty (30) days of the effective date of the Director's termination.</p>
Terry Tumey	Fresno State	NA	NA	NA	NA	NA
Doug Knuth	Nevada	7/1/2016 - 6/30/2019	\$ 295,000	No	NA	NA

**Liquidated Damages  
Athletic Directors in Mountain West Conference**

**ATTACHMENT 6**

Eddie Nunez	New Mexico	9/25/2017 - 9/22/2022	\$ 300,000	Yes	Flat Rate	10. <b>TERMINATION BY REQUEST OF MR. NUÑEZ:</b> Mr. Nuñez recognizes that the loss of his services to the University prior to the expiration of this Agreement, or any renewal thereof, would cause an inherent loss to the University, which cannot be estimated with certainty, nor be adequately compensated by money damages. Therefore, in the event that Mr. Nuñez unilaterally terminates this Agreement without permission of the President of the University prior to its expiration on September 24, 2022, Mr. Nuñez agrees to pay to the University one half (1/2) of his prorated base salary as described in paragraph 3(a) of this Agreement from the date of his unilateral termination through the remainder of the contract term. For purposes of this paragraph, "prorated base salary" shall mean the prorated remainder of the guaranteed base salary that would be due to be paid to Mr. Nuñez as described in paragraph 3(a) of this Agreement for the Contract Employment Year in which Mr. Nuñez unilaterally terminates his employment plus the full guaranteed base salary for the remaining Contract Employment Years, if any. Mr. Nuñez will repay to the University one half (1/2) of his prorated base salary in equal monthly installments for the remainder of the term of this Agreement. The University shall have no further liability except for prorated base salary and benefits accrued to the date of the unilateral termination.														
John David Wicker	San Diego State	11/28/2016 - 6/30/2020	\$ 264,468	Yes	Sliding Scale	<ul style="list-style-type: none"> <li>A clause that your premature termination of the contract to accept another comparable position at a Division I institution, Conference, or affiliated sports or entertainment organization (i.e. Sports Equipment Manufacturer, Broadcast network, Professional Sports team Sports Marketing company), will require your payment to the University of up to \$1,250,000 reduced by \$250,000 for each of the first four years of the contract.</li> </ul>														
Marie Tuite	San Jose State	5/17/2017 - 5/17/2022	\$ 345,108	No	NA	NA														
Desiree Reed-Francois	UNLV	At will	\$ 360,500	NA	NA	NA														
John Hartwell	Utah State	7/1/2016 - 6/30/2021	\$ 445,000	Yes	Sliding Scale	<p>b. <b>Termination by Director:</b> Director must obtain permission from the President before discussing job opportunities with principals for any other athletic position, which permission shall not be unreasonably withheld. If Director terminates this Contract <b>without cause</b> in order to accept other employment in intercollegiate athletics before June 30, 2020, then (i) Director will be entitled to payment from the University of any Annual Salary that was accrued and performance incentives that may have been awarded but remained unpaid as of the effective date of termination, and (ii) shall pay to the University, as liquidated damages, a sum determined under the following schedule:</p> <p>3. Paragraph 19.b of the 2015 Contract shall be revised to state to include the following schedule:</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Date of Termination</th> <th>Liquidated Damages</th> </tr> </thead> <tbody> <tr> <td>7/15/15 – 6/30/16</td> <td>\$1,000,000</td> </tr> <tr> <td>7/1/16 – 6/30/17</td> <td>\$800,000</td> </tr> <tr> <td>7/1/17 – 6/30/18</td> <td>\$200,000</td> </tr> <tr> <td>7/1/18 – 6/30/19</td> <td>\$100,000</td> </tr> <tr> <td>7/1/19 – 6/30/20</td> <td>\$50,000</td> </tr> <tr> <td>7/1/20 – 6/30/21</td> <td>\$0</td> </tr> </tbody> </table>	Date of Termination	Liquidated Damages	7/15/15 – 6/30/16	\$1,000,000	7/1/16 – 6/30/17	\$800,000	7/1/17 – 6/30/18	\$200,000	7/1/18 – 6/30/19	\$100,000	7/1/19 – 6/30/20	\$50,000	7/1/20 – 6/30/21	\$0
Date of Termination	Liquidated Damages																			
7/15/15 – 6/30/16	\$1,000,000																			
7/1/16 – 6/30/17	\$800,000																			
7/1/17 – 6/30/18	\$200,000																			
7/1/18 – 6/30/19	\$100,000																			
7/1/19 – 6/30/20	\$50,000																			
7/1/20 – 6/30/21	\$0																			
Tom Burman	Wyoming	7/1/2017 - 6/30/2022	\$ 200,004	None	NA	None														

\*Sliding Scale, Flat Rate, Tied to years in contract

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 14, 2019**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Academic Transitional Leave - President Chuck Staben

**REFERENCE**

November 2013                      The Idaho State Board of Education (Board) appointed Dr. Chuck Staben as President of University of Idaho

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**ALIGNMENT WITH STRATEGIC PLAN**

This agenda item is a non-strategic Board governance agenda item.

**BACKGROUND/DISCUSSION**

President Staben's employment agreement provides that he "shall be tenured at the Institution at the rank of full professor, and entitled to a position in a department within a college at the Institution where the President has competence and knowledge to teach." Dr. Staben's employment agreement as president terminates on June 15, 2019.

Dr. Staben has requested academic transitional leave during fall 2019 to prepare for a teaching assignment in January 2020 and beyond, and to consider the research that he might resume or originate as a faculty member.

The University of Idaho's Faculty Staff Handbook provides that "Academic transitional leave may apply when an academic administrator steps down from his/her administrative appointment and assumes a faculty appointment. The purpose of academic transitional leave is to prepare the employee for a new faculty appointment. Academic transitional leave is granted at the discretion of the university, must be approved by the provost, and approved by the president or designee."

Since President Staben cannot approve his own academic transitional leave, this request is brought to the Board for its consideration.

**IMPACT**

President Staben's employment agreement provides that the salary in this [tenured full professor] position "shall be not less than the highest paid full professor in that college." It is estimated that the contract value for President Staben as a tenured professor in the biology department would be approximately \$160,000 per year.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**FEBRUARY 14, 2019**

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**STAFF COMMENTS AND RECOMMENDATIONS**

Dr. Staben last taught a Biology course in Fall 2007. The academic transitional leave would be used by Dr. Staben to prepare for a teaching assignment in January 2020. This time is also anticipated to be used to evaluate Dr. Staben's research and whether that can be incorporated into the existing research programs or whether Dr. Staben would develop an alternative research program within the department. Given the advances in this field, Dr. Staben believes it would be in his best interest and that of his future students to allow him time to prepare for such an assignment.

**BOARD ACTION**

I move to approve the request by Dr. Chuck Staben for academic transitional leave for the Fall 2019 semester, provided such leave is also approved by the provost.

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