

CONSENT
DECEMBER 18, 2024

TAB	DESCRIPTION	ACTION
1	BAHR - RETIREMENT PLAN COMMITTEE – IDAHO STATE BOARD OF EDUCATION (BOARD) UPDATES TO OPTIONAL RETIREMENT PLAN (ORP) 401(A) AND SUPPLEMENTAL PLAN 403(B) AMENDMENTS	Action Item
2	BAHR - BOISE STATE UNIVERSITY - EMPLOYMENT AGREEMENT FOR ATHLETIC DIRECTOR JERAMIAH DICKEY	Action Item
3	BAHR - BOISE STATE UNIVERSITY – EMPLOYMENT CONTRACT FOR HEAD SOFTBALL COACH JUSTIN SHULTS	Action Item
4	BAHR - BOISE STATE UNIVERSITY – EMPLOYMENT CONTRACT FOR HEAD WOMEN’S BASKETBALL COACH GORDON PRESNELL	Action Item
5	BAHR - UNIVERSITY OF IDAHO – RENEWAL BY AMENDMENT OF EXISTING RETAIL LEASE FOR VANDAL STORE IN BOISE	Action Item
6	BAHR - UNIVERSITY OF IDAHO – RENEWAL OF EXISTING FARM LEASE FOR UI COLLEGE OF AGRICULTURAL AND LIFE SCIENCE’S ABERDEEN RESEARCH AND EXTENSION CENTER	Action Item
7	BAHR - UNIVERSITY OF IDAHO – RENEWAL OF EXISTING LEASE AT UI RESEARCH PARK IN POST FALLS FOR AMERICAN WAGYU ASSOCIATION	Action Item
8	BAHR - UNIVERSITY OF IDAHO – RENEWAL OF EXISTING LEASE AT UI RESEARCH PARK IN POST FALLS FOR SUN TROPICS	Action Item

9	IRSA - BOISE STATE UNIVERSITY – GENERATIVE AI IN EDUCATION GRADUATE CERTIFICATE ONLINE PROGRAM FEE	Action Item
10	IRSA - HIGHER EDUCATION RESEARCH COUNCIL REAPPOINTMENT	Action Item
11	IDE - EMERGENCY PROVISIONAL CERTIFICATE RECOMMENDATIONS	Action Item

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SUBJECT

Retirement Plan Committee – Idaho State Board of Education (Board) Optional Retirement Plan (ORP) 401(a) and Supplemental Plan 403(b) Amendments

REFERENCE

June 2011	Idaho State Board of Education (Board) approved Supplemental Retirement 403(b) Plan document
August 2013	Board approved technical amendments to plan document
February 2014	Board approved amendments to the Supplemental Retirement Benefit Plan
April 2020	Board approved allowance of plan-optional COVID-19 distribution and loan relief related to the CARES Act.
October 2020	Board approved amendments to ORP and the Supplemental Retirement Benefit Programs
December 2020	Board approved second reading of amendment to Board policy II.R authorized the Executive Director to hire consultants as recommended by the Retirement Plan Committee.
October 2021	Board approved Retirement Plan Committee proposal to hire Optional Retirement Plan consultant – Multnomah Group, Inc.
December 2022	Board received information regarding recordkeeping services for Board 401(a) Optional Retirement Plan.
January 2023	Board Office received exemption for RFP process from Idaho Division of Purchasing.
December 2023	Board approved Fidelity as the 401(a) Optional Retirement Plan's sole provider of Defined Contribution Recordkeeping Services for the State Board of Education, effective December 2, 2024.

APPLICABLE STATUTES, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections II.K.2. and II.R.
Idaho Code §§ 33-107A, 33-107B, 33-107C
Idaho Code § 59-513

BACKGROUND

Board Policy II.R. creates the Retirement Plan Committee (RPC) which is charged with “stewardship of the retirement plans sponsored by the Board for the exclusive benefit of participants and their beneficiaries.” The Board-sponsored plans include the 401(a) Optional Retirement Plan (ORP), and the 403(b) Supplemental Plan and 457(b) Voluntary Deferred Compensation Plan. The Board has authority to manage and control the Plans’ operation and administration. The Board retains exclusive authority to amend the Plans and select trustees/custodians.

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In December 2023, the Board approved Fidelity Investments as the sole provider of Defined Contribution Recordkeeping Services for the Idaho State Board of Education Optional Retirement Program (ORP) beginning in December 2024. Board staff has been diligently working with Fidelity Investments since June 2024 in preparation for consolidating and transitioning recordkeeping services.

DISCUSSION

Board Staff, Multnomah Group (Retirement Plan Consultant) and Reinhart Law (Retirement Plan Legal Counsel) has worked with Retirement Plan Committee members in updating plan documents for the SBOE ORP 401(a) and 403(b) programs to accurately reflect the changes made by transitioning to Fidelity Investments.

IMPACT

Board approval of the revisions contained in the attachments will bring the SBOE 401(a) and 403(b) retirement plan documents up-to-date, clarify current procedures, tighten up sections related to federal and state laws for defined contribution plans, and reflect the transition to Fidelity Investments.

ATTACHMENTS

Attachment 1 - Optional Retirement Plan (ORP) 401(a) – redline

Attachment 2 - Optional Retirement Plan (ORP) 410(a) – clean

Attachment 3 - Supplemental Plan 403(b) – redline

Attachment 4 - Supplemental Plan 403(b) – clean

Attachment 5 – Explanation of 2024 Amendments to the Idaho State Board of Education Optional Retirement Plan

STAFF COMMENTS AND RECOMMENDATIONS

The proposed updates to the 401(a) and 403(b) plans will ensure the language in both respective documents is current and in compliance with federal and state law.

Staff recommends approval.

BOARD ACTION

I move to approve amendments to the Idaho State Board of Education's Optional Retirement Plan (ORP) 401(a) and Supplemental Plan 403(b) as presented in Attachments 2 and 4.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Idaho State Board of Education
Optional Retirement Plan

A Defined Contribution Retirement Plan

~~Restated November 2001~~
~~Amendment 1, effective the first day of the first plan year beginning after~~
~~December 31, 2001~~
~~Restated December 2003~~
~~Restated to include amendments through 2008~~
~~Restated December 2011~~
~~Restated effective January 2013~~
~~Restated August 2013~~
~~Restated August 2014~~
~~Restated April 2018~~
~~References related to EITC removed December 2018~~
~~Restated October 28, 2020~~
~~Amendment 1, adopted October 29, 2021~~
~~Amendment 2, adopted November 17, 2022~~
Restated effective December 1, 2024

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Article I: Definitions

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(1)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary (ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means an employee's total annual salary (inclusive of bonuses, overtime pay and overload pay, as applicable) paid in the Plan Year not reduced by a compensation election deduction because of the application of Code Sections 125, 403(b) or 457(b). Compensation does not include the following items (even if includible in gross income):
- (a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.
 - (b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs and bonuses.
 - (c) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.
 - (d) The value of a reduction in tuition provided by an educational institution to an employee which does not qualify for exclusion from the employee's wages because of the application of Code Section 117.
 - (e) Fringe benefits (cash and noncash).

- (f) Moving expense reimbursements as defined in section 67-5337, Idaho Code.

Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996 through December 31, 2001, the OBRA '93 annual compensation limit is \$150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

- 1.7 ***Date of Employment or Reemployment*** means the effective date of the appointment for a faculty member or professional staff. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.
- 1.8 ***Eligible Employee*** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90-day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, College of Western Idaho, or College of Eastern Idaho initially appointed or hired on or after July 1, 1997 who

work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150-day period from July 1, 1997 to November 28, 1997. However, "Eligible Employee" shall exclude:

- (a) an Employee whose employment is expected to be less than five (5) months;
- (b) and
- (c) an Employee whose employment is incidental to his or her status as a student at the Institution; and
- (d) an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one-time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

Effective January 1, 2008, the term Eligible Employee shall not include a "leased employee" as defined in Code section 414(n), which defines a "leased employee" as any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

- 1.9 ***Fund Sponsor*** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.

1.10 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Board or its authorized delegate for use under this Plan.

1.11 **Hours of Service** means:

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
- (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.
- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

1.12 **Institution** means the Board and employment units under its jurisdiction, namely:

The Office of the Idaho State Board of Education

Boise State University
Idaho State University
University of Idaho
Lewis-Clark State College
College of Eastern Idaho
College of Southern Idaho
North Idaho College
College of Western Idaho

- 1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.
- 1.14 ***Limitation Year*** means a calendar year.
- 1.15 ***Normal Retirement Age*** means age 65.
- 1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.
- 1.17 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.18 ***Plan*** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.
- 1.19 ***Plan Contributions*** means the combination of Participant Plan Contributions and Institution Plan Contributions.
- 1.20 ***Plan Entry Date*** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.
- 1.21 ***Plan Year*** means January 1 through December 31.
- 1.22 ***Year of Service*** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.

Article II: Establishment of Plan

- 2.1 ***Establishment of Plan.*** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2).

It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

Article III: Eligibility for Participation

- 3.1 **Eligibility.** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at the Institution.
- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- he or she ceases to be an Eligible Employee;
 - the Plan is terminated.

Article IV: Plan Contributions

- 4.1 **Plan Contributions.** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute the percentage indicated below of the Compensation of that Institution's Participants, reduced by the amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation:

NIC, CSI, CWI and CEI: an amount equal to the Public Employee Retirement System of Idaho (PERSI) contributions rates;

UI, BSU, ISU, LCSC and the Office of the State Board of Education: nine and thirty--five one hundredths percent (9.35%); and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and §33-1078 and are subject to change as those sections are amended.

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

- 4.2 **When Contributions Are Made.** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 **Allocation of Contributions.** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.
- 4.4 **Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.

- 4.5 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.
- 4.6 ***Transfer of Funds to PERSI.*** Should an existing Plan Participant be hired into a PERSI-eligible position and no longer be eligible for Plan Contributions, the Participant may request to have all or a portion of his or her Accumulated Account transferred to PERSI through a trustee-to-trustee transfer by completing the forms required by the Board. At its sole discretion, the Board may refuse to make a transfer of assets if the Board reasonably believes the transfer could jeopardize the tax-exempt status of the Plan, or could create adverse tax consequences for the Plan.
- (a) PERSI Base Plan. If a prior PERSI participant transferred funds into the Plan upon taking a Plan-eligible position and then transfers back into a PERSI-eligible position, the Participant may request that funds be transferred to the PERSI Base Plan in order to buy back PERSI service. To be eligible to buy back PERSI service, a Participant must be employed in a PERSI-eligible position and have satisfied all other eligibility requirements. A Participant may only transfer funds to the PERSI Base Plan up to the exact amount of the determined buy back cost.
- (b) 401(k) Choice Plan. If a Participant has transferred funds to repurchase all available service credit in the PERSI Base Plan and has remaining amounts in his or her Accumulated Account, the Participant may request that the remaining amounts be transferred to the PERSI 401(k) Choice plan. All rollovers must be submitted with all required forms and documentation and are subject to the approval of the PERSI Board. Such amounts shall retain their character (e.g., employer or employee contributions) once transferred to the 401(k) Choice Plan.

The transfer of a Participant's entire Plan balance to PERSI will result in termination of the Participant's participation in the Plan and the Participant shall not be eligible for any future benefits from the Plan unless the Participant returns to Plan-eligible employment and receives additional contributions in the Plan.

4.7 Rollovers from other Plans.

- (a) Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:
 - (i) A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
 - (ii) A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
 - (iii) An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (b) Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:
 - (i) A qualified plan described in section 401(a) or 403(a) of the Code.
 - (ii) A tax sheltered annuity plan described in section 403(b) of the Code.
 - (iii) An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (c) Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

4.8 Military Service. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided to the extent required by Code section 414(u).

- (a) Effective January 1, 2009, for purposes of applying the limitations of Code section 415 as described in section 4.8 of the Plan, compensation includes differential wage payments. A "differential wage payment" is a payment which (1) is made by the Institution with respect to a period during which an individual is on active military duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the Institution if the individual were performing service for the Institution, all as defined by Code section 3401(h)(2).
- (b) Effective January 1, 2007, to the extent required by Code section 401(a)(37), if a Participant dies while performing qualified military service (within the meaning of Code section 414(u)(5)), the Participant shall be treated as having terminated employment with the Institution due to his death for purposes of any additional benefits (other than contributions relating to the period of qualified military service) provided under the Plan.

- (c) Effective December 12, 1994, a Participant who returns to employment with the Institution as an Eligible Employee during the period within which reemployment rights are guaranteed by law may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan if the Participant had remained continuously employed by the Institution throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this subsection 4.7(c) shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan at that time. A Participant may make such contributions during a period beginning on the Participant's reemployment with the Institution and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this subsection 4.7(c), the Participant's Accumulation Account will receive Institution contributions that would have been made during the same period.

- 4.9 **Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- (b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

Effective January 1, 2008, solely for purposes of applying Code section 415 limits, compensation is defined as wages within the meaning of Code section 3401(a), plus amounts that would be included in wages but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b), all as described in Treas. Reg. section 1.415(c)-2.

~~4.10 **Revenue Sharing Account.** The Plan shall record in an unallocated Plan account any amounts paid to the Plan by Fund Sponsors, and shall invest such unallocated account as directed by the Board or its delegate. As of the last day of each Plan Year, all assets remaining in the unallocated account shall be allocated among the Accumulation Accounts of Participants who have Accumulation Accounts on the last day of the Plan Year. The allocation shall be made in proportion to the value of each Participant's Accumulation Account invested in Funding Vehicles that generate revenue sharing, determined according to the Fund Sponsors' records as of the last day of the Plan Year.~~

Article V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

(a) Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)

~~(b) Corebridge Variable Annuity Life Insurance Company (VALIC)~~

~~(b)(c) Fidelity Investments~~

~~Effective with the first pay period on or after December 2, 2024, all new contributions will be sent to Fidelity. TIAA and Corebridge will remain Fund Sponsors only for historical amounts that cannot be transferred to Fidelity by the Board and for amounts that are not voluntarily transferred by the Participants. The current selection of Fund Sponsors isn't intended to limit the authority of the Board or its authorized delegate to add or delete Fund Sponsors.~~

5.2 **Fund Transfers.** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles. Effective December 2, 2024, transfers may only be made from TIAA-CREF and Corebridge to Fidelity. No transfers may be made from Fidelity to TIAA-CREF and Corebridge Funding Vehicles.

Article VI: Vesting

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

Article VII: Benefits

- 7.1 **Retirement Benefits.** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.
- 7.2 **Forms of Benefit.** ~~Unless additional forms are~~ ~~The forms of benefit are the benefit options~~ offered by the Funding Vehicles available under this Plan, a Participant may elect from the following Forms of Benefit. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:
- ~~(a) Lump sum payments;~~
 - ~~(b) Installment payments under a systematic withdrawal plan; or~~
 - ~~(a) Partial withdrawals~~ ~~Single life annuities as provided under the Funding Vehicle contract.~~
 - ~~(b) Joint and survivor annuities as provided under the Funding Vehicle contract.~~
 - ~~(c) Cash withdrawals to the extent the Funding Vehicle permits.~~
 - ~~(d) Fixed period annuities, as permitted by the Funding Vehicle contract.~~
 - ~~(e) Retirement Transition Benefit.~~
 - ~~(f)(c) Such other annuity and withdrawal options as provided under the Funding Vehicle contract.~~
- 7.3 **Retirement Transition Benefit.** ~~As allowed by the Funding Vehicle, u~~Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one-time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.
- 7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary (ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).
- 7.5 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary (ies) by the Fund Sponsor.

7.6 Minimum Distribution Requirements. No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Code section 401(a)(9) (including the incidental death benefit requirements of Code section 401(a)(9)(G) and Treasury Regulations 1.409(a)(9)-1 through 1.401(a)(9)-8), all as applicable to governmental plans. The requirements of this section shall take precedence over any inconsistent provisions of the Plan. All distributions shall begin not later than the April 1 following the later of the calendar year in which the Participant either attains age 73 (72 if the Participant attained age 70-1/2 on or after January 1, 2020 and attained age 72 prior to January 1, 2023, and 70-1/2 if the Participant attained age 70-1/2 on or before December 31, 2019) or terminates employment with the Institution April 1 immediately following the calendar year in which the Participant reaches age 70-1/2, or effective January 1, 2020, age 72, or in which the Participant subsequently retires from employment with the Institution ("Required Beginning Date"). Subject to each Funding Vehicle's procedures, if a participant has not taken a distribution as required by Code section 401(a)(9) by the participant's Required Beginning Date, the participant shall automatically receive a distribution in the amount required to comply with the Code and applicable Regulations.

Notwithstanding any provision of this section 7.5 a Participant or beneficiary who would have been required to receive required minimum distributions for 2020 but for the enactment of Code section 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are (a) equal to the 2020 RMDs or (b) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those distributions for 2020 unless the Participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving distributions described in the preceding sentence.

There shall be no new annuity starting date upon recommencement of required minimum distributions if suspended in accordance with this provision.

7.67.7 Direct Rollovers. This section applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to

separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

For this section, the following definitions apply:

- (a) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and, for any distributions after 12/31/99, any hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).
- (b) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401(a) or 403(a) of the Code, that accepts the distributee's eligible rollover distribution, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Code section 408A, subject to the adjusted gross income limits of Code section 408A(c)(3)(B), if applicable, and subject to the distribution rules of Code section 408A(d)(3). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
- (c) **Distributee:** A distributee includes an employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

~~7.77.8~~ ***Distribution to IRA of Nonspouse Beneficiary.*** A Participant's nonspouse Beneficiary may elect payment of any portion of the deceased Participant's account in a direct trustee to trustee transfer to an individual retirement account or annuity described in section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this section, a trust maintained for the benefit of one or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's Required Beginning Date as defined in section 7.5, the required minimum distribution in the year of death may not be transferred according to this section. The requirements of section 402(c)(11) of the Code apply to distributions under this section.

~~7.87.9~~ ***Mandatory Distribution of Small Amounts.*** The Plan shall make a mandatory distribution of a Participant's Account which is valued at \$~~75~~,000 or less at the time of distribution. Participant or Beneficiary consent to a mandatory distribution shall not be required. A mandatory distribution shall be made no earlier than 30 days from the date the Plan provides notice of the right to elect payment in a direct rollover, pursuant to Code section 402(f), and no later than an administratively feasible date following the end of the Plan Year in which the Participant's employment with the Employer terminates. Mandatory distributions shall be paid in a single lump sum cash payment, and in accordance with Code section 401(a)(31)(B), if the Participant or Beneficiary does not elect to have such distribution paid to an Eligible Retirement Plan in a direct rollover or receive the distribution directly, the Plan will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan if the Participant has not yet attained Normal Retirement Age. Notwithstanding the foregoing, if the distribution is not an eligible rollover distribution, the distribution will be made in a single lump sum cash payment.

7.10 Coronavirus Related Distributions. To the extent allowed by the Fund Sponsor, effective March 27, 2020 through December 31, 2020, an eligible Participant (as defined below) who is otherwise eligible for a distribution may elect to receive one or more distributions of any portion of the vested value of his Account not to exceed \$100,000.

(a) Eligibility. A Participant is eligible for a Coronavirus Related Distribution under this section 7.9 if he certifies that he satisfies one of the following criteria:

- (i) the Participant, the Participant's Spouse or the Participant's dependent (as defined in Code section 152 without regard to Code section 152(d)(1)(B)) was diagnosed with the virus SARS-CoV 2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
- (ii) the Participant, the Participant's Spouse or a member of the Participant's household experienced adverse financial consequences as a result of:

- (A) being quarantined, furloughed, laid off or having his or her work hours reduced due to such virus or disease;
- (B) being unable to work due to lack of child care due to such virus or disease;
- (C) closing or reducing hours of a business owned or operated by the Participant, the Participant's Spouse, or a member of the Participant's household;
- (D) experiencing a reduction in pay, rescinded job offer or delayed start date for a job because of COVID-19; or
- (E) meeting such other factors as may be issued in Treasury guidance.

For purposes of this section 7.9(a)(ii), a member of a Participant's household is defined as an individual who shares the Participant's principal residence.

(a)(b) Repayment. A Participant is permitted, but is not required, to repay his Coronavirus Related Distribution(s) to the Plan in full or in part within three years of the date of the distribution in accordance with procedures established by the Plan Administrator. Any repayment made to the Plan shall not exceed the aggregate amount of the Participant's Coronavirus Related Distribution(s) and will be treated as an eligible rollover contribution.

Article VIII: Administration

- 8.1 ***Plan Administrator.*** The Idaho State Board of Education, located at 650 W. State Street Boise, Idaho 83720, is the administrator of this Plan and in accordance with section 8.2 has designated each institution as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan as delegated by the Board:
- 8.2 ***Authority of the Board.*** The Board has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Board shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Board will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Board may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its duties. The Board may designate a person or persons other than the Board to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 ***Action of the Board.*** Any act authorized, permitted, or required to be taken by the Board under the Plan, which has not been delegated in accordance section 8.2 "Authority of the Board," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Board under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the Board in accordance with the provisions of section 8.2 "Authority of the Board." Any action taken by the Board that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Board, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Board.
- 8.4 ***Indemnification.*** Subject to the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et. seq., The Board will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Board is delegated pursuant to section 8.2 "Authority of the Board" (other than the Fund Sponsors or other entities paid to perform services related to the Plan) arising out of any action (or inaction) relating to this plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of

incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.

- 8.5 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.
- 8.6 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.7 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.
- 8.8 **Administrative Expenses.** Reasonable expenses incurred in the proper administration of the Plan may be paid from the Trust Fund. At its discretion, the Board may charge reasonable Plan administrative expenses to the Accumulation Accounts of Participants on a pro rata basis, or another reasonable basis as determined by the Board.

Article IX: Amendment and Termination

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Board reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of the Board or its authorized delegate. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Board or its authorized delegate will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article X: Miscellaneous

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.
- 10.6 ***Governing Law.*** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.
- 10.7 ***Forfeitures.*** Any amounts forfeited under the Plan shall be used to pay expenses incurred by the Plan no later than the close of the Plan Year following the Plan Year in which the forfeiture occurred. In the event forfeitures exceed authorized Plan expenses, such forfeitures shall be allocated to Participant Accumulation

Accounts on a pro rata basis. The Plan will comply with applicable Internal Revenue Service regulations relating to forfeitures.

Article XI: Trust Provisions

- 11.1 ***Establishment of Trust.*** The Board shall enter into an agreement or agreements with one or more Trustees, pursuant to which the Trustee(s) shall receive and hold in trust all contributions and income paid into the Trust Fund (as defined below). The Trust Fund shall consist of mutual funds available under the Plan as investment options and all other Plan assets, except that TIAA-CREF annuity contracts or certificates (and any other annuity contracts that satisfy the requirements of §401(f) of the Code) shall not be part of the Trust Fund. It shall be prohibited at any time for any part of the Trust Fund (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and Beneficiaries except as otherwise permitted under the Code.
- 11.2 ***Nontransferability or Alienation of Benefits.*** No right or interest of a Plan Participant or Beneficiary shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) or to a lien or levy on behalf of the Internal Revenue Service.
- 11.3 ***Appointment of Successor and Additional Trustees.*** The Board may at any time and from time to time appoint successor Trustees and/or additional Trustees. The appointment of a successor and/or an additional Trustee shall become effective upon such Trustee's written acceptance of such appointment. Upon acceptance of the appointment, each successor and/or additional Trustee shall have all the powers and duties of a Trustee. Except to the extent otherwise provided under ERISA, no successor or additional Trustee shall be personally liable for any act or omission which occurred prior to the time he or she became a Trustee.

IN WITNESS WHEREOF, the Board has caused this instrument to be executed by its duly authorized representative effective on this 28th day of Oct 20240.

Name: Matt Freeman

Signature: _____

Title: -Executive Director

Idaho State Board of Education
Optional Retirement Plan

A Defined Contribution Retirement Plan

Restated effective December 1, 2024

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Article I: Definitions

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(1)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary (ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means an employee's total annual salary (inclusive of bonuses, overtime pay and overload pay, as applicable) paid in the Plan Year not reduced by a compensation election deduction because of the application of Code Sections 125, 403(b) or 457(b). Compensation does not include the following items (even if includible in gross income):
- (a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.
 - (b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs and bonuses.
 - (c) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.
 - (d) The value of a reduction in tuition provided by an educational institution to an employee which does not qualify for exclusion from the employee's wages because of the application of Code Section 117.
 - (e) Fringe benefits (cash and noncash).

- (f) Moving expense reimbursements as defined in section 67-5337, Idaho Code.

Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996 through December 31, 2001, the OBRA '93 annual compensation limit is \$150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

- 1.7 ***Date of Employment or Reemployment*** means the effective date of the appointment for a faculty member or professional staff. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.
- 1.8 ***Eligible Employee*** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90-day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, College of Western Idaho, or College of Eastern Idaho initially appointed or hired on or after July 1, 1997 who

work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150-day period from July 1, 1997 to November 28, 1997. However, "Eligible Employee" shall exclude:

- (a) an Employee whose employment is expected to be less than five (5) months;
- (b) and
- (c) an Employee whose employment is incidental to his or her status as a student at the Institution; and
- (d) an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one-time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

Effective January 1, 2008, the term Eligible Employee shall not include a "leased employee" as defined in Code section 414(n), which defines a "leased employee" as any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

- 1.9 **Fund Sponsor** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.

1.10 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Board or its authorized delegate for use under this Plan.

1.11 **Hours of Service** means:

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
- (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.
- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

1.12 **Institution** means the Board and employment units under its jurisdiction, namely:

The Office of the Idaho State Board of Education

Boise State University
Idaho State University
University of Idaho
Lewis-Clark State College
College of Eastern Idaho
College of Southern Idaho
North Idaho College
College of Western Idaho

- 1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.
- 1.14 ***Limitation Year*** means a calendar year.
- 1.15 ***Normal Retirement Age*** means age 65.
- 1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.
- 1.17 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.18 ***Plan*** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.
- 1.19 ***Plan Contributions*** means the combination of Participant Plan Contributions and Institution Plan Contributions.
- 1.20 ***Plan Entry Date*** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.
- 1.21 ***Plan Year*** means January 1 through December 31.
- 1.22 ***Year of Service*** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.

Article II: Establishment of Plan

- 2.1 ***Establishment of Plan.*** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2).

It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

Article III: Eligibility for Participation

- 3.1 **Eligibility.** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at the Institution.
- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- he or she ceases to be an Eligible Employee;
 - the Plan is terminated.

Article IV: Plan Contributions

- 4.1 **Plan Contributions.** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute the percentage indicated below of the Compensation of that Institution's Participants, reduced by the amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation:

NIC, CSI, CWI and CEI: an amount equal to the Public Employee Retirement System of Idaho (PERSI) contributions rates;

UI, BSU, ISU, LCSC and the Office of the State Board of Education: nine and thirty--five one hundredths percent (9.35%); and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and §33-1078 and are subject to change as those sections are amended.

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

- 4.2 **When Contributions Are Made.** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 **Allocation of Contributions.** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.
- 4.4 **Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.

- 4.5 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.
- 4.6 ***Transfer of Funds to PERSI.*** Should an existing Plan Participant be hired into a PERSI-eligible position and no longer be eligible for Plan Contributions, the Participant may request to have all or a portion of his or her Accumulated Account transferred to PERSI through a trustee-to-trustee transfer by completing the forms required by the Board. At its sole discretion, the Board may refuse to make a transfer of assets if the Board reasonably believes the transfer could jeopardize the tax-exempt status of the Plan, or could create adverse tax consequences for the Plan.
- (a) PERSI Base Plan. If a prior PERSI participant transferred funds into the Plan upon taking a Plan-eligible position and then transfers back into a PERSI-eligible position, the Participant may request that funds be transferred to the PERSI Base Plan in order to buy back PERSI service. To be eligible to buy back PERSI service, a Participant must be employed in a PERSI-eligible position and have satisfied all other eligibility requirements. A Participant may only transfer funds to the PERSI Base Plan up to the exact amount of the determined buy back cost.
- (b) 401(k) Choice Plan. If a Participant has transferred funds to repurchase all available service credit in the PERSI Base Plan and has remaining amounts in his or her Accumulated Account, the Participant may request that the remaining amounts be transferred to the PERSI 401(k) Choice plan. All rollovers must be submitted with all required forms and documentation and are subject to the approval of the PERSI Board. Such amounts shall retain their character (e.g., employer or employee contributions) once transferred to the 401(k) Choice Plan.

The transfer of a Participant's entire Plan balance to PERSI will result in termination of the Participant's participation in the Plan and the Participant shall not be eligible for any future benefits from the Plan unless the Participant returns to Plan-eligible employment and receives additional contributions in the Plan.

4.7 *Rollovers from other Plans.*

- (a) Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:
 - (i) A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
 - (ii) A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
 - (iii) An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (b) Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:
 - (i) A qualified plan described in section 401(a) or 403(a) of the Code.
 - (ii) A tax sheltered annuity plan described in section 403(b) of the Code.
 - (iii) An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (c) Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

4.8 *Military Service.* Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided to the extent required by Code section 414(u).

- (a) Effective January 1, 2009, for purposes of applying the limitations of Code section 415 as described in section 4.8 of the Plan, compensation includes differential wage payments. A "differential wage payment" is a payment which (1) is made by the Institution with respect to a period during which an individual is on active military duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the Institution if the individual were performing service for the Institution, all as defined by Code section 3401(h)(2).
- (b) Effective January 1, 2007, to the extent required by Code section 401(a)(37), if a Participant dies while performing qualified military service (within the meaning of Code section 414(u)(5)), the Participant shall be treated as having terminated employment with the Institution due to his death for purposes of any additional benefits (other than contributions relating to the period of qualified military service) provided under the Plan.

- (c) Effective December 12, 1994, a Participant who returns to employment with the Institution as an Eligible Employee during the period within which reemployment rights are guaranteed by law may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan if the Participant had remained continuously employed by the Institution throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this subsection 4.7(c) shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan at that time. A Participant may make such contributions during a period beginning on the Participant's reemployment with the Institution and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this subsection 4.7(c), the Participant's Accumulation Account will receive Institution contributions that would have been made during the same period.

- 4.9 **Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- (b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

Effective January 1, 2008, solely for purposes of applying Code section 415 limits, compensation is defined as wages within the meaning of Code section 3401(a), plus amounts that would be included in wages but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b), all as described in Treas. Reg. section 1.415(c)-2.

Article V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

- (a) Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)
- (b) Corebridge
- (c) Fidelity Investments

Effective with the first pay period on or after December 2, 2024, all new contributions will be sent to Fidelity. TIAA and Corebridge will remain Fund Sponsors only for historical amounts that cannot be transferred to Fidelity by the Board and for amounts that are not voluntarily transferred by the Participants.

5.2 **Fund Transfers.** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles. Effective December 2, 2024, transfers may only be made from TIAA-CREF and Corebridge to Fidelity. No transfers may be made from Fidelity to TIAA-CREF and Corebridge Funding Vehicles.

Article VI: Vesting

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

Article VII: Benefits

- 7.1 **Retirement Benefits.** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.
- 7.2 **Forms of Benefit.** Unless additional forms are offered by the Funding Vehicles available under this Plan, a Participant may elect from the following Forms of Benefit:
- (a) Lump sum payments;
 - (b) Installment payments under a systematic withdrawal plan; or
 - (c) Partial withdrawals.
- 7.3 **Retirement Transition Benefit.** As allowed by the Funding Vehicle, unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one-time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.
- 7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary (ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).
- 7.5 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary (ies) by the Fund Sponsor.
- 7.6 **Minimum Distribution Requirements.** No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Code section 401(a)(9) (including the incidental death benefit requirements of Code section 401(a)(9)(G) and Treasury Regulations 1.409(a)(9)-1 through 1.401(a)(9)-8), all as applicable to governmental plans. The requirements of this section shall take precedence over any inconsistent provisions of the Plan. All distributions shall begin not later than the April 1 following the later of the calendar year in which the Participant either attains age 73 (72 if the Participant attained age 70-1/2 on or after January 1, 2020 and attained age 72 prior to January 1, 2023, and 70-1/2 if the Participant attained age 70-1/2 on or before December 31, 2019) or terminates employment with the Institution("Required Beginning Date"). Subject to each Funding Vehicle's procedures, if a participant has not taken a distribution as required by Code section 401(a)(9) by the participant's Required Beginning Date,

the participant shall automatically receive a distribution in the amount required to comply with the Code and applicable Regulations.

Notwithstanding any provision of this section 7.5 a Participant or beneficiary who would have been required to receive required minimum distributions for 2020 but for the enactment of Code section 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are (a) equal to the 2020 RMDs or (b) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those distributions for 2020 unless the Participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving distributions described in the preceding sentence.

There shall be no new annuity starting date upon recommencement of required minimum distributions if suspended in accordance with this provision.

- 7.7 **Direct Rollovers.** This section applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

For this section, the following definitions apply:

- (a) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for

net unrealized appreciation with respect to employer securities); and, for any distributions after 12/31/99, any hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).

- (b) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401(a) or 403(a) of the Code, that accepts the distributee's eligible rollover distribution, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Code section 408A, subject to the adjusted gross income limits of Code section 408A(c)(3)(B), if applicable, and subject to the distribution rules of Code section 408A(d)(3). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
- (c) **Distributee:** A distributee includes an employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

7.8 ***Distribution to IRA of Nonspouse Beneficiary.*** A Participant's nonspouse Beneficiary may elect payment of any portion of the deceased Participant's account in a direct trustee to trustee transfer to an individual retirement account or annuity described in section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this section, a trust maintained for the benefit of one or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's Required Beginning Date as defined in section 7.5, the required minimum distribution in the year of death may not be transferred according to this section. The requirements of section 402(c)(11) of the Code apply to distributions under this section.

7.9 ***Mandatory Distribution of Small Amounts.*** The Plan shall make a mandatory distribution of a Participant's Account which is valued at \$7,000 or less at the time of distribution. Participant or Beneficiary consent to a mandatory distribution shall

not be required. A mandatory distribution shall be made no earlier than 30 days from the date the Plan provides notice of the right to elect payment in a direct rollover, pursuant to Code section 402(f), and no later than an administratively feasible date following the end of the Plan Year in which the Participant's employment with the Employer terminates. Mandatory distributions shall be paid in a single lump sum cash payment, and in accordance with Code section 401(a)(31)(B), if the Participant or Beneficiary does not elect to have such distribution paid to an Eligible Retirement Plan in a direct rollover or receive the distribution directly, the Plan will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan if the Participant has not yet attained Normal Retirement Age. Notwithstanding the foregoing, if the distribution is not an eligible rollover distribution, the distribution will be made in a single lump sum cash payment.

7.10 ***Coronavirus Related Distributions.*** To the extent allowed by the Fund Sponsor, effective March 27, 2020 through December 31, 2020, an eligible Participant (as defined below) who is otherwise eligible for a distribution may elect to receive one or more distributions of any portion of the vested value of his Account not to exceed \$100,000.

- (a) Eligibility. A Participant is eligible for a Coronavirus Related Distribution under this section 7.9 if he certifies that he satisfies one of the following criteria:
 - (i) the Participant, the Participant's Spouse or the Participant's dependent (as defined in Code section 152 without regard to Code section 152(d)(1)(B)) was diagnosed with the virus SARS-CoV 2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
 - (ii) the Participant, the Participant's Spouse or a member of the Participant's household experienced adverse financial consequences as a result of:
 - (A) being quarantined, furloughed, laid off or having his or her work hours reduced due to such virus or disease;
 - (B) being unable to work due to lack of child care due to such virus or disease;
 - (C) closing or reducing hours of a business owned or operated by the Participant, the Participant's Spouse, or a member of the Participant's household;
 - (D) experiencing a reduction in pay, rescinded job offer or delayed start date for a job because of COVID-19; or

- (E) meeting such other factors as may be issued in Treasury guidance.

For purposes of this section 7.9(a)(ii), a member of a Participant's household is defined as an individual who shares the Participant's principal residence.

- (b) Repayment. A Participant is permitted, but is not required, to repay his Coronavirus Related Distribution(s) to the Plan in full or in part within three years of the date of the distribution in accordance with procedures established by the Plan Administrator. Any repayment made to the Plan shall not exceed the aggregate amount of the Participant's Coronavirus Related Distribution(s) and will be treated as an eligible rollover contribution.

Article VIII: Administration

- 8.1 **Plan Administrator.** The Idaho State Board of Education, located at 650 W. State Street Boise, Idaho 83720, is the administrator of this Plan and in accordance with section 8.2 has designated each institution as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan as delegated by the Board:
- 8.2 **Authority of the Board.** The Board has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Board shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Board will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Board may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its duties. The Board may designate a person or persons other than the Board to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 **Action of the Board.** Any act authorized, permitted, or required to be taken by the Board under the Plan, which has not been delegated in accordance section 8.2 "Authority of the Board," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Board under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the Board in accordance with the provisions of section 8.2 "Authority of the Board." Any action taken by the Board that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Board, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Board.
- 8.4 **Indemnification.** Subject to the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et. seq., The Board will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Board is delegated pursuant to section 8.2 "Authority of the Board" (other than the Fund Sponsors or other entities paid to perform services related to the Plan) arising out of any action (or inaction) relating to this plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of

incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.

- 8.5 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.
- 8.6 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.7 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.
- 8.8 **Administrative Expenses.** Reasonable expenses incurred in the proper administration of the Plan may be paid from the Trust Fund. At its discretion, the Board may charge reasonable Plan administrative expenses to the Accumulation Accounts of Participants on a pro rata basis, or another reasonable basis as determined by the Board.

Article IX: Amendment and Termination

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Board reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of the Board or its authorized delegate. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Board or its authorized delegate will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article X: Miscellaneous

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.
- 10.6 ***Governing Law.*** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.
- 10.7 ***Forfeitures.*** Any amounts forfeited under the Plan shall be used to pay expenses incurred by the Plan no later than the close of the Plan Year following the Plan Year in which the forfeiture occurred. In the event forfeitures exceed authorized Plan expenses, such forfeitures shall be allocated to Participant Accumulation

Accounts on a pro rata basis. The Plan will comply with applicable Internal Revenue Service regulations relating to forfeitures.

Article XI: Trust Provisions

- 11.1 ***Establishment of Trust.*** The Board shall enter into an agreement or agreements with one or more Trustees, pursuant to which the Trustee(s) shall receive and hold in trust all contributions and income paid into the Trust Fund (as defined below). The Trust Fund shall consist of mutual funds available under the Plan as investment options and all other Plan assets, except that TIAA-CREF annuity contracts or certificates (and any other annuity contracts that satisfy the requirements of §401(f) of the Code) shall not be part of the Trust Fund. It shall be prohibited at any time for any part of the Trust Fund (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and Beneficiaries except as otherwise permitted under the Code.
- 11.2 ***Nontransferability or Alienation of Benefits.*** No right or interest of a Plan Participant or Beneficiary shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) or to a lien or levy on behalf of the Internal Revenue Service.
- 11.3 ***Appointment of Successor and Additional Trustees.*** The Board may at any time and from time to time appoint successor Trustees and/or additional Trustees. The appointment of a successor and/or an additional Trustee shall become effective upon such Trustee's written acceptance of such appointment. Upon acceptance of the appointment, each successor and/or additional Trustee shall have all the powers and duties of a Trustee. Except to the extent otherwise provided under ERISA, no successor or additional Trustee shall be personally liable for any act or omission which occurred prior to the time he or she became a Trustee.

IN WITNESS WHEREOF, the Board has caused this instrument to be executed by its duly authorized representative effective on this ____th day of _____ 2024.

Name: _____

Signature: _____

Title: _____

AMENDMENTS TO THE IDAHO STATE BOARD OF EDUCATION
TAX DEFERRED 403(b) PLAN

Purpose of Amendments: Amend the Idaho State Board of Education Tax Deferred 403(b) Plan ("Plan") to clarify the term Individual Agreement and allow Roth elective deferrals for State Board and Lewis-Clark employees.

1. Amend Section 1.15 of the Plan to read as follows effective December 2, 2024:

"Individual Agreement": The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract. This term includes both individual and group accounts and contracts.

2. Amend Section 5.2 of the Plan to read as follows effective December 2, 2024:

Small Account Balances. The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed ~~\$75~~,000 (determined without regard to any separate account that holds rollover contributions under Section 6.1) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

3. Amend Section 10.1 of the Plan to read as follows:

Roth Elective Deferrals Are Permitted. ~~TEffective January 1, 2009,~~ the Plan accepts Roth Elective Deferrals as described in this Section 10. Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals for all Plan purposes except as provided in this Section 10. Effective December 2, 2024, ~~Notwithstanding the foregoing,~~ Participants who are Employees of the Office of the Idaho State Board of Education and Lewis-Clark State College are also ~~not~~ eligible to make Roth Elective Deferrals under the Plan.

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Small Account Balances. The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$7,000 (determined without regard to any separate account that holds rollover contributions under Section 6.1) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

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**EXPLANATION OF 2024 AMENDMENTS TO THE IDAHO STATE BOARD OF
EDUCATION OPTIONAL RETIREMENT PLAN**

Article IV: Plan Contributions. Fidelity is taking over as the sole recordkeeper of the ORP. There will no longer be a Revenue Sharing Account, so this provision is being deleted.

Article V: Funding Vehicles. The amendments to Article 5 reflect the addition of Fidelity and Fidelity's role as the sole recordkeeper accepting contributions after December 2, 2024. While TIAA and Corebridge may continue to hold ORP assets, new contributions will not be received by either company. Additionally, ORP Participants may transfers assets out of TIAA and Corebridge but not to them.

Article VII: Benefits.

- Fidelity will be offering different forms of benefit, so the changes to Section 7.2 reflect the new distribution options.
- Federal law requires that a Participant commence their retirement benefits no later than the Participant's required start date. This was historically the April 1 after attaining age 70-1/2. Recent tax law changes delayed the required start date for Participants' benefits, first to age 72 then to age 73. The changes to Section 7.6 reflect this delay.
- Additionally, as part of the CARES Act in response to COVID-19, 2020 required minimum distributions were waived. The changes to Section 7.6 reflect the waiver that occurred back in 2020.
- The ORP automatically distributes a Participant's small account after termination of employment. Previously, the definition of small account under the Internal Revenue Code was \$5,000. This was recently increased to \$7,000. The amendments to Section 7.9 reflect this increase.
- The CARES Act further allowed certain Participants to receive a COVID distribution, which had preferred tax treatment. The changes to Section 7.10 reflect those distributions that were made available to certain ORP Participants in 2020.

Article X: Miscellaneous. The amendments to Section 10.7 provide that in the event there are forfeitures, they will be used to pay ORP expenses or be allocated to Participant accounts. There will not be significant forfeitures because Participants are 100% vested. However, many plans include this information to address any forfeitures that may exist.

BOISE STATE UNIVERSITY

SUBJECT

Employment Agreement for Athletic Director Jeramiah Dickey

REFERENCE

March 2021

Board approved a five-year employment agreement for Jeramiah Dickey

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is requesting approval to update and extend a contract for its Athletic Director, Jeramiah Dickey. In March 2021, the Board approved a five year contract naming Dickey the Athletic Director following a national search completed by Collegiate Sports Associates.

Under Dickey's leadership , Boise State Athletics has had numerous successes including:

- Implementation of the What's Next Initiative - a strategic roadmap to enhance the trajectory and sustainability of Bronco Athletics. The multi-year plan cements Boise State as a leader in the industry by strengthening four key areas: infrastructure, revenue generation, student-athlete experience, and marketability.
- Three straight years of \$20+ million raised annually, with the all-time single-year fundraising record of \$24.1 million in 2022.
- Launched Broncos United, an internal initiative that focuses on the investment in its most important asset - its people. The initiative keys on six areas to create a holistic environment of supporting student-athletes, coaches, and staff.
- 27 team and individual conference championships, 34 team post-season appearances, and 11 individual post-season appearances.
- Earned 21 All-Americans, 34 coach and student-athlete conference awards, and more than 230 all-conference honorees.
- Department academic records:
 - 3.42 GPA in Spring 2024,
 - 94% Graduation Success Rate
 - Academic progress Rate of 991
- Sold out all 6 home games in football for 2024.
- Highest number of football and men's basketball season tickets sold for the 2024-2025 academic year.
- More than 50 facility improvements have been completed, while 38 are ongoing that impact every single student-athlete.

**CONSENT
DECEMBER 18, 2024**

- Boise State student-athletes have volunteered at nearly 400 events and more than 60 local charities and schools.

With the vision and relentless pursuit for excellence that has led to the success stated above, Boise State University requests approval to enter into a new multi-year contract with Jeramiah Dickey as the Athletic Director. A summary of the proposed terms of the agreement follows:

Term: Fixed term contract of five (5) years.

Base Compensation: \$465,000 annually. The base salary will increase annually by at least 2.5% at the beginning of each fiscal year, starting in Fiscal Year 2026, which may include Change in Employee Compensation (CEC).

Signing Bonus: A one-time signing bonus payment of \$75,000 will be paid within forty-five (45) days after the execution of the agreement.

Retention Bonus: A retention bonus will be paid within thirty (30) days of the dates listed below, if the Athletic Director is still employed as the Director of Athletics by the University on that date:

May 1, 2025 = \$75,000
May 1, 2026 = \$75,000
May 1, 2027 = \$75,000
May 1, 2028 = \$100,000
May 1, 2029 = \$100,000

Housing Allowance: \$54,000 annually to be paid in equal bi-weekly payments, for costs associated with housing.

Buy-Out Provision: If Athletic Director terminates this Agreement for convenience, Athletic Director shall pay, or cause to be paid, to the University, as liquidated damages and not a penalty, the following sum:

- a) \$250,000 if terminated on or before December 31, 2025; and
- b) \$175,000 if terminated between January 1, 2026 and Dec. 31, 2027; and
- c) \$100,000 if terminated between January 1, 2028 and June 30, 2029.

Incentives:

Pay for Performance – Academic:

Academic Progress Rate (APR):

If the departmental Academic Progress Rate (APR) scores meets one of the following levels, the corresponding incentive payment will be paid by the University:

**CONSENT
DECEMBER 18, 2024**

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

Grade Point Average (GPA)

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.

Pay for Performance - Athletic:

Overall Department Athletic Performance:

Team Specific Achievements:

Football team participates in conference championship	\$10,000
Football team wins the conference championship	\$10,000
Team participates in a non-CFP Bowl Game	\$20,000
Men's basketball team, either reaches 18 regular season wins or reaches post-season play	\$10,000
One of the five teams (women's soccer, women's volleyball, women's basketball, women's gymnastics or women's softball) reaches post-season play	\$10,000

College Football Playoff (CFP):

Team participates in a first-round game of the CFP (including a first-round bye)	\$25,000
Team participates in a CFP quarterfinal game	\$25,000
Team participates in a CFP semifinal game	\$50,000
Team participates in the CFP national championship	\$75,000
Team prevails as the CFP Champions	\$100,000

All incentive pay amounts will be cumulative within the categories described below and will in no event exceed the cumulative total supplemental compensation payment amounts in one contract year:

- a) \$80,000 - Overall Department Athletic Performance, Team Specific Achievements, Academic Progress Rate and Grade Point Average Incentive Pay
- b) \$275,000 - College Football Playoff (CFP)

IMPACT

The sources of funds for the Athletic Director's salary include program and media revenue, donations and other non-appropriated funds.

ATTACHMENTS

- Attachment 1 – Proposed Contract
- Attachment 2 – Redline of Proposed Contract to Model Agreement
- Attachment 3 – Redline of Proposed Contract to Current Agreement
- Attachment 4 – Maximum Compensation Calculation
- Attachment 5 – APR Summary
- Attachment 6 – Base Salary and Incentive Comparison
- Attachment 7 – Liquidated Damages Comparison

BOARD STAFF COMMENTS AND RECOMMENDATIONS^[JM1]

The proposed employment agreement is in substantial compliance with the Board-approved model contract, with a base salary of \$465,000 that increases annually by 2.5% throughout the duration of the proposed 5-year contract. Also included is a one-time signing bonus of \$75,000, annual retention bonus, and \$54,000 per year housing allowance.

The contract reflects the positive trajectory of the Boise State University's Athletic Department and includes incentives tied to both academic and athletic outcomes, ensuring performance is rewarded across key areas.

It should be noted that Board Policy II.H requires all "contracts must be submitted for Board approval prior to the contract effective date." The term of this contract starts July 1, 2024. This contract also would be the first time that the Board has approved a housing allowance for any college or university employee, other than the president.

Board staff recommends approval of the proposed multi-year employment agreement with Jeramiah Dickey as Boise State University Athletic Director. This agreement secures the continued success and leadership that has been integral to Boise State Athletics accomplishments and ensures that the university retains strong leadership in this role.

BOARD ACTION

I motion to approve the request by Boise State University to enter into a new multi-year agreement as proposed with Jeramiah Dickey, Athletic Director.

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 Jeramiah Dickey (“Athletic Director”).

ARTICLE 1

1.1 Employment. Subject to the terms and conditions of this Agreement, the University shall employ Jeramiah Dickey 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. The 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 or the President’s designee 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. In addition to the duties described herein, Athletic Director will be wholly committed to development of student-athletes and their academic success, create a clear, inspiring, and articulable vision for the Program, develop a sustainable, long-term financial plan that supports that vision, including a plan for fundraising, donor stewardship, investment in facilities and revenue generation, and demonstrate a comprehensive understanding of and commitment to meeting the highest NCAA compliance standards.

ARTICLE 2

2.1 Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on July 1, 2024 and terminating, without further notice to either party, on June 30, 2029 (the “Term”) unless terminated sooner in accordance with other provisions of this Agreement. This Agreement is subject to, and contingent upon the prior approval of the State Board of Education acting as the Board of Trustees of Boise State University, and if that approval and final execution occurs after July 1, 2024, the Agreement will be retroactive to July 1, 2024.

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. Renewal may be subject to, and contingent upon 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 Regular 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) An annual salary of \$465,000 (Base Salary), payable in bi-weekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President and approved by the Board.
- b) The Base Salary will increase by at least 2.5% at the beginning of each fiscal year. Beginning in Fiscal Year 2026, annual increases may be in addition to, or inclusive of, Change in Employee Compensation (CEC) increases, if given, at the President's discretion.
- c) A one-time signing bonus payment of \$75,000 will be paid within forty-five (45) days after the execution of this agreement and final Board of Education approval.
- d) A retention bonus will be paid within thirty (30) days of the dates listed below, if the Athletic Director is still employed as the Director of Athletics by the University on that date:
May 1, 2025 = \$75,000
May 1, 2026 = \$75,000
May 1, 2027 = \$75,000
May 1, 2028 = \$100,000
May 1, 2029 = \$100,000
- e) The University shall provide the Athletic Director with an annual allowance of \$54,000, to be paid in equal bi-weekly payments, for costs associated with housing. Athletic Director shall be solely responsible for the home, and the University shall have no responsibility in the maintenance or management thereof. Specifically, the University will not be responsible for upkeep, maintenance, utilities, insurance, property taxes, or any similar or related responsibility associated with the Athletic Director's home.
- f) The opportunity to receive such employee benefits as the University provides generally to non-faculty professional employees, provided that Athletic Director qualifies for such benefits by meeting all applicable eligibility requirements; and
- g) Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and

any separate agreement(s) relating to the vehicle; specifically, Athletic Director shall be responsible for insurance premiums for personal use of the vehicle; and

- h) Except as otherwise stated herein, 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, provided that Athletic Director qualifies for such benefits by meeting all applicable eligibility requirements; and
- i) The University shall provide Athletic Director with one full country club membership at all times during the Term of this Agreement, subject to availability, reasonable University business rules, processes and limitations which may lead to certain out of pocket expenses by Athletic Director (for example, for food, beverages, cart rentals and the like); and
- j) Athletic Director's spouse and children will be eligible for travel alongside Athletic Director for post season tournaments and bowl games.

Athletic Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Board policy as the President may determine to be necessary to meet such challenges; provided that any furlough applied to Athletic Director must be applied to all other employees of a comparable level. In the event of a furlough or other action, the actual salary paid to Athletic Director may be less than the salary stated in Section 3.1.1(a) above.

3.2 Supplemental Compensation. Each year the University shall pay supplemental Athletic Director incentive compensation as follows:

3.2.1 Athletic Team Specific Achievement Incentive Pay:

Football team:

Participates in the conference championship game	\$10,000
Wins the conference championship game	\$10,000
Participates in a non-CFP Bowl Game	\$20,000

Men's basketball team:

Wins 18 regular season games or reaches the NCAA Basketball Tournament	\$10,000
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Any one of five teams (women's soccer, women's volleyball, women's basketball, women's gymnastics or women's softball) reaches post-season play	\$10,000
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The maximum payment per year is \$10,000 whether one or all five teams reach postseason competition.

3.2.2 Academic Achievement Incentive Pay.

Academic Progress Rate:

Academic Incentive Pay may be earned for the most recent academic year if the annual department Academic Progress Rate (“APR”) ranks as follows:

- a) If the annual department APR rating is between 970-979, Athletic Director will receive \$10,000; or
- b) If the annual department APR rating is between 980-989, Athletic Director will receive \$15,000; or
- c) If the annual department APR rating is between 990-999, Athletic Director will receive \$20,000; or
- d) If the annual department APR rating is 1000, Athletic Director will receive \$25,000.

Grade Point Average:

Grade Point Average Pay may be earned for each academic year if the single semester grade point average for the student-athletes collectively in the following semesters are 3.0 or higher:

- a) Fall Semester = \$7,500
- b) Spring Semester = \$7,500

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.

3.2.3 College Football Playoff (“CFP”)

Team participates in a first-round game of the CFP (including a first-round bye)	\$25,000
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Team participates in a quarterfinal game of the CFP	\$25,000
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Team participates in the semifinal game of the CFP	\$50,000
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Team participates in the national championship game of the CFP	\$75,000
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Team prevails as the College Football Playoff Champions	\$100,000
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3.2.4. Conditions for payment of Athletic and Academic Achievement supplemental compensation.

All Incentive Pay amounts pursuant to Section 3.2 shall be cumulative within each of the following sections described below and shall in no event exceed the cumulative total supplemental compensation payment amounts in any one contract Year:

- a) \$80,000 - Overall Department Athletic Performance, Athletic Team Specific Achievements, Academic Progress Rate and Grade Point Average Incentive Pay (3.2.1 and 3.2.2)
- b) \$275,000 - College Football Playoff (“CFP”) (3.2.3)

If the Athletic Director qualifies for any supplemental compensation, it shall be paid within forty-five (45) days of the occurrence, as long as the Athletic Director remains continuously employed as the Athletic Director on the date of the occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2 above. If the Athletic Director is the Athletic Director for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

Any supplemental compensation awarded for Academic Progress Rate shall be paid as soon as reasonably practicable following APR rating determination and verification by the National Collegiate Athletic Association (“NCAA”), as long as the Athletic Director remains continuously employed as the Athletic Director on that date.

Any such supplemental compensation actually paid to the Athletic Director shall be reported to the Board on an annual basis.

3.3 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 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.

3.4 Footwear; Apparel; Equipment. 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 the Department 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, Athletic Director shall submit all outside consulting agreements to the University for review and approval prior to execution. The Athletic Director shall also report such outside income to the University in accordance with Section

4.2 of this Agreement. Athletic Director further agrees that Athletic Director 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.

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

ARTICLE 4

4.1 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 1 FBS level university;

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to enable them to compete successfully and reasonably protect their health, safety, and well-being;

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

4.1.4 Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's Board of Trustees, conferences in which the University is a member (Conference), 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 Comply with additional reporting requirements, such as those in the Title IX policy and the Clery Act.

4.1.6 Make diligent, good faith efforts to maintain and cultivate effective working relationships with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, and staff;

4.1.7 Develop effective internal communications with all members of the Department so that an efficient and effective athletics program will be maintained;

4.1.8 Supervise and manage the Department to ensure, to the maximum extent possible, that all staff act in the best interest of the University, as a whole, and follow applicable University policies, State Board of Education policies, NCAA, and applicable conference rules and regulations at all times. Remain open to feedback, both positive and negative, on the performance and actions of Program staff;

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

4.1.10 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; and

4.1.11 Make every effort, with due consideration for the unique work schedules of the Program, to fully engage other campus leaders as a member of the University's executive team including participating in leadership meetings, attending leadership functions, and making efforts to collaborate directly with executive team peers.

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 (such approval not to be unreasonably withheld).

4.3 Outside Income. In accordance with NCAA rules, Athletic Director shall obtain prior written approval from the President (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 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 for the hiring and termination of Program personnel; provided, however, any decision to hire or terminate a Head Coach shall, when necessary or appropriate, be subject to approval by the President, which shall not be unreasonably withheld. Additionally, such decisions shall, when necessary or appropriate, be subject to the approval of the University's Board of Trustees.

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

4.7 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 providing 48 hours prior notice to the President. Such notice 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.

4.8 Disclosure of Criminal Proceedings, Serious Misconduct, and Discipline. Athletic Director warrants that prior to signing this Agreement, he has disclosed and will continue to disclose if he has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Athletic Director was employed, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where he was employed. "Serious misconduct" is defined as any act of harassment prohibited by law, including sexual harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or dishonesty or fiscal misconduct. Any disclosure after the date of this Agreement shall be made as soon as possible, but no later than 72 hours after Athletic Director is on notice of any accusation.

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; 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 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 (but excluding isolated, minor NCAA infractions) 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 (but excluding isolated, minor NCAA infractions) 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;
- i) A deliberate or material 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;

- j) The failure of Athletic Director to disclose any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.8 of this Agreement;
- k) The refusal or unwillingness of Athletic Director to comply with any valid or legal directive of President;
- l) Athletic Director's engagement in dishonesty, illegal conduct, or misconduct, which, in each case, is injurious to University or its reputation;
- m) Athletic Director's embezzlement, misappropriation, or fraud, whether or not related to the Athletic Director's employment with the University;
- n) Athletic Director's conviction of or plea of guilty or *nolo contendere*, or the entry of a withheld judgment to a crime what constitutes a felony or misdemeanor (but excluding traffic infractions), if such felony or misdemeanor is work-related, materially impairs the Athletic Director's ability to perform duties for the University, or results in reputational harm to the University or the State Board of Education;
- o) Athletic Director's violation of University's written policies, or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct, which violation is material, or is not material but in the University's judgment, reflects materially adversely on the University or its Program;
- p) Athletic Director's unauthorized disclosure of Confidential Information, which information and disclosure is material, or is not material, but in the University's judgment, reflects materially adversely on the University or its Program; or
- q) Athletic Director's engagement in conduct that brings University or the State Board of Education material negative publicity or into public disgrace, embarrassment, or disrepute.

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

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

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, Base Salary set forth in 3.1.1 a), and housing allowance set forth in section 3.1.1 e), reduced by all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends, or until Athletic Director obtains other employment, whichever occurs first. In addition, any unpaid supplemental compensation under section 3.2, which has been earned by Athletic Director prior to termination, would be paid.

Liquidated damages are subject to mitigation and offset such that Athletic Director must use reasonable best efforts to obtain other employment, commensurate with his skills and experience as an athletic director at a Division 1 FBS level university, during the original term of this Agreement and, in the event Athletic Director obtains other comparable employment of any kind or nature after such termination (including but not limited to consulting work for a consultant or through Athletic Director's own created entity), 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 comparable employment.

In addition, Athletic Director will be entitled to continue with the University benefits Athletic Director is eligible for as if Athletic Director remained a University employee until the end of the Term this Agreement until Athletic Director obtains employment of any kind or nature (including but not limited to consulting work for a consultant or through Athletic Director's own created entity), whichever occurs first. 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 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 Athletic Director by the University after the date he obtains other employment, to which he is not entitled under this provision. Athletic Director acknowledges and agrees that the University will withhold taxes and other payroll deductions from the payments due Athletic Director pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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 convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Athletic Director terminates this Agreement for convenience, Athletic Director shall pay, or cause to be paid, to the University, as liquidated damages and not a penalty, the following sum:

- (a) \$250,000 if the Agreement is terminated on or before December 31, 2025; and
- (b) \$175,000 if the Agreement is terminated between January 1, 2026 and December 31, 2027, inclusive; and
- (c) \$100,000 if the Agreement is terminated between January 1, 2028 and June 30, 2029, inclusive.

If Athletic Director terminates this Agreement for his convenience at a time when Dr. Marlene Tromp no longer is employed as the President at Boise State University, OR for reasons other than to accept employment with an employer which is an educational institution or professional sports team or organization, then Athletic Director shall not owe any liquidated damages to the University.

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.

If Athletic Director terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Athletic Director and the amount of liquidated damages owed shall be calculated as of the date Athletic Director begins such employment.

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

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 Supplemental Compensation earned under section 3.2, 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 Supplemental Compensation earned under section 3.2, 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 or suspension, Athletic Director agrees that he will not interfere or communicate with the University's student-athletes or coaches, 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 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 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 provided 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, identification cards, 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 or the President's Designee.

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 83725-1002

Athletic Director: Jeramiah Dickey
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. Athletic Director shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other

Dickey Contract

2024 to 2029

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CONSENT - BAHR

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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

Dr. Marlene Tromp
President

Jeramiah Dickey

Date

Date

Approved by the Board of Trustees on the ____ day of ____, 2024.

(MODEL ATHLETICS MULTI-YEAR CONTRACT)

(template adopted by Idaho State Board of Education, _____, 2018)

EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is entered into by and between _____ (Boise State University (College), the “University”) and _____ (Coach), Jeramiah Dickey (“Athletic Director”).

ARTICLE 1

1.1 ~~4.1.~~ Employment. Subject to the terms and conditions of this Agreement, the University (College) shall employ Coach Jeramiah Dickey as the head coach Athletic Director of its intercollegiate (Sport) team (Team) (or athletics program (the “Program”). Athletic Director of Athletics). Coach (Director) represents and warrants that Coach he is fully qualified to serve, and is available for employment, in this capacity.

4.2.1.2 Reporting Relationship. ~~Coach~~ The Athletic Director shall report and be responsible directly to the University (College)’s University’s President (the “President”). Athletic Director (Director) or the Director’s designee. Coach shall abide by the reasonable instructions of Director or the Director’s designee the President and shall confer with the Director President or the Director’s President’s designee as necessary on all administrative and technical matters. ~~Coach shall also be under the general supervision of the University (College)’s Chief Executive Officer (Chief Executive Officer).~~

4.3.1.3 Duties. ~~Coach Athletic Director~~ shall manage and supervise the Team Program and shall perform such other duties in the University (College)’s athletic program as the Director as the President may assign and as may be described elsewhere in this Agreement. ~~The University (College) shall have the right, at any time, In addition to reassign Coach to the duties at the University (College) other than as head coach of the Team, provided described herein, Athletic Director will be wholly committed to development of student-athletes and their academic success, create a clear, inspiring, and articulable vision for the Program, develop a sustainable, long-term financial plan that Coach’s compensation and benefits shall not be affected by any such reassignment, except supports that the opportunity vision, including a plan for fundraising, donor stewardship, investment in facilities and revenue generation, and demonstrate a comprehensive understanding of and commitment to earn supplemental compensation as provided in Sections 3.2.1 through (depending on supplemental pay provisions used) shall cease meeting the highest NCAA compliance standards.~~

ARTICLE 2

~~2.1.2.1~~ Term. -This Agreement is for a fixed-term appointment of ~~(five (5))~~ years, commencing on July 1, 2024 and terminating, without further notice to ~~Coach~~either party, on June 30, 2029 (the "Term") unless ~~sooner~~ terminated sooner in accordance with other provisions of this Agreement. This Agreement is subject to, and contingent upon the prior approval of the State Board of Education acting as the Board of Trustees of Boise State University, and if that approval and final execution occurs after July 1, 2024, the Agreement will be retroactive to July 1, 2024.

~~2.2.2.2~~ Extension or Renewal. -This Agreement is renewable solely upon an offer from the University ~~(College)~~ and an acceptance by ~~Coach~~Athletic Director, both of which must be in writing and signed by the parties. ~~Any renewal is~~Renewal may be subject to, and contingent upon the prior approval of the ~~Idaho~~ State Board of Education ~~(acting as the Board)~~ of Trustees of Boise State University. This Agreement in no way grants to ~~Coach~~Athletic Director a claim to tenure in employment, nor shall ~~Coach's~~Athletic Director's service pursuant to this Agreement count in any way toward tenure at the University ~~(College)~~.

ARTICLE 3

~~3.1~~ 3.1 ~~Regular Compensation.~~

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

- a) ~~a)~~ An annual salary of \$ per year, ~~\$465,000 (Base Salary)~~, payable in ~~biweekly~~bi-weekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the ~~Director and Chief Executive Officer~~President and approved by the Board.
- b) ~~b)~~ ~~The opportunity~~The Base Salary will increase by at least 2.5% at the beginning of each fiscal year. Beginning in Fiscal Year 2026, annual increases may be in addition to receive such employee benefits as the, or inclusive of, Change in Employee Compensation (CEC) increases, if given, at the President's discretion.
- c) A one-time signing bonus payment of \$75,000 will be paid within forty-five (45) days after the execution of this agreement and final Board of Education approval.

d) A retention bonus will be paid within thirty (30) days of the dates listed below, if the Athletic Director is still employed as the Director of Athletics by the University ~~(College)~~ on that date:

May 1, 2025 = \$75,000

May 1, 2026 = \$75,000

May 1, 2027 = \$75,000

May 1, 2028 = \$100,000

May 1, 2029 = \$100,000

e) The University shall provide the Athletic Director with an annual allowance of \$54,000, to be paid in equal bi-weekly payments, for costs associated with housing. Athletic Director shall be solely responsible for the home, and the University shall have no responsibility in the maintenance or management thereof. Specifically, the University will not be responsible for upkeep, maintenance, utilities, insurance, property taxes, or any similar or related responsibility associated with the Athletic Director's home.

f) The opportunity to receive such employee benefits as the University provides generally to non-faculty ~~exempt~~ professional employees, provided that ~~Coach~~ Athletic Director 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~~

g) ~~c) —~~ The opportunity to receive such employee benefits as the University ~~(College)~~'s Assignment of one vehicle through the University's Department of Athletics ~~(the Department)~~ trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Athletic Director shall be responsible for insurance premiums for personal use of the vehicle; and

h) Except as otherwise stated herein, 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. ~~Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee, provided that Athletic Director qualifies for such benefits; by meeting all applicable eligibility requirements; and~~

- i) ~~Coach~~ The University shall provide Athletic Director with one full country club membership at all times during the Term of this Agreement, subject to availability, reasonable University business rules, processes and limitations which may lead to certain out of pocket expenses by Athletic Director (for example, for food, beverages, cart rentals and the like); and
- j) Athletic Director's spouse and children will be eligible for travel alongside Athletic Director for post season tournaments and bowl games.

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

~~3.2~~—3.2 Supplemental Compensation

~~3.2.3. 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.~~ University shall pay supplemental Athletic Director incentive compensation as follows:

~~3.2.2 Each year the 1 Athletic Team is ranked~~ Specific Achievement Incentive Pay:

Football team:

<u>Participates in the conference championship game</u>	<u>\$10,000</u>
<u>Wins the conference championship game</u>	<u>\$10,000</u>
<u>Participates in a non-CFP Bowl Game</u>	<u>\$20,000</u>

Men's basketball team:

<u>Wins 18 regular season games or reaches the NCAA Basketball Tournament</u>	<u>\$10,000</u>
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Any one of five teams (women's soccer, women's volleyball, women's basketball, women's gymnastics or women's softball) reaches post-season play \$10,000
The maximum payment per year is \$10,000 whether one or all five teams reach postseason competition.

3.2.2 Academic Achievement Incentive Pay.

Academic Progress Rate:

Academic Incentive Pay may be earned for the most recent academic year if the annual department Academic Progress Rate ("APR") ranks as follows:

- a) If the annual department APR rating is between 970-979, Athletic Director will receive \$10,000; or
- b) If the annual department APR rating is between 980-989, Athletic Director will receive \$15,000; or
- c) If the annual department APR rating is between 990-999, Athletic Director will receive \$20,000; or
- d) If the annual department APR rating is 1000, Athletic Director will receive \$25,000.

Grade Point Average:

Grade Point Average Pay may be earned for each academic year if the single semester grade point average for the student-athletes collectively in the following semesters are 3.0 or higher:

- a) Fall Semester = \$7,500
- b) Spring Semester = \$7,500

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.

3.2.3 in the (College Football Playoff ("CFP"))

Team participates in a first-round game of the CFP (including a first-round bye) \$25,000

Team participates in a quarterfinal game of the CFP \$25,000

Team participates in the semifinal game of the CFP \$50,000

Team participates in the national rankings championship game of sport's division), the CFP
\$75,000

Team prevails as the College Football Playoff Champions \$100,000

3.2.4. Conditions for payment of Athletic and ~~if Coach continues~~ Academic Achievement supplemental compensation.

All Incentive Pay amounts pursuant to ~~be~~ Section 3.2 shall be cumulative within each of the following sections described below and shall in no event exceed the cumulative total supplemental compensation payment amounts in any one contract Year:

- a) \$80,000 - Overall Department Athletic Performance, Athletic Team Specific Achievements, Academic Progress Rate and Grade Point Average Incentive Pay (3.2.1 and 3.2.2)
- b) \$275,000 - College Football Playoff ("CFP") (3.2.3)

If the Athletic Director qualifies for any supplemental compensation, it shall be paid within forty-five (45) days of the occurrence, as long as the Athletic Director remains continuously employed as the Athletic Director on the date of the occurrence. Provided, however, if conditions beyond the control of the University ~~(College)'s head (Sport) coach as of the ensuing July 1st,~~ prevent the University ~~(College)~~ shall pay Coach from hosting home competitions at full capacity, supplemental compensation in an amount equal to ~~(amount or computation)~~ of Coach's Annual Salary in effect on ~~may be less than the date of~~ amounts in Sections 3.2 above. If the final poll, The University ~~(College)~~ shall determine Athletic Director is the appropriate manner in which it shall pay Coach Athletic Director for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

Any supplemental compensation awarded for Academic Progress Rate shall be paid as soon as reasonably practicable following APR rating determination and verification by the National Collegiate Athletic Association ("NCAA"), as long as the Athletic Director remains continuously employed as the Athletic Director on that date.

Any such supplemental compensation actually paid to the Athletic Director shall be reported to the Board on an annual basis.

3.3 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 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.

3.4 Footwear; Apparel; Equipment. Athletic Director

~~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 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).~~

~~3.2.6 (SUMMER CAMP—OPERATED BY UNIVERSITY (COLLEGE))~~
Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'s camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s (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 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.~~

~~3.2.7 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 Athletic Director~~, during official practices and games and during times when ~~Coach Athletic Director~~ or the ~~Team Department~~ is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University ~~(College)~~. ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name), or give a lecture at an event sponsored in whole or in part by (Company Name), or make other educationally related appearances as may be reasonably requested by the University (College). Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder Coach's duties and obligations as head (Sport) coach.~~ In order to avoid entering into an agreement with a competitor of ~~(Company Name), Coach any University selected vendors, Athletic Director~~ shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. ~~Coach The Athletic Director~~ shall also report such outside income to the University ~~(College)~~ in accordance with ~~NCAA (or NAIA) rules. Coach~~ Section 4.2 of this Agreement. ~~Athletic Director~~ further agrees that ~~Coach Athletic Director~~ 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.

~~3.35~~ General Conditions of Compensation. -All compensation provided by the University ~~(College)~~ to ~~Coach the Athletic Director~~ is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which ~~Coach the Athletic Director~~ participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University ~~(College)~~ to ~~Coach the Athletic Director~~, such fringe benefit shall be based only on the compensation provided pursuant to Section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

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

4.1.4.1.1 Devote Coach's Athletic Director's full time and best efforts to the performance of Coach's 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 1 FBS level university;

4.1.2.4.1.2 Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which evaluations of all Program sport participants to enable them to compete successfully and reasonably protect their health, safety, and well-being;

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

4.1.4.4.1.4 Know, recognize, and comply with all applicable laws, and with the policies, rules and regulations of the University (College), the University's Board, of Trustees, conferences in which the conference, University is a member (Conference), and the NCAA (or NAIA); supervise and take appropriate steps to ensure that Coach's assistant coaches, any other the Department's 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 President and to the Department's Department's Director of NCAA Compliance if Coach Athletic Director has reasonable cause to believe that any person or entity, including without limitation representatives of the University (College)'s University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach Athletic Director shall cooperate fully with the University (College) and the 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: (a) State Board policies; (b) University (College)'s (Faculty Staff) Handbook; (c) University (College)'s Administrative of Education (Board of Trustees) Governing Policies and Procedures and Rule Manual; (d) b) the University's Policy Manual; (c) the policies of the Department; (e) NCAA (or NAIA) rules and regulations; and (f) the rules and regulations of the (Sport) conference conferences of which the University (College) is a member;

4.1.5 Comply with additional reporting requirements, such as those in the Title IX policy and the Clery Act.

4.1.6 Make diligent, good faith efforts to maintain and cultivate effective working relationships with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, and staff;

4.1.7 Develop effective internal communications with all members of the Department so that an efficient and effective athletics program will be maintained;

4.1.8 Supervise and manage the Department to ensure, to the maximum extent possible, that all staff act in the best interest of the University, as a whole, and follow applicable University policies, State Board of Education policies, NCAA, and applicable conference rules and regulations at all times. Remain open to feedback, both positive and negative, on the performance and actions of Program staff;

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

4.1.10 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; and

4.1.11 Make every effort, with due consideration for the unique work schedules of the Program, to fully engage other campus leaders as a member of the University's executive team including participating in leadership meetings, attending leadership functions, and making efforts to collaborate directly with executive team peers.

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

4.3 NCAA (or NAIA) Rules. Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, ~~Coach Athletic Director~~ shall obtain prior written approval from the ~~University (College)'s Chief Executive Officer~~ President (such approval not to be unreasonably withheld) 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 ~~to in accordance with the 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-Department's Outside Income Reporting Form.~~ The report shall be in a format reasonably satisfactory to ~~the~~ University ~~(College)~~. In no event shall ~~Coach~~ Athletic Director accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University ~~(College)~~-booster club, University ~~(College)~~-alumni association, University ~~(College)~~ foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University ~~(College)~~, the University's Board of Trustees, the ~~conference~~ conferences in which the University is a member, or the NCAA ~~(or NAIA)~~.

4.4 Hiring Authority. ~~Coach~~ Athletic Director shall have the responsibility and ~~the~~ sole authority ~~to recommend to the Director for~~ the hiring and termination of ~~assistant coaches for the Team, but the Program~~ personnel; provided, however, any decision to hire or terminate ~~an assistant coach~~ a Head Coach shall, when necessary or appropriate, be ~~made~~ subject to approval by the ~~Director and~~ President, which shall not be unreasonably withheld. Additionally, such decisions shall, when necessary or appropriate, be subject to the approval of ~~Chief Executive Officer and the~~ University's Board of Trustees.

4.56 Scheduling. ~~Coach shall consult with, and may make recommendations to, the Director or the Director's designee~~ Athletic Director shall make decisions with respect to the scheduling of ~~Team~~ competitions, ~~but the final decision shall be made by the Director or the Director's designee~~ for sports in the Program.

4.67 Other Coaching Athletic Director Opportunities. ~~Coach Athletic Director~~ shall not, under any circumstances, interview ~~for or~~ negotiate for, ~~or accept~~ employment as ~~a coach~~ an Athletic Director 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~~ providing 48 hours prior ~~approval of notice to~~ the ~~Director, President.~~ Such ~~approval notice~~ shall not ~~unreasonably be withheld.~~ 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.

4.78 Disclosure of Criminal Proceedings, Serious Misconduct. ~~Coach, and Discipline.~~ Athletic Director warrants that prior to signing this Agreement, ~~Coach~~ he has disclosed and will continue to disclose if ~~Coach~~ he has been accused of, investigated for, convicted of, or pled guilty or no contest to ~~a~~, or received a withheld judgment for a felony or misdemeanor ~~involving~~, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Athletic Director was employed, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where ~~Coach~~ he was employed. - "Serious misconduct" is defined as any act of harassment prohibited by law, including sexual violence ~~harassment, sexual misconduct~~, domestic violence, dating violence, stalking, sexual exploitation, or ~~any assault that employs the use of a deadly weapon~~ dishonesty or ~~causes serious bodily injury.~~

~~4.8—Media Obligations. Coach must fully participate in media programs and public appearances (Programs) through fiscal misconduct. Any disclosure after 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 Agreement shall be made as soon as possible, but 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 later than 72 hours after Athletic Director is on notice of any accusation.~~

ARTICLE 5

~~5.1 5.1—Termination of Coach Athletic Director 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 with good or 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; or terminate this Agreement at any time.~~

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

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

Director is administratively responsible, or a member of any team in the ~~Team~~Program if CoachAthletic Director knew or reasonably should have known of the violation and could have prevented it by ordinary supervision-;

- ~~j)~~ j) —The failure of CoachAthletic Director to disclose Serious Misconductany criminal proceeding or accusation or finding of serious misconduct as required in Section 4.78 of this Agreement-;
- ~~k) 5.1.2~~ The refusal or unwillingness of Athletic Director to comply with any valid or legal directive of President;
- ~~l)~~ Athletic Director's engagement in dishonesty, illegal conduct, or misconduct, which, in each case, is injurious to University or its reputation;
- ~~m)~~ Athletic Director's embezzlement, misappropriation, or fraud, whether or not related to the Athletic Director's employment with the University;
- ~~n)~~ Athletic Director's conviction of or plea of guilty or *nolo contendere*, or the entry of a withheld judgment to a crime what constitutes a felony or misdemeanor (but excluding traffic infractions), if such felony or misdemeanor is work-related, materially impairs the Athletic Director's ability to perform duties for the University, or results in reputational harm to the University or the State Board of Education;
- ~~o)~~ Athletic Director's violation of University's written policies, or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct, which violation is material, or is not material but in the University's judgment, reflects materially adversely on the University or its Program;
- ~~p)~~ Athletic Director's unauthorized disclosure of Confidential Information, which information and disclosure is material, or is not material, but in the University's judgment, reflects materially adversely on the University or its Program; or
- ~~q)~~ Athletic Director's engagement in conduct that brings University or the State Board of Education material negative publicity or into public disgrace, embarrassment, or disrepute.

5.1.2 ~~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~~ ~~President~~ or the ~~Director's~~ ~~President's~~ designee ~~(to be designated in writing)~~ shall provide ~~Coach~~ ~~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. ~~Coach~~ ~~Athletic Director~~ shall then have ~~an~~ a reasonable opportunity to respond. After ~~Coach~~ ~~Athletic Director~~ responds or fails to respond, ~~the~~ University ~~(College)~~ shall notify ~~Coach, in writing, Athletic Director~~ whether, and if so when, the action will be effective.

5.1.3 ~~5.1.3~~ In the event of any termination for good or adequate cause, the ~~University (College)'s~~ University's obligation to provide compensation and benefits to ~~Coach~~ ~~Athletic Director~~, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University ~~(College)~~ shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources. 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 ~~5.1.4~~ If found by the NCAA to be in violation of NCAA ~~(NAIA)~~ regulations, ~~Coach~~ ~~Athletic Director~~ shall, in addition to the provisions of ~~Section~~ section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA ~~(NAIA)~~ enforcement procedures. This ~~Section~~ section applies to violations occurring at the University ~~(College)~~ or at previous institutions at which ~~Coach~~ ~~Athletic Director~~ was employed.

5.1.5 ~~5.2~~ In the event of non-renewal or termination of Athletic Director's employment, Athletic Director will use all accumulated annual leave prior to the end of the contract period.

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

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

5.2.2 ~~5.2.2~~ In the event that ~~the~~ University ~~(College)~~ terminates this Agreement for its own convenience, ~~the~~ University ~~(College)~~ shall be obligated to pay ~~Coach~~ ~~Athletic Director~~, as liquidated damages and not a penalty, the ~~salary~~ base compensation, along with increases set forth in ~~Section~~ section 3.1.1 ~~(a), excluding b), remaining in this Agreement that Athletic Director would have received but for termination, reduced by~~ all deductions required by law, on the regular paydays of ~~the~~ University ~~(College)~~ until the ~~term~~ Term of this Agreement ends, or until ~~Coach~~ ~~Athletic Director~~ obtains ~~reasonably comparable~~ other employment, whichever

occurs first. ~~In addition, any unpaid supplemental compensation under section 3.2, which has been earned by Athletic Director prior to termination, would be paid.~~

~~Liquidated damages are subject to mitigation and offset such that Athletic Director must use reasonable best efforts to obtain other employment, commensurate with his skills and experience as an athletic director at a Division 1 FBS level university, during the original term of this Agreement and, in the event Coach Athletic Director obtains other comparable employment of any kind or nature after such termination, (including but not limited to consulting work for a consultant or through Athletic Director's own created entity), then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach 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 3.1.1(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 comparable employment.~~

~~In addition, Athletic Director will be entitled to continue with the University (College) health insurance plan and group life insurance benefits Athletic Director is eligible for as if Coach Athletic Director remained a University (College) employee until the termend of the Term this Agreement ends or until Coach Athletic Director obtains reasonably comparable employment or of any other employment providing Coach with kind or nature (including but not limited to consulting work for a reasonably comparable health plan and group life insurance, consultant or through Athletic Director's own created entity), whichever occurs first. Coach Athletic Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach~~

~~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. Coach 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 received from paid to Athletic Director by the University (College) after the date he obtains other employment, to which he is obtained not entitled under this provision. Athletic Director acknowledges and agrees that the University will withhold taxes and other payroll deductions from the payments due Athletic Director pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.~~

~~5.2.3 5.2.3—The parties have both been represented by legal counsel, or had the opportunity to consult with, legal counsel do so, in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that~~

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

~~5.3~~ ~~5.3~~ — ~~Termination by Coach Athletic Director for Convenience.~~

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

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

~~5.3.2~~ — ~~5.3.3~~ — If ~~Coach Athletic Director~~ terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. 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 ~~Coach Athletic Director~~ terminates this Agreement for convenience, ~~Coach~~ at any time, all obligations of the University shall cease as of the effective date of the termination. If Athletic Director terminates this Agreement for convenience, Athletic Director shall pay, or cause to be paid, to the University ~~(College)~~, as liquidated damages and not a penalty, the following sum: _____.

- (a) \$250,000 if the Agreement is terminated on or before December 31, 2025; and
- (b) \$175,000 if the Agreement is terminated between January 1, 2026 and December 31, 2027, inclusive; and
- (c) \$100,000 if the Agreement is terminated between January 1, 2028 and June 30, 2029, inclusive.

If Athletic Director terminates this Agreement for his convenience at a time when Dr. Marlene Tromp no longer is employed as the President at Boise State University, OR for reasons other than to accept employment with an employer which is an educational institution or

professional sports team or organization, then Athletic Director shall not owe any liquidated damages to the University.

The liquidated damages shall be due and payable within ~~twenty (20)~~sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight ~~(8)~~ percent (8%) per annum until paid.

If Athletic Director terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Athletic Director and the amount of liquidated damages owed shall be calculated as of the date Athletic Director begins such employment.

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 ~~(College)~~ will incur administrative and recruiting costs in obtaining a replacement for ~~Coach~~Athletic Director, in addition to potentially increased compensation costs if ~~Coach~~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 ~~Coach~~Athletic Director 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~~Athletic Director. The liquidated damages are not, and shall not be construed to be, a penalty. ~~-This Section~~section 5.3.4 shall not apply if ~~Coach~~Athletic Director terminates this Agreement because of a material breach by the University ~~(College)~~.

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

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

5.4.1 ~~5.4.1~~ Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if ~~Coach~~Athletic Director becomes totally or permanently disabled as defined by the ~~University (College)'s~~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 head coach, Athletic Director for a period of at least ninety (90) consecutive days; or dies.~~

~~5.4.2~~ ~~5.4.2~~—If this Agreement is terminated because of ~~Coach's Athletic Director's~~ death, ~~Coach's Athletic Director's~~ salary and all other benefits shall terminate as of the last day worked, except that ~~Coach's Athletic Director's~~ personal representative or other designated beneficiary shall be paid all compensation ~~due or unpaid~~ earned and due (including any Supplemental Compensation earned under section 3.2, 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 ~~(College)~~ and due to ~~Coach's Athletic Director's~~ estate or beneficiaries thereunder.

~~5.4.3~~ ~~5.4.3~~—If this Agreement is terminated because ~~Coach Athletic Director~~ becomes totally or permanently disabled ~~as defined by the University (College)'s disability insurance carrier~~, or becomes unable to perform the essential functions of the position of ~~head coach 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 ~~Coach Athletic Director~~ shall be entitled to receive any compensation due (including any Supplemental Compensation earned under section 3.2, but not yet paid, as of the effective date of termination) or unpaid and any disability-related benefits to which ~~Coach he~~ is entitled by virtue of employment with the University ~~(College)~~.

~~5.4.4~~ ~~5.5~~—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 ~~Coach Athletic Director~~. In the event of termination, ~~or suspension, or reassignment~~, ~~Coach Athletic Director~~ agrees that ~~Coach he~~ will not interfere ~~or communicate~~ with the ~~University (College)'s~~ University's student-athletes or ~~coaches, or~~ otherwise obstruct the ~~University (College)'s~~ University's ability to transact business or operate ~~its intercollegiate athletics program~~ the Program.

~~5.6~~ ~~5.6~~—No Liability. ~~The University (College) shall~~ Other than what Athletic Director is or shall be entitled to under this Agreement, the University shall not be liable to ~~Coach 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 ~~Coach Athletic Director~~, regardless of the circumstances.

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

ARTICLE 6

6.1 ~~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, the Chief Executive Officer, of Trustees and the Director; 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 and University (College)'s rules regarding financial exigency.

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

6.3 ~~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 ~~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 ~~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 ~~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 ~~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~~ 6.8 ~~Force Majeure.~~ Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes ~~therefor~~ therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

~~6.9~~ 6.9 ~~Confidentiality.~~ ~~This Agreement~~ 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 ~~Coach~~ he is required to produce under this Agreement may be released and made available to the public ~~by~~ at the ~~University (College).~~ University's sole discretion.

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

the University ~~(College):~~ Director of Athletics: President
Boise State University
1910 University Drive
Boise, Idaho 83725

with a copy to: Chief Executive Officer General Counsel
Boise State University
1910 University Drive

Coach:
Boise, Idaho 83725-1002

Athletic Director: Jeramiah Dickey
Last known address on file with
University (College)'s University's Human Resource Services

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

~~6.11~~ ~~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~~ ~~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~~ ~~6.13~~ ~~Non--Use of Names and Trademarks.~~ ~~Coach~~ Athletic Director shall not, without the ~~University (College)'s~~ University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (~~College~~) (including contraction, abbreviation or simulation), except in the course and scope of his official University (~~College~~) duties.

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

~~6.15~~ ~~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 ~~if required under Board Policy II.H of Trustees.~~

~~6.16~~ ~~6.16~~ ~~Opportunity to Consult with Attorney.~~ ~~Coach~~ Athletic Director acknowledges that ~~Coach~~ 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

University (College) Coach

Signature: _____

Printed

Name: _____

Chief _____ Executive
Officer

Date: _____

President

Signature: _____

Printed

Name: _____

Date: _____

Dr. Marlene Tromp

ATHLETIC DIRECTOR

Jeramiah Dickey

Date _____ Date _____

Approved by the ~~Idaho State~~ Board of ~~Education~~ Trustees on the ____ day of _____,
20____, 2024.

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

EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is entered into by and between Boise State University (the “University”) and Jeramiah Dickey (“Athletic Director”).

ARTICLE 1

1.1 Employment. Subject to the terms and conditions of this Agreement, the University shall employ Jeramiah Dickey 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. ~~The~~ 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 or the President’s designee 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. In addition to the duties described herein, Athletic Director will be wholly committed to development of student-athletes and their academic success, create a clear, inspiring, and articulable vision for the Program, develop a sustainable, long-term financial plan that supports that vision, including a plan for fundraising, donor stewardship, investment in facilities and revenue generation, and demonstrate a comprehensive understanding of and commitment to meeting the highest NCAA compliance standards. ~~The University shall have the right, at any time, 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 ~~January 16, 2021~~ July 1, 2024 and terminating, without further notice to either party, on ~~December 31, 2025~~ June 30, 2029 (the “Term”) unless terminated sooner in accordance with other provisions of this Agreement. This Agreement is subject to, and contingent upon the prior approval of the State Board of Education acting as the Board of Trustees of Boise State University, and if that approval and final execution occurs after July 1, 2024, the Agreement will be retroactive to July 1, 2024.

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. Renewal may be subject to, and contingent upon 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.

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Jeramiah Dickey—2021 to 2025
SBQE approved 04/05/2021

CONSENT - BAHR

ARTICLE 3

3.1 Regular 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) An annual salary of \$465,000 (Base Salary), payable in bi-weekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President and approved by the Board.
- b) The Base Salary will increase by at least 2.5% at the beginning of each fiscal year. Beginning in Fiscal Year 2026, annual increases may be in addition to, or inclusive of, Change in Employee Compensation (CEC) increases, if given, at the President's discretion.
- c) A one-time signing bonus payment of \$75,000 will be paid within forty-five (45) days after the execution of this agreement and final Board of Education approval.
- d) A retention bonus will be paid within thirty (30) days of the dates listed below, if the Athletic Director shall is still employed as the Director of Athletics by the University on that date:
May 1, 2025 = \$75,000
May 1, 2026 = \$75,000
May 1, 2027 = \$75,000
May 1, 2028 = \$100,000
May 1, 2029 = \$100,000
- e) The University shall provide the Athletic Director with an annual allowance of \$54,000, to be paid in equal bi-weekly payments, for costs associated with housing. Athletic Director shall be solely responsible for the home, and the University shall have no responsibility in the maintenance or management thereof. Specifically, the University will not be responsible for upkeep, maintenance, utilities, insurance, property taxes, or any similar or related responsibility associated with the Athletic Director's home.
- a)f) The opportunity to receive such employee benefits as the University provides generally to non-faculty professional ~~staff~~-employees, provided that Athletic Director qualifies for such benefits by meeting all applicable eligibility requirements; and
- g) Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the

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Jeramiah Dickey—2021 to 2025
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vehicle; specifically, Athletic Director shall be responsible for insurance premiums for personal use of the vehicle; and

~~b)h) Except as otherwise stated herein, 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, provided that Athletic Director qualifies for such benefits by meeting all applicable eligibility requirements; and except that in the event of non-renewal or termination of Athletic Director's employment, Athletic Director must use accumulated vacation/annual leave prior to the end date of employment or the leave will be forfeited and not paid out; and;~~

~~) Payment or reimbursement of all reasonable moving expenses in accordance with University policy, in an amount not to exceed \$15,000; and~~

~~) Payment of \$25,000 in transitional allowance to offset expenses incurred during the transition to Boise State University.~~

~~3.1.8 Base Salary: The University shall pay Athletic Director a Base Salary of \$410,000 per year (prorated for partial years) of this Agreement. Additionally, the Base Salary will increase annually by at least 2% 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. Athletic Director may be eligible to receive the Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. The CEC, if granted, may be incorporated as part of the increase.~~

~~3.1.11. 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 while the Athletic Director was employed in that position.~~

~~) 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 40	\$15,000
Top 60	\$10,000
Top 75	\$5,000

- ~~→ 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

~~1.~~

- ~~→ For Football Bowl Game Appearances: If the University football team plays in an NCAA approved post-season bowl game, one of the following incentive payments will be made by the University, as applicable:~~

~~College Football Playoff (CFP) game = \$35,000~~

~~New Year's Six game = \$30,000~~

~~Non CFP bowl game = \$20,000~~

- ~~→ Additional Incentive Compensation~~

~~0) 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.~~

~~0) If the Football team wins or ties for the conference divisional championship, Athletic Director shall receive \$7,500.~~

~~0) If the Football team wins a conference football championship game, Athletic Director shall receive \$10,000.~~

~~0) If the men's basketball team either reaches 18 regular season wins or reaches postseason play, Athletic Director shall receive \$10,000.~~

~~0) 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.~~

~~) 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 shall in no event exceed \$50,000 annually.~~

~~3.1.51 The University annually shall provide or make arrangements through the Department trade out program one (1) full size automobile subject to and according to the policy of the Board and the University. Insurance premiums for the assigned vehicle shall be paid by Athletic Director. Any vehicle assigned shall be returned in the same or similar condition as it was upon being assigned, reasonable wear and tear excepted.~~

~~3.1.53i) The University shall provide Athletic Director with one full country club membership at all times during the Term of this Agreement, subject to availability, reasonable University business rules, processes and limitations which may lead to certain out of pocket expenses by Athletic Director (for example, for food, beverages, cart rentals and the like-); and~~

~~j) Athletic Director's spouse and children will be eligible for travel alongside Athletic Director for post season tournaments and bowl games.~~

~~Athletic Director understands and agrees that financial conditions may require the President, in the President's discretion, to institute furloughs or to take such other actions consistent with Board policy as the President may determine to be necessary to meet such challenges; provided that any furlough applied to Athletic Director must be applied to all other employees of a comparable level. In the event of a furlough or other action, the actual salary paid to Athletic Director may be less than the salary stated in Section 3.1.1(a) above.~~

~~3.2 Supplemental Compensation. Each year the University shall pay supplemental Athletic Director incentive compensation as follows:~~

~~3.2.1 Athletic Team Specific Achievement Incentive Pay:~~

~~Football team:~~

~~Participates in the conference championship game \$10,000~~

~~Wins the conference championship game \$10,000~~

~~Participates in a non-CFP Bowl Game \$20,000~~

~~Men's basketball team:~~

~~Wins 18 regular season games or reaches the NCAA Basketball Tournament
\$10,000~~

~~Any one of five teams (women's soccer, women's volleyball, women's basketball, women's gymnastics or women's softball) reaches post-season play
\$10,000~~

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The maximum payment per year is \$10,000 whether one or all five teams reach postseason competition.

3.2.2 Academic Achievement Incentive Pay.

Academic Progress Rate:

Academic Incentive Pay may be earned for the most recent academic year if the annual department

Academic Progress Rate ("APR") ranks as follows:

- a) If the annual department APR rating is between 970-979, Athletic Director will receive \$10,000; or
- b) If the annual department APR rating is between 980-989, Athletic Director will receive \$15,000; or
- c) If the annual department APR rating is between 990-999, Athletic Director will receive \$20,000; or
- d) If the annual department APR rating is 1000, Athletic Director will receive \$25,000.

Grade Point Average:

Grade Point Average Pay may be earned for each academic year if the single semester grade point average for the student-athletes collectively in the following semesters are 3.0 or higher:

- a) Fall Semester = \$7,500
- b) Spring Semester = \$7,500

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.

3.2.3 College Football Playoff ("CFP")

Team participates in a first-round game of the CFP (including a first-round bye)
\$25,000

Team participates in a quarterfinal game of the CFP \$25,000

Team participates in the semifinal game of the CFP \$50,000

Team participates in the national championship game of the CFP
\$75,000

Team prevails as the College Football Playoff Champions \$100,000

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

All Incentive Pay amounts pursuant to Section 3.2 shall be cumulative within each of the following sections described below and shall in no event exceed the cumulative total supplemental compensation payment amounts in any one contract Year:

- a) \$80,000 - Overall Department Athletic Performance, Athletic Team Specific Achievements, Academic Progress Rate and Grade Point Average Incentive Pay (3.2.1 and 3.2.2)

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b) \$275,000 - College Football Playoff (“CFP”) (3.2.3)

If the Athletic Director qualifies for any supplemental compensation, it shall be paid within forty-five (45) days of the occurrence, as long as the Athletic Director remains continuously employed as the Athletic Director on the date of the occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2 above. If the Athletic Director is the Athletic Director for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

Any supplemental compensation awarded for Academic Progress Rate shall be paid as soon as reasonably practicable following APR rating determination and verification by the National Collegiate Athletic Association (“NCAA”), as long as the Athletic Director remains continuously employed as the Athletic Director on that date.

Any such supplemental compensation actually paid to the Athletic Director shall be reported to the Board on an annual basis.

~~3.2~~ 3.3 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~~ 3.4 Footwear; Apparel; Equipment. 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 Department~~ is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of ~~the University~~ University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Athletic Director shall submit all outside consulting agreements to the University for review and approval prior to execution. The Athletic Director shall also report such outside income to the University in accordance with Section 4.2 of this Agreement. Athletic Director further agrees that Athletic Director 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~~ 3.5 General Conditions of Compensation. All ~~payments~~ compensation provided for in this Agreement shall be paid through by the University’s normal bi-weekly payroll with University to the ~~applicable~~ Athletic Director is subject to deductions and withholdings as required by law and ~~applicable deductions as directed by Athletic Director.~~

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3.5 ~~Athletic Director's spouse or the terms and children will be eligible for travel alongside conditions of any fringe benefit in which the Athletic Director for post-season tournaments or bowl games, as determined~~ participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to the Athletic Director, such fringe benefit shall be based only on a case-by-case basis 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. ~~President.~~

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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 1 FBS level university;

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to enable them to compete successfully and reasonably protect their health, safety, and well-being;

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

4.1.4 Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's Board of Trustees, conferences in which the University is a member; (Conference), 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 Comply with additional reporting requirements, such as those in the Title IX policy and the Clery Act.

4.1.5-6 Make diligent, good faith efforts to maintain and cultivate effective working relationships with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, and staff;

4.1.7 Develop effective internal communications with all members of the Department so that an efficient and effective athletics program will be maintained;

4.1.8 Supervise and manage the Department to insure, to the maximum extent possible, that all staff act in the best interest of the University, as a whole, and follow applicable University policies, State Board of Education policies, NCAA, and applicable conference rules and regulations at all times. Remain open to feedback, both positive and negative, on the performance and actions of Program staff;

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~~4.1.6~~ 4.1.9 Manage Departmental fiscal areas consistent with State Board of Education policies and the policies of the University; ~~and,~~

~~4.1.7~~ 4.1.10 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; ~~;~~ and

4.1.11 Make every effort, with due consideration for the unique work schedules of the Program, to fully engage other campus leaders as a member of the University's executive team including participating in leadership meetings, attending leadership functions, and making efforts to collaborate directly with executive team peers.

~~4.2~~ 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

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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- ~~(such approval not to be unreasonably withheld).~~

4.3 NCAA Rules.4.3 Outside Income. In accordance with NCAA rules, Athletic Director shall obtain prior written approval from the President ~~(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 ~~to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th; 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 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 4.4 Hiring Authority. Athletic Director shall have the responsibility and sole authority for the hiring and termination of Program personnel; provided, however, any decision to hire or terminate a Head Coach shall, ~~when necessary or appropriate, be made subject to approval by the President, in the President's sole discretion, following recommendation by Athletic Director, and which shall not be unreasonably withheld.~~ Additionally, such decisions shall, when necessary or appropriate, be subject to the approval of the University's Board of Trustees.

4.5 4.6 Scheduling. Athletic Director shall make decisions with respect to the scheduling of competitions for sports in the Program.

4.6 4.7 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 providing 48 hours~~ prior ~~approval~~ ~~of notice to~~ the President. Such ~~approval shall not unreasonably be withheld and notice~~ 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.

4.8 Disclosure of Criminal Proceedings, Serious Misconduct, and Discipline. Athletic Director warrants that prior to signing this Agreement, he has disclosed and will continue to disclose if he has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Athletic Director was employed, or has been subject to official institution or athletic department disciplinary action at any time at any prior institution where he was employed. "Serious misconduct" is defined as any act of harassment prohibited by law, including sexual harassment, sexual misconduct, domestic

violence, dating violence, stalking, sexual exploitation, or dishonesty or fiscal misconduct. Any disclosure after the date of this Agreement shall be made as soon as possible, but no later than 72 hours after Athletic Director is on notice of any accusation.

ARTICLE 5

5.1 Termination of Athletic Director for Cause. The University may, with good and adequate cause, and 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 (but excluding ~~infractions~~) or the isolated, minor NCAA infractions) or the policies, rules or regulations of the University, the University's Board of Trustees, the conference, or the NCAA;

~~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 (but excluding isolated, minor NCAA infractions) 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;
- i) ~~AA deliberate or material~~ 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;
- j) The failure of Athletic Director to disclose any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.8 of this Agreement;
~~4.7 of this Agreement;~~
- k) The ~~failure~~refusal or unwillingness of Athletic Director to comply with any valid or legal directive of President;
- l) Athletic Director's engagement in dishonesty, illegal conduct, or misconduct, which, in each case, is injurious to University or its reputation;
- m) Athletic Director's embezzlement, misappropriation, or fraud, whether or not related to the Athletic Director's employment with the University;
- n) Athletic Director's conviction of or plea of guilty or *nolo contendere*, or the entry of a withheld judgment to a crime what constitutes a felony or misdemeanor (but excluding traffic infractions), if such felony or misdemeanor is work-related, materially impairs the Athletic Director's ability to perform duties for the University, or results in reputational harm to the University or the State Board of Education;
- ~~n) —~~ Athletic Director's violation of University's written policies, or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct, which violation is material, or is

- ~~o)~~ not material but in the University's ~~judgement~~judgment, reflects materially adversely on the University or its Program;
- ~~e)p)~~ Athletic Director's unauthorized disclosure of Confidential Information, which information and disclosure is material, or is not material, but in the University's judgment, reflects materially adversely on the University or its Program; or
- ~~p)q)~~ Athletic Director's engagement in conduct that brings University or the State Board of Education material negative publicity or into public disgrace, embarrassment, or disrepute.

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~~ the President's 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.

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

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 3.1.1 a), and housing allowance set forth in section 3.1.2, 1 e), 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, or until Athletic Director obtains other employment, whichever occurs first. In addition, any unpaid supplemental compensation under section 3.2, which has been earned by Athletic Director prior to termination, would be paid.

~~employment of any kind or nature after such termination;~~

Liquidated damages are subject to mitigation and offset such that Athletic Director must use reasonable best efforts to obtain other employment, commensurate with his skills and experience as an athletic director at a Division 1 FBS level university, during the original term of this Agreement and, in the event Athletic Director obtains other comparable employment of any kind or nature after such termination (including but not limited to consulting work for a consultant or through Athletic Director's own created entity), 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 comparable 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) with the University benefits Athletic Director is eligible for as if he Athletic Director~~ remained a University employee until the end of the Term of this Agreement ends or until Athletic Director obtains employment or of any other employment, kind or nature (including but not limited to consulting work for a consultant or through Athletic Director's own created entity), 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

Athletic Director specifically agrees to inform the University within ten (10) business days of obtaining other athletic 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 Athletic Director by the University after the date he obtains other employment, to which he is not entitled under this provision. Athletic Director acknowledges and agrees that the University will withhold taxes and other payroll deductions from the payments due Athletic Director pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

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.

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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.

____ 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

5.3.2 (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~~ 5.3.3 If Athletic Director terminates this Agreement for his convenience ~~in order to accept employment at another educational institution or with a professional sports team or organization, he shall pay any~~ time, all obligations of the University shall cease as of the effective date of the termination. If Athletic Director terminates this Agreement for convenience, Athletic Director shall pay, or cause to be paid, to the University, as liquidated damages and not a penalty, the following sum: ~~(a) \$1,000,000 if the Agreement is terminated on or before December 31, 2023; (b) \$750,000 if the Agreement is terminated between January 1, 2024 and December 31, 2024, inclusive; and~~ (a) \$250,000 if the Agreement is terminated on or before December 31, 2025; and (b) \$175,000 if the Agreement is terminated between January 1, 2025 and 2026 and December 31, 2027, inclusive; and December 31, 2025 (c) \$100,000 if the Agreement is terminated between January 1, 2028 and June 30, 2029, inclusive.

If Athletic Director terminates this Agreement for his convenience ~~because at a time when Dr. Marlene Tromp no longer is employed as the President at Boise State University, OR in order for reasons other than~~ to accept employment with an employer which is ~~not~~ an educational institution or professional sports team or organization, then ~~the Athletic Director shall not owe any~~ liquidated damages ~~amount owed to the University shall be only a one time \$250,000.~~

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.

~~If Athletic Director terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Athletic Director and the amount of liquidated damages owed shall be calculated as of the date Athletic Director begins such employment.~~

5.3.4 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~~ 5.3.5 Except as provided elsewhere in this Agreement, if Athletic Director terminates this Agreement for convenience, ~~he~~ Athletic Director shall forfeit to the extent permitted by law ~~his~~ the right to receive all supplemental compensation and other payments ~~not earned by him as of the time of termination.~~

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SRQF approved 04/05/2021

CONSENT - BAHR

5.4 Termination due to Disability or Death of Athletic Director.

~~5.4.0~~ 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

5.4.1 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.

5.4.15.4.2 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~~Supplemental Compensation earned under section 3.4.32, 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.

5.4.25.4.3 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~~Supplemental Compensation earned under section 3.4.32, 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.

5.4.35.4.4 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, ~~or~~ suspension, ~~or reassignment,~~ Athletic Director agrees that he will not interfere ~~or communicate~~ with the University's student-athletes ~~or coaches,~~ 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 provided by the Board of Trustees and its Governing Policies and Procedures Manual, and the University Policy Manual.

ARTICLE 6

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,

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CONSENT - BAH

6.1 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, identification cards, 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- or the President's Designee.

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.

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SRQE approved 04/05/2021

CONSENT - BAHR

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 83725-1002

Athletic Director: _____ Jeramiah Dickey

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. 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

~~Dr. Marlene Tromp~~

~~Dr. Marlene Tromp~~
~~Dr. Marlene Tromp~~

~~President~~

~~4/12/2021 11:21:43 PM PDT~~
~~9:50 AM PDT~~

~~Jeramiah Dickey~~

~~Jeramiah Dickey~~
~~Jeramiah Dickey~~

~~4/12/2021~~

~~Date~~

~~Date~~

~~Date~~

~~Date~~

Approved by the Board of Trustees on the ~~5th~~ ____ day of ~~April, 2021~~ ____, 2024.

Athletic Director Jeramiah Dickey Maximum Compensation Calculation - 2024-2029

		2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
3.1.1a	Annual Base Salary	\$465,000	\$476,625	\$488,541	\$500,754	\$513,273
3.1.1c	Signing Bonus	\$75,000	-	-	-	-
3.1.1d	Retention Bonus	\$75,000	\$75,000	\$75,000	\$100,000	\$100,000
3.1.1e	Housing Allowance	\$54,000	\$54,000	\$54,000	\$54,000	\$54,000
3.2.1 & 3.2.2	Additional Pay based on Overall Department Athletic Performance, Team Specific Achievements, Academic Progress Rate and Grade Point Average Incentive Pay	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
3.2.1	Additional Pay based on College Football Playoff ("CFP")	\$275,000	\$275,000	\$275,000	\$275,000	\$275,000
	Total Maximum potential annual compensation under Employment Agreement	\$1,024,000	\$960,625	\$972,541	\$1,009,754	\$1,022,273

BOISE STATE UNIVERSITY
 All Athletic Department APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2019-20	2020-21	2021-22	2022-23 May 2024 release
Boise State Athletic Department	993	993	991	987

NCAA APR REPORT YEAR
Raw Score for single year

MULTI-YEAR APR (4-Year Rolling Average)

Boise State Athletic Department	992	992	992	991
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SINGLE YEAR GRADE POINT AVERAGE (GPA) SCORES

	2020-21	2021-22	2022-23	2023-24
Boise State Athletic Department	3.26	3.33	3.34	3.40

Academic Year

**Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference**

Athletic Director	School	Base Salary	Incentives
Nathan Price	Air Force	NA	NA
Jeremiah Dickey	Boise State	\$ 465,000	See Contract
Joe Parker	Colorado State	\$ 439,192	NA
Terry Tumey	Fresno State	\$ 340,000	Annual Performance Bonus. All bonuses are determined by the total base salary of the fiscal year in which the bonuses were earned. At the completion of each fiscal year commencing with 2023-24, Employee will receive an annual bonus from the Athletic Corporation in the amounts set out below, provided that the specific goals are met as follows: 1) Achievement of Annual NCAA APR a) \$7,500 if every sports team reaches an APR of 930 b) \$15,000 if every sports team reaches an APR of 940 Only one may be awarded. 2) NACDA Rankings a) \$10,000 if the University ranks in the top 100 b) \$12,500 if the University ranks in the top 75 Only one may be awarded. 3) Sports Team Competitions a) \$7,500 if the men's basketball team competes in the NCAA tournament; b) \$7,500 if the women's basketball team competes in the NCAA tournament; c) \$5,000 if the baseball team competes in the NCAA College World Series; d) \$5,000 if the softball team competes in the NCAA College World Series; e) \$5,000 if the football team competes in a bowl game and has a winning record during the regular season; f) \$12,000 if football team competes in New Year's Day 6 bowl and has a winning regular season record; and f) \$25,000 if the football team competes in the College Football playoff. 4) Final Rank of any team Top 25 A.) FB: \$5K B.) MBB: \$5K C.) WBB: \$5K D.) Softball: \$5K E.) Baseball: \$5K F.) All Others: \$2.5K The cash distribution of this bonus will be subject to applicable state, federal and local taxes. Bonuses may be directed to a deferred retirement account at the Employee's request. The

**Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference**

Stephanie Rempe	Nevada	\$ 400,000	Athletic Performance Payment: For each year that the Football Program's single year APR is at 930 or above: \$10,000 for the Football Team's participation post-season in a Bowl Game; \$50,000 for the Football Team's participation post-season in the College Football Play-off. For each year that the Men's Basketball Program's single year APR is at 930 or above: \$15,000 for the Men's Basketball Team's participation in the NCAA tournament. For Director's Cup Top 100, \$10,000. Academic Performance Payment For each year that the Athletic Department's student athletes' single year APR is at 935 or above, the University shall pay the Employee, as additional compensation, a total maximum amount of \$15,000 per fiscal year. These amounts are cumulative and are not subject to COLA, retirement contributions, or retirement deductions.
Eddie Nunez	New Mexico	\$ 360,000	<u>Incentive Compensation:</u> In addition to the compensation set forth above, Mr. Nunez is eligible for incentive payments ("Incentive Compensation") according to the following categories of professional achievement. a. <u>Student Athlete Academic Performance Rating (APR)</u> i. Academic Performance Rating (APR) 975 or higher \$2,500 ii. Academic Performance Rating (APR) 985 or higher \$5,000 iii. A maximum of one incentive payment pursuant to subsection 5.a may be earned per Contract Employment Year. b. <u>Student Athlete Academic Performance</u> i. NCAA Graduation Success Rate (GSR) annual increase from previous year \$5,000 ii. Intercollegiate Athletics Grade Point Average (GPA) 3.2 or Higher \$2,500 c. <u>Director's Cup National Sports Award</u> i. Overall Athletics Department Performance for the Director's Cup National Sports Award (NACDA) final year end ranking of 60 or better \$5,000 ii. Overall Athletics Department Performance for the Director's Cup National Sports Award (NACDA) final year end ranking of 25 or better \$7,500 iii. A maximum of one incentive payment pursuant to subsection 5.c may be earned per Contract Employment Year. d. <u>Athletic Achievement</u> i. Top Ranked School in the Mountain West Conference (MWC) in the Director's Cup \$5,000 ii. Football Team Wins the MWC Championship Game \$5,000 iii. Football Team Wins the MWC Regular Season Conference Title \$5,000

**Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference**

			iv. Football Team Participates in Non-College Football Playoff Bowl Game \$2,500 v. Football Team Participate in College Football Playoff Bowl Game \$10,000 vi. Men's Basketball Team Wins MWC Regular Season Conference Title \$5,000 vii. Men's Basketball Team NCAA Tournament Appearance \$2,500 viii. Men's Basketball Team NCAA Tournament Final Four Appearance \$5,000 ix. Men's Basketball Team National Champion \$10,000 x. Women's Basketball Team Wins MWC Regular Season Conference Title \$2,500 xi. Women's Basketball Team NCAA Tournament Appearance \$2,500 xii. Women's Basketball Team NCAA Tournament Final Four Appearance \$5,000 xiii. Women's Basketball Team National Champion \$10,000 xiv. National Champion in any other sport (other than FB/MBB/WBB) \$5,000
			e. <u>Fiscal Management</u> i. Develop and administer a fiscally responsible budget plan \$5,000 ii. 5% increase in revenue generated through the Lobo Club \$5,000
John David Wicker	San Diego State	\$ 325,000	4.5.2. <u>Incentive Compensation</u>. Incentive payments will be payable annually if earned during the period of this appointment, provided however that the maximum incentive compensation for performance in a single academic year may not exceed \$80,000, nor can any earned payment above \$80,000 be deferred. Incentive payments will be made through the San Diego State University Research Foundation and are subject to all applicable tax provisions. 4.5.2.a. <u>Student Athlete Academic Performance</u>. Beginning with the 2017 official NCAA APR report, University shall pay you \$15,000 for each year that all SDSU intercollegiate athletics teams' APR is ten (10) points or more above the NCAA-specified APR minimum (e.g. current minimum APR is 930, requires 940 for bonus). If the single semester grade point average for the student-athletes collectively in a given semester is 3.0 or higher, you shall receive \$7,500 per semester, not to exceed \$15,000 per academic year. This payment may be earned for fall and spring semesters only, summer sessions are not considered. 4.5.2.b. <u>Postseason Play</u>. Beginning with the fiscal year 2016/17 University shall pay you \$5,000 if the football team wins or ties for the conference divisional championship. University shall pay you \$10,000 if the football team wins a conference championship

**Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference**

you \$10,000 if the football team wins a conference championship game. University shall pay you \$12,500 for each non-CFP access bowl game in which the football team participates in. University shall pay you \$15,000 for each CFP access bowl game in which the football team participates in. University shall pay you \$20,000 for each CFP Semi-final game in which the football team participates. University shall pay you \$25,000 for each National Championship won by the football team. University shall pay you \$5,000 if the men's or women's basketball team wins the regular season or conference championship. University shall pay you \$10,000 for each NCAA postseason tournament in which the

men's or women's basketball team participates, and \$5,000 for each NIT appearance in which the men's or women's basketball team participates. University shall pay you \$17,500 if the men's or women's basketball team participates in the Final Four. University shall pay you \$25,000 if the men's or women's basketball team win the National Championship. University shall pay you \$10,000 if the men's or women's team wins the NIT Tournament. University shall pay you \$2,500 if any other intercollegiate sport participates in the NCAA Tournament.

4.5.2.c. Athletic Director's Cup. University shall pay you \$5,000 for each team that is in the top fifty (50) ranking in the Division I Athletic Director's Cup beginning in 2016/17. University shall pay you \$10,000 if the department finishes in the top fifty (50) final rankings in the Division I Athletic Director's Cup beginning in 2016/17.

4.5.2.d. Annual Budget Performance. University shall pay you \$5,000 for each \$250,000 in excess of annual budgeted fundraising target in each of the three fundraising categories – annual fund, director's cabinet and major gifts; targets will be those stated in the annual budget recommended to and approved by the President. University shall pay \$10,000 in each budget year in which approved revenues exceed authorized expenses by \$250,000 except that no University supplemental allocations or loans may be included as approved revenues for the purpose of this performance factor.

Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference

Jeff Konya	San Jose State	\$ 229,906	1. Athletic Team Performance																									
			A. Overall performance in the National Association of College Director of Athletics Director's Cup: <table><tr><td>Top 100</td><td>\$17,000</td></tr><tr><td>Top 150</td><td>\$14,875</td></tr><tr><td>Top 200</td><td>\$12,750</td></tr><tr><td>Top 250</td><td>\$10,625</td></tr></table> B. Conference Championships/Conference Finish: Football - Conference Champion 85% of one month's salary (base + supplemental) Basketball - Men's Conference Champion 85% of one month's salary (base + supplemental) Basketball - Women's Conference Champion 85% of one month's salary (base + supplemental) <table><tr><td>All Other Sports - Conference Champion</td><td>\$8,500 per Championship</td></tr><tr><td>All Sports - 2nd Place Conference Finish</td><td>\$4,250 per Sport</td></tr><tr><td>All Sports - 3rd Place Conference Finish</td><td>\$2,125 per Sport</td></tr></table> C. Post Season Appearances (If Not Conference Champions): <table><tr><td>Football Bowl Appearance</td><td>\$12,750</td></tr><tr><td>NCAA Basketball Tournament Appearance (Men or Women)</td><td>\$12,750 + \$8,500 per win</td></tr><tr><td>NIT Basketball Tournament Appearance (Men or Women)</td><td>\$8,500 +\$4,250 per win</td></tr></table> D. Final National Rankings: <table><tr><td>Top 25 Final National Ranking Any Sport</td><td>\$8,500</td></tr><tr><td>Final National Ranking Any Sport</td><td>\$4,250</td></tr></table> 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. 2. Academic Progress Rate (APR) A. Annual Divisional Average NCAA APR: <table><tr><td>970 and Above</td><td>\$23,375</td></tr><tr><td>965-969</td><td>\$21,250</td></tr></table>	Top 100	\$17,000	Top 150	\$14,875	Top 200	\$12,750	Top 250	\$10,625	All Other Sports - Conference Champion	\$8,500 per Championship	All Sports - 2 nd Place Conference Finish	\$4,250 per Sport	All Sports - 3 rd Place Conference Finish	\$2,125 per Sport	Football Bowl Appearance	\$12,750	NCAA Basketball Tournament Appearance (Men or Women)	\$12,750 + \$8,500 per win	NIT Basketball Tournament Appearance (Men or Women)	\$8,500 +\$4,250 per win	Top 25 Final National Ranking Any Sport	\$8,500	Final National Ranking Any Sport	\$4,250	970 and Above
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970 and Above	\$23,375																											
965-969	\$21,250																											

**Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference**

			960-964 \$19,125 955-959 \$17,000 950-954 \$14,875 945-949 \$12,750 940-944 \$10,000 935-939 \$ 8,500 3. Strategic Plan Implementation A. The President has the discretion to award a bonus of up to \$25,000 for the Athletics Department's contributions toward the achievement of the strategic plan, <i>Transformation 2030</i>. 4. All earned incentive payments are cumulative unless otherwise noted (See Section 1E). Total amount of incentive payments that can be earned in any fiscal year shall not exceed 40% of the base salary plus supplemental compensation. Numbers below are based on compensation as of date of hire. State Annual Base Salary: \$260,004 Tower Foundation Annual Compensation: \$106,080 Total Annual Compensation: \$366,084 40% of Annual Compensation: \$146,434
Erik Harper	UNLV	\$ 420,000	5.6 Membership and Additional Compensation – Performance Payment The University will arrange for membership privileges, at no cost to Employee, at a local golf or country club for as long as Employee serves as the Director of Athletics and for no longer. During employment as Director of Athletics, Employee shall have the opportunity to earn supplemental compensation in the amounts and upon the conditions set forth below, based upon the exceptional academic and athletic performance of the various program's teams and also based upon the various teams' participation in post-season games. The University shall pay employee, as additional compensation, the following: a. For each year that the total annual grade point average of all student athletes is 3.0 or better: \$15,000.00. b. For each year that the NCAA single year total Graduation Success Rate (GSR) is 80% or better: \$10,000.00. c. For winning or tying the Conference Regular Season Championship (Football): \$15,000.00. d. For winning the Conference Tournament Divisional Championship (Football): \$5,000.00. e. For appearing in any Bowl game (Football): \$10,000.00. f. In the NCAA Tournament (Men's Basketball and Women's Basketball): i. For the team earning an NCAA Tournament bid: \$10,000.00. ii. For the team advancing in each round: \$10,000.00. iii. For the team playing in the Final Four: \$10,000.00. iv. For the team winning the NCAA Championship: \$15,000.00. g. In the NCAA Tournament (all other sports): i. For the team earning an NCAA Tournament bid: \$2,500.00. ii. For the team advancing in each round: \$2,500.00. iii. For the team winning the NCAA Championship: \$2,500.00.
Diana Sabau	Utah State	\$ 550,000	5. Incentive Payments. In addition to the total compensation outlined in numbered paragraph 3 of this letter, USU will pay you incentive bonuses for certain achievements in an annual amount of up to but not to exceed Fifty Thousand Dollars (\$50,000). The details of these incentive payments will be determined based on mutually agreed upon goals for the USU Athletics Department and will be set forth in your Employment Agreement.

Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference

Tom Burman	Wyoming	\$ 300,000	7. Incentive Payments To encourage Employee's accomplishment of some of the key goals and objectives of the University's strategic plan for intercollegiate athletics, the University agrees to pay certain performance-related incentives as outlined below in this Agreement in paragraphs 8-11, beginning with seasons of intercollegiate competition starting after July 1, 2019. However, the maximum total incentives awarded in any qualifying year shall be \$150,000. Except for the GPA incentive (see Paragraph 9(a)), which will be awarded following the end of the full academic year including summer once all applicable student-athlete grades have posted and the GPA has been calculated, the period to be used for the calculation of an incentive payment during a qualifying year shall be the University's fiscal year (i.e., July 1 to June 30). The source of funds for any and all incentive awards shall be from non-state, non-tuition/fee dollars. 8. Deferred Compensation If Employee earns at least \$100,000 in performance-related incentives in any qualifying year, as outlined below, the University shall, at the Employee's discretion, contribute any or all of the remaining amount (up to \$150,000) to a benefit plan on behalf of the Employee subject to the conditions contained herein. The University shall select the manager for the benefit plan; however, the Employee shall be entitled to direct the payout of the funds and all associated earnings in accordance with the benefit plan payout requirements. These funds will vest immediately. 9. Academic Performance Incentives. If, in any qualifying year during the term of this Agreement: a. At the conclusion of the full academic year, including the following summer, the annual student-athlete GPA is: i. Above a 2.8 GPA, Employee will receive \$27,600; ii. Above a 2.9 GPA, Employee will receive \$34,500; iii. Above a 3.0 GPA, Employee will receive \$41,400. b. For purposes of this incentive, the following provisions apply: i. All student-athletes on each annual "team" shall be included in the calculation. ii. The annual "team" shall be defined as the official squad list that is sent to the Mountain West Conference prior to the 1st date of competition. iii. The annual student-athlete GPA shall be calculated using the following parameters: 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 2019-2020 academic year, the fall 2019, winter 2020 and summer 2020 term GPA's will be used.
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**Salary and Incentive Comparisons
Athletic Directors in Mountain West Conference**

the fall 2019, spring 2020 and summer 2020 term GPAs will be utilized.

The exception to this rule will be that the summer term prior to 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 2019-2020 academic year, the summer 2019 (only for newcomers taking summer school prior to initial enrollment), the fall 2019, spring 2020 and summer 2020 term GPAs 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 \$2,760 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 \$27,600 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 \$34,500 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 \$13,800 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 \$6,900 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 \$3,450 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.

**Liquidated Damages
Athletic Directors in Mountain West Conference**

Athletic Director	School	Length of Contract	2024-25 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
Nathan Price	Air Force	NA	NA	NA	NA	
Jeremiah Dickey	Boise State	5 years ending 06/30/2029	\$ 465,000	Yes	Tied to years in contract	See Contract
Joe Parker	Colorado State	5 years ending 12/31/2027	\$ 474,986	Yes	Tied to years in contract	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"): (i) \$200,000 if such termination occurs between the Effective Date and December 31, 2023; (ii) \$100,000 if such termination occurs during the contract year of January 1, 2024 and December 31, 2024; (iii) \$100,000 if such termination occurs during the contract year of January 1, 2025 and December 31, 2025; (iv) \$100,000 if such termination occurs during the contract year of January 1, 2026 and December 31, 2026; and (v) \$75,000 if such termination occurs during the contract year of January 1, 2027 and December 31, 2027. These amounts shall be payable in full on a lump-sum basis within sixty (60) days of the effective date of the Director's termination.
Terry Tumey	Fresno State	2 years ending 6/30/2025	\$ 390,000	Yes	Tied to years in contract	Cancellation by Employee. The Employee automatically cancels this appointment if Employee chooses to resign his position as Athletic Director prior to the completion of the Term. The University and Employee agree that Athletic Directors conduct their professional activities under circumstances unique in the University community and among University employees, including evaluation and scrutiny of coach and program performance by the public and the media and control by external rules and regulations. The Employee engenders the loyalty and commitment of student-athletes, fans, and donors, which can be lost if the Employee leaves the University prior to the expiration of the Term. Employee acknowledges that the University will incur other substantial costs if Employee resigns or terminates this appointment prior to its scheduled expiration. The amount, nature and extent of such costs are difficult if not impossible to compute and ascertain with certainty but which will include and not be limited to: (i) searching, recruiting and hiring another Athletics Director, (ii) buying out the contract, if necessary, of a new Athletics Director, (iii) compensating for potential lost donors and related revenues. If Employee agrees, whether orally or in writing, to accept comparable employment, as defined in Section 3.02 above, after Employee resigns or otherwise terminates this appointment prior to its normal expiration, he shall pay the University one of the following early-departure fees as determined by the effective date of his separation from employment: (a) Separation A) Should separation occur between July 1, 2023 and June 30, 2024, employee shall pay the Athletic Corporation \$120,000; B) Should separation occur between July 1, 2024 and June 30, 2025, employee shall pay the Athletic Corporation \$120,000; C) If Employee's term is extended to a third year, and should separation occur between July 1, 2025 and June 30, 2026, employee shall pay the Athletic Corporation \$60,000.

**Liquidated Damages
Athletic Directors in Mountain West Conference**

Stephanie Rempe	Nevada	5 years ending 6/30/2027	\$ 475,000	Yes	Tied to years in contract	If the Employee terminates this Agreement for convenience, then Employee or designee shall pay to the University, as liquidated damages and not a penalty, the following sum: an amount equal to the remaining Base Salary of the Employee as set forth in Section 5.1, excluding all deductions required by law. The liquidated damages shall be due and payable within thirty (30) calendar days of the effective date of the termination or in accordance with a payment schedule agreed upon by the parties in writing, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. The University shall not be liable for any consequential damages or loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of the Employee's termination of this Agreement without cause and Employee hereby expressly waives any such claims against the University, its officers, employees and agents. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation or outside compensation relating to Employee's employment at the University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by the Employee and acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for damages and injury suffered because of such termination by the Employee. The foregoing shall not be, nor be construed to be, a penalty.										
Eddie Nunez	New Mexico	5 years ending 6/30/2025	\$ 360,000	Yes	Tied to years in contract	Mr. Nuñez understands and agrees that termination of this Contract pursuant to this Section prior to the expiration of the Contract Term 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 Mr. Nuñez terminates this Contract during the Contract Term then he agrees to pay, or cause to be paid, to the University as liquidated damages, and not as a penalty as follows: <table><tr><td>Termination Date</td><td>Amount Owed</td></tr><tr><td>Before June 30, 2022</td><td>\$250,000</td></tr><tr><td>July 1, 2022 – June 30 2023</td><td>\$250,000</td></tr><tr><td>July 1, 2023 – June 30, 2024</td><td>\$100,000</td></tr><tr><td>After July 1, 2024</td><td>\$0</td></tr></table>	Termination Date	Amount Owed	Before June 30, 2022	\$250,000	July 1, 2022 – June 30 2023	\$250,000	July 1, 2023 – June 30, 2024	\$100,000	After July 1, 2024	\$0
Termination Date	Amount Owed															
Before June 30, 2022	\$250,000															
July 1, 2022 – June 30 2023	\$250,000															
July 1, 2023 – June 30, 2024	\$100,000															
After July 1, 2024	\$0															
John David Wicker	San Diego State	5 years ending 6/30/2028	\$ 475,000	Yes	Tied to years in contract	6. <u>Termination by Athletic Director.</u> 6.1. 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 100% of the annual base salary for the remainder of the Term of this contract. Termination by you requires thirty (30) day written notice to the University.										
Jeff Konya	San Jose State	5 years ending 12/30/2027	\$ 375,288	NA	NA	NA										

**Liquidated Damages
Athletic Directors in Mountain West Conference**

Erik Harper	UNLV	4.5 years ending 6/30/2026	\$ 420,000	Yes	Tied to years in contract	6.2 Termination by Employee The Employee understands that Employee's promise to remain employed as Director of Athletics for the entire term of this Agreement is of the essence of this Agreement to the University. The Employee also understands that the University is making a highly valuable investment in Employee continued employment by entering into this Agreement and that its investment would be lost were Employee to resign or otherwise terminate Employee employment with the University prior to the expiration of this Agreement. In recognition of these understandings, the parties agree that while the Employees may, nevertheless, terminate this Agreement prior to its normal expiration, such termination shall be only upon the following terms and conditions: 6.2.a. Written Notice Notwithstanding any provision of the NSHE Code, Title 2 to the contrary and subject to the provisions of Article 7.1, at any time after commencement of this Agreement, the Employee may terminate this Agreement without cause by giving ten (10) days' written notice to the President, such termination to become effective no earlier than ten (10) days after receipt of such written notice. 6.2.b. Liquidated Damages If the Employee terminates this Agreement for convenience, then Employee or designee shall pay to the University, as liquidated damages and not a penalty, the following sum: If Employee terminates this Agreement between January 1, 2022 and June 30, 2022: \$600,000.00; If Employee terminates this Agreement between July 1, 2022 and June 30, 2023: \$250,000.00; If Employee terminates this Agreement between July 1, 2023 and June 30, 2026: \$100,000.00, excluding all deductions required by law. The liquidated damages shall be due and payable within twenty (20) calendar days of the effective date of the termination or in accordance with a payment schedule agreed upon by the parties in writing, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. The University shall not be liable for any consequential damages or loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of the Employee's termination of this Agreement without cause and Employee hereby expressly waives any such claims against the University, its officers, employees and agents. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation or outside compensation relating to Employee's employment at the University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by the Employee and acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for damages and injury suffered because of such termination by the Employee. The foregoing shall not be, nor be construed to be, a penalty.
Diana Sabau	Utah State	5 years ending 6/30/2028	\$ 550,000	Yes	Tied to years in contract	14. Termination for Cause and Convenience (without cause). Subject to the terms of the Employment Agreement, USU will have the right to terminate your employment for cause. Further, both USU and you will have the right to terminate your employment with USU for convenience (also commonly referred to as a without-cause basis). In the event USU terminates your employment for convenience at any time, USU will be responsible to pay liquidated damages to you in the amount of seventy-five percent (75%) of the "Cumulative Remaining Salary", which is the pro-rated amount of total compensation (as described in paragraph 3 of this letter) due under this offer letter or the Employment Agreement that USU and other third parties would have been obligated to pay you had your employment not been terminated. If you terminate your employment for convenience, you will be responsible to pay USU liquidated damages in the following amounts: \$1,000,000 if you terminate before June 30, 2024; \$750,000 if you terminate before June 30, 2025; \$500,000 if you terminate before June 30, 2026; \$250,000 if you terminate before June 30, 2027; and \$150,000 if you terminate before June 30, 2028. Liquidated damage payments owed by you will be due in full within thirty (30) days of the effective date of your termination.
Tom Burman	Wyoming	5 years ending 6/30/2027	\$ 550,000	NA	NA	NA

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

BOISE STATE UNIVERSITY

SUBJECT

Employment Agreement for Head Softball Coach Justin Shults

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University seeks approval for a multi-year contract extension for Head Softball Coach Justin Shults. The contract is similar to the standard issued by Boise State University and is in conformance with the template provided by the Board.

Coach Shults was hired in June 2021 and has led the program to numerous achievements including 2023 Mountain West Regular Season Champions with an overall record of 108-50 (.684). Shults was the 2023 Mountain West Coach of the Year.

IMPACT

Coach Shults' salary is funded with program revenues, media, donations and other non-appropriated funds. Terms are as follows:

Term: Fixed term contract of five years.

Base Compensation: \$120,000 annually. The base salary will increase annually on August 1 by at least 5% at the sole discretion of the athletic director.

Buy-Out Provision: If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, an amount equal to: Coach's base salary at the time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any softball team participating in any professional league or conference in the United States or Canada.

**CONSENT
DECEMBER 18, 2024**

Incentives

Pay for Performance – Athletic:

Regular Season:

Conference Regular Season Champion	5% of salary
Conference Tournament Champion	5% of salary
NCAA At-Large Tournament Invitation	3% of salary
<i>Maximum Cumulative Regular Season</i>	<i>10% of salary</i>

Post-Season:

NCAA Tournament Win (per win)	3% of salary
Participate in NCAA Super Regionals	5% of salary
Participate in NCAA College World Series	7% of salary
Win College World Series	14% of salary
<i>Maximum Cumulative Post-Season</i>	<i>14% of salary</i>

Pay for Performance – Academic:

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate (“APR”) ranks nationally within softball as follows:

- a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 2% of salary; or
- b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or
- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or
- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary.

ATTACHMENTS

- Attachment 1 – Proposed Contract
- Attachment 2 – Redline of Proposed Contract to Model Agreement
- Attachment 3 – Redline of Proposed Contract to Current Agreement as amended
- Attachment 4 – Maximum Compensation Calculation
- Attachment 5 – APR Summary
- Attachment 6 – Base Salary and Incentive Comparison
- Attachment 7 – Liquidated Damages Comparison

BOARD STAFF COMMENTS AND RECOMMENDATIONS

The proposed employment contract is in substantial compliance with the Board-approved model contract, with a base salary of \$120,000 being consistent with

CONSENT
DECEMBER 18, 2024

other head softball coaches in the Mountain West Conference. The 5-year fixed term contract will increase at least 5% annually at the sole discretion of the BSU athletic director. Proposed incentives are aligned with performance expectations and are designed to reward both athletic and academic success. The contract provides reasonable terms regarding termination and liquidated damages, ensuring fairness for both parties.

The contract does contemplate Athletic Achievement Incentives as noted in the contract (Attachment 1 – Articles 3.21 through 3.2.4.) The dollar incentive is tied to the NCAA Academic Progress Rate (APR) Standards that are reported to the Board annually.

Should the University terminate the Coach for convenience, the University would be obligated to pay the Coach any compensation to which the Coach was contractually entitled before the termination date, but which was unpaid as of that date. Additionally, the University shall be obligated to pay the Coach, as liquidated damages not a penalty, the annual salary until the term of the agreement ends or the Coach obtains reasonable comparable employment, whichever occurs first. If the Coach terminates the Agreement for convenience, he will be responsible for liquidated damages and not a penalty in the amounts noted in Attachment 1 – Section 5.2.

It should be noted that Board Policy II.H requires all “contracts must be submitted for Board approval prior to the contract effective date.” The term of this contract starts August 1, 2024.

Board staff recommends approval of the proposed employment agreement for Head Softball Coach Justin Shults.

BOARD ACTION

I move to approve the request by Boise State University to enter a new multi-year employment agreement as proposed herein with Justin Shults, Head Softball Coach.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

(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 ~~(College);the~~ University) and
_____~~Justin Shults~~ (Coach).

ARTICLE 1

1.1. Employment. -Subject to the terms and conditions of this Agreement, the University ~~(College)~~ shall employ Coach as the head coach of its intercollegiate ~~(Sport)~~softball 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 (College)'s~~University's Athletic Director (Director) or the Director's designee. Coach shall abide by the reasonable instructions of ~~the~~ Director or the ~~Director's~~Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the ~~University (College)'s Chief Executive Officer (Chief Executive Officer)~~University's President (the President).

1.3. Duties. -Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)'s~~University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. -The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in ~~Sections 3.2.1 through (depending on supplemental pay provisions used)~~Section 3.2 shall cease.

ARTICLE 2

2.1. Term. -This Agreement is for a fixed-term appointment of ~~(—five (5) years,~~ commencing on _____~~August 1, 2024~~ and terminating, without further notice to Coach, on _____~~July 31, 2029~~ 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) ~~a)~~ An annual salary of \$ _____ ~~per year~~ \$120,000, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and ~~Chief Executive Officer~~ President and approved by the Board;
- b) The base salary will increase annually on August 1 by at least 5% at the sole discretion of the Director after determination by the Director that the annual goals the Director sets for the Coach are successfully achieved. Coach may be eligible to receive a Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. A CEC, if granted, and in what amounts, will be at the Athletic Director's sole discretion; and
- c) ~~The~~ opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty ~~exempt~~ professional 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~~ does not accrue ~~any and use~~ annual leave ~~(vacation) hours, and but~~ may take leave (other than sick leave) ~~only~~ with prior written approval of the Director~~);~~; and
- ~~ed)~~ Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Coach shall be responsible for insurance premiums for personal use of the vehicle; and
- e) The opportunity to receive such employee benefits as the University (College)'s ~~Department of Athletics (Department)~~ provides generally to its employees of a comparable level. Coach hereby

agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands and agrees that financial conditions may require the ~~Chief Executive Officer/President~~, in the ~~Chief Executive Officer's/President's~~ discretion, to institute furloughs or to take such other actions consistent with Board policy as the ~~Chief Executive Officer/President~~ may determine to be necessary to meet such challenges; provided that any furlough applied to Coach must be applied to all other employees of a comparable level. 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 may be eligible to receive supplemental compensation as follows:

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

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

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

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE)) Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College)~~3.2.1 Athletic Achievement Incentive Pay.

Regular Season:

<u>Regular Season Conference Champion</u>	<u>5% of salary</u>
<u>Conference Tournament Champion</u>	<u>5% of salary</u>
<u>NCAA At-Large Tournament Invitation</u>	<u>3% of salary</u>

Maximum Cumulative Regular Season 10% of salary

Post-Season:

<u>NCAA Tournament Win (per win)</u>	<u>3% of salary</u>
<u>Participate in NCAA Super Regional's</u>	<u>5% of salary</u>
<u>Participate in College World Series</u>	<u>7% of salary</u>
<u>Win College World Series</u>	<u>14% of salary</u>

Maximum Cumulative Post-Season 14% of salary

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be paid on the first regular pay date in August, as long as Coach remains continuously employed as the Head Coach on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate ("APR") ranks nationally within softball as follows:

- a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 2% of salary; or
- b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or
- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or
- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary.

Any supplemental compensation awarded as Academic Achievement Incentive Pay, shall be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association ("NCAA"), as long as Coach remains continuously employed as Head Coach on that date.

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

If Coach qualifies for any supplemental compensation, the amount paid to the Coach will be calculated on the percentage of base salary at time of occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2.1 and 3.2.2, above. If Coach is Head Coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

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. Coach is not entitled to supplemental compensation if Coach is placed on administrative leave or otherwise not performing the duties of Coach during the time the applicable achievement is attained.

Any such supplemental compensation actually paid to Coach shall be reported to the Board on an annual basis.

3.2.4. Coach agrees that the University has the priority right to operate 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 University (College)'s University's camps and/or clinics in Coach's Coach's capacity as a University (College)-employee.- Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s (Sport)University's 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)University's camps and/or clinics, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport)a coach at the University (College). This amount shall be paid (terms of payment).

(SUMMER CAMP—OPERATED BY COACH) If the University allows Coach may to operate a summer youth (Sport) camp camps and/or clinics at the University (College) under the following conditions:

- b) a) The summer youth camp, such operation reflects positively on the University (College) and the Department; shall be according to a written agreement which shall include conditions such as:
- 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~~i) Coach compliance with all NCAA ~~(NAIA),, Mountain West Conference (Conference), Board,~~ 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~~ii) Payment for use of University facilities; and
- iii) Provision 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 and/or clinic~~ to be held by ~~the~~ Coach after the effective date of such termination, suspension, or reassignment, and the University ~~(College)~~ shall be released from all obligations relating thereto.

~~3.2.7—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 ~~(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), any University selected vendors,~~ Coach shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. ~~Coach shall also report such outside income to the University (College) in accordance with NCAA (or NAIA) rules. Section 4.2 of this Agreement.~~ 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.

~~3.34. 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~~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 ~~softball~~ conference, ~~of which the University is a member (Conference)~~, and the NCAA ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the ~~Department's~~Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University (College)'s~~University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises ~~are attached as Exhibit B.~~will be provided to Director through the Countable Coach Form. The applicable laws, policies, rules, and regulations include: (a) ~~Board policies;~~ (b) ~~University (College)'s (Faculty Staff) Handbook;~~ (c) ~~University (College)'s Administrative Procedures Manual;~~ (d) ~~the~~ policies of the Department; (e) ~~NCAA (or NAIA) rules and regulations;~~ and (f) ~~the~~ b) the University's Policy Manual; (c) Board policies; (d) the rules and regulations of the (Sport) conference of which the University (College) is a memberConference; and (e) NCAA rules and regulations.

~~4.24.2.~~Outside Activities.— Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would ~~otherwise unreasonably~~ detract from those duties in any manner, or that, in the ~~reasonable~~ opinion of the University ~~(College)~~, ~~the Department~~, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the ~~Chief Executive Officer~~President, enter into separate arrangements for outside activities and endorsements which

are consistent with ~~Coach's~~Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use ~~the University (College)'s~~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 ~~Chief Executive Officer.~~President (such approval not to be unreasonably withheld).

4.3 ~~— NCAA (or NAIA) Rules.~~ Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s Chief Executive Officer~~President and the Director (such approval not to be unreasonably withheld) 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 ~~to the University (College)'s Chief Executive Officer whenever reasonably requested, but in no event less than annually before~~in accordance with the ~~close of business on June 30th of each year or the last regular University (College) work day preceding June 30th.~~Department's Outside Income Reporting Form. 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~~Conference, or the NCAA ~~(or NAIA).~~.

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

4.7. Disclosure of Criminal Proceedings, Serious Misconduct, ~~and Discipline.~~ Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor ~~involving, has been accused of~~ serious

misconduct in a civil suit or internal process at any prior institution where Coach was employed, 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 harassment prohibited by law, including sexual violence, harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs dishonesty or fiscal misconduct. Any disclosure after the use date of a deadly weapon or causes serious bodily injury this Agreement shall be made as soon as possible, but no later than 72 hours after Coach is on notice of any accusation.

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 University’s designated media outlets.

4.9. Attendance at Specific Gatherings. Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The Boise State Athletics Hall of Fame Dinner
- b) The biennial BAA/Alumni Auction
- c) The Lyle Smith Golf Tournament
- d) The Dairy Booster Auction
- e) The annual BAA Endowment Dinner
- f) All Department staff meetings called by the Athletic Director
- g) Athletic Department Graduation Reception
- h) BAA Appreciation Day
- i) Dinner on the Blue

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

- a) A 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~~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'~~days' absence of Coach from duty without the ~~University (College)'s~~University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)'s~~University's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA ~~(NAIA)~~;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA ~~(NAIA)~~, by one of— Coach's

assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~ Conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose ~~Serious Misconduct~~ any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.7 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 (College)'s~~ University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University ~~(College)~~ shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

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

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

5.2.2. In the event that the University ~~(College)~~ terminates this Agreement for its own convenience, the University ~~(College)~~ shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in Section 3.1.1(a), excluding all deductions required by law,

on the regular paydays of the University ~~(College)~~ until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. ~~in~~

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other employment during the original term of this Agreement and, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay period by reducing the gross salary set forth in Section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue 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 employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. ~~Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end.~~ Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation ~~received from the~~ paid to Coach by University (College) after the date Coach obtains other employment, to which Coach is obtained not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

In addition, Coach will be entitled to continue with the University benefits they are eligible for as if Coach remained a University employee until the term of this Agreement ends or until Coach other employment whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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

5.3.1. 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 employment with the University ~~(College)~~ before the end of the Agreement term.

5.3.2. 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)~~.

5.3.3. 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, an amount equal to: Coach's base salary at the following sum: _____, time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any softball team participating in any professional league or conference in the United States or Canada.

_____ The liquidated damages shall be due and payable within ~~twenty (20)~~sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

If Coach terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts such employment.

The University, in its sole discretion, may elect to waive a portion of the liquidated damages due to the University.

Coach's obligation, if any, to repay relocation expenses is based on duration of employment and not related to reason for termination and is separate from any obligation to pay liquidated damages.

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

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

5.4. Termination due to Disability or Death of Coach.

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

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

5.4.3. If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the University ~~(College)'s~~'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)~~.

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

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

5.7. Waiver of Rights.— Because 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 (College) (Faculty Staff) Handbook and the University's policies.~~

ARTICLE 6

6.1—~~Board.~~ Approval. This Agreement shall not be effective until and 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~~agreement shall be subject to the approval of the Board, if required, the ~~Chief Executive Officer~~President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board 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 (College)'s~~University's direction or for the ~~University (College)'s~~University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University ~~(College)~~. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

6.6. Governing Law.– This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. –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 ~~(College)~~: Boise State University
Director of Athletics
1910 University Drive
Boise, Idaho 83725-1020

with a copy to: Chief Executive Officer Boise State University

Office of the President
1910 University Drive
Boise, Idaho 83725-1000

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

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

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

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

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

Coach

Signature: _____
Printed Name: _____
~~Chief Executive Officer~~
Date: _____

Signature: _____
Printed Name: _____
Date: _____

University Coach

Jeramiah Dickey Justin Shults
Director of Athletics

Date Date

Dr. Marlene Tromp
President

Date

Approved by the Idaho State Board of Education on the ____ day of _____,
20__. December, 2024.

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

(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 (~~College~~),the University) and _____Justin Shults (Coach).

ARTICLE 1

1.1. Employment. -Subject to the terms and conditions of this Agreement, the University (~~College~~) shall employ Coach as the head coach of its intercollegiate (~~Sport~~)softball 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 (College)~~'s University's Athletic Director (Director) or the Director's designee. Coach shall abide by the reasonable instructions of the Director or the ~~Director's~~Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the ~~University (College)~~'s Chief Executive Officer (Chief Executive Officer)University's President (the President).

1.3. Duties. -Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)~~'s University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. -The University (~~College~~) shall have the right, at any time, to reassign Coach to duties at the University (~~College~~) other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in Sections 3.2.1 through (depending on supplemental pay provisions used)Section 3.2 shall cease.

ARTICLE 2

2.1. Term. -This Agreement is for a fixed-term appointment of (~~—~~)five (5) years, commencing on _____August 1, 2024 and terminating, without further notice to Coach, on _____July 31, 2029 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) ~~a)~~ An annual salary of \$ _____ ~~per year~~ \$120,000, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and ~~Chief Executive Officer~~ President and approved by the Board;
- b) The base salary will increase annually on August 1 by at least 5% at the sole discretion of the Director after determination by the Director that the annual goals the Director sets for the Coach are successfully achieved. Coach may be eligible to receive a Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. A CEC, if granted, and in what amounts, will be at the Athletic Director's sole discretion; and
- c) ~~The~~ opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty ~~exempt~~ professional 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~~ does not accrue ~~any and use~~ annual leave ~~(vacation) hours, and but~~ may take leave (other than sick leave) ~~only~~ with prior written approval of the Director~~);~~; and
- e~~d~~) Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Coach shall be responsible for insurance premiums for personal use of the vehicle; and
- e) The opportunity to receive such employee benefits as the University (College)'s ~~Department of Athletics (Department)~~ provides generally to its employees of a comparable level. Coach hereby

agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands and agrees that financial conditions may require the ~~Chief Executive Officer/President~~, in the ~~Chief Executive Officer's/President's~~ discretion, to institute furloughs or to take such other actions consistent with Board policy as the ~~Chief Executive Officer/President~~ may determine to be necessary to meet such challenges—; provided that any furlough applied to Coach must be applied to all other employees of a comparable level. 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 may be eligible to receive supplemental compensation as follows:

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

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

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

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE)) Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College)~~
~~3.2.1 Athletic Achievement Incentive Pay.~~

Regular Season:

<u>Regular Season Conference Champion</u>	<u>5% of salary</u>
<u>Conference Tournament Champion</u>	<u>5% of salary</u>
<u>NCAA At-Large Tournament Invitation</u>	<u>3% of salary</u>

Maximum Cumulative Regular Season 10% of salary

Post-Season:

<u>NCAA Tournament Win (per win)</u>	<u>3% of salary</u>
<u>Participate in NCAA Super Regional's</u>	<u>5% of salary</u>
<u>Participate in College World Series</u>	<u>7% of salary</u>
<u>Win College World Series</u>	<u>14% of salary</u>

Maximum Cumulative Post-Season 14% of salary

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be paid on the first regular pay date in August, as long as Coach remains continuously employed as the Head Coach on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate ("APR") ranks nationally within softball as follows:

- a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 2% of salary; or
- b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or
- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or
- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary.

Any supplemental compensation awarded as Academic Achievement Incentive Pay, shall be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association ("NCAA"), as long as Coach remains continuously employed as Head Coach on that date.

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

If Coach qualifies for any supplemental compensation, the amount paid to the Coach will be calculated on the percentage of base salary at time of occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2.1 and 3.2.2, above. If Coach is Head Coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

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. Coach is not entitled to supplemental compensation if Coach is placed on administrative leave or otherwise not performing the duties of Coach during the time the applicable achievement is attained.

Any such supplemental compensation actually paid to Coach shall be reported to the Board on an annual basis.

3.2.4. Coach agrees that the University has the priority right to operate 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 University (College)'s University's camps and/or clinics in Coach's Coach's capacity as a University (College)-employee.- Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s (Sport)University's 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)University's camps and/or clinics, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport)a coach at the University (College). This amount shall be paid (terms of payment).

~~(SUMMER CAMP—OPERATED BY COACH)~~ If the University allows Coach may to operate a summer youth (Sport) camp camps and/or clinics at the University (College) under the following conditions:

- b) a) The summer youth camp, such operation reflects positively on the University (College) and the Department; shall be according to a written agreement which shall include conditions such as:
- 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~~i) Coach compliance with all NCAA ~~(NAIA),, Mountain West~~ Conference ~~(Conference), Board,~~ 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~~ii) Payment for use of University facilities; and
- iii) Provision 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 and/or clinic~~ to be held by ~~the~~ Coach after the effective date of such termination, suspension, or reassignment, and the University ~~(College)~~ shall be released from all obligations relating thereto.

~~3.2.7—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 (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), any University selected vendors, Coach shall submit all outside consulting agreements to the University (College) for review and approval prior to execution. Coach shall also report such outside income to the University (College) in accordance with NCAA (or NAIA) rules. Section 4.2 of this Agreement. 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.~~

~~3.34. 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~~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 ~~softball~~ conference, ~~of which the University is a member (Conference)~~, and the NCAA ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the ~~Department's~~Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University (College)'s~~University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall cooperate fully with the University ~~(College)~~ and Department at all times. The names or titles of employees whom Coach supervises ~~are attached as Exhibit B.~~will be provided to Director through the Countable Coach Form. The applicable laws, policies, rules, and regulations include: (a) ~~Board policies;~~ (b) ~~University (College)'s (Faculty Staff) Handbook;~~ (c) ~~University (College)'s Administrative Procedures Manual;~~ (d) ~~the~~ policies of the Department; (e) ~~NCAA (or NAIA) rules and regulations;~~ and (f) ~~the~~ b) the University's Policy Manual; (c) Board policies; (d) the rules and regulations of the (Sport) conference of which the University (College) is a memberConference; and (e) NCAA rules and regulations.

~~4.24.2.~~Outside Activities.— Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would ~~otherwise unreasonably~~ detract from those duties in any manner, or that, in the reasonable opinion of the University ~~(College)~~, the Department, would reflect adversely upon the University ~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the ~~Chief Executive Officer~~President, enter into separate arrangements for outside activities and endorsements which

are consistent with ~~Coach's~~Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use ~~the University (College)'s~~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 ~~Chief Executive Officer.~~President (such approval not to be unreasonably withheld).

4.3 ~~— NCAA (or NAIA) Rules.~~ Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s Chief Executive Officer~~President and the Director (such approval not to be unreasonably withheld) 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 ~~to the University (College)'s Chief Executive Officer whenever reasonably requested, but in no event less than annually before~~in accordance with the ~~close of business on June 30th of each year or the last regular University (College) work day preceding June 30th.~~Department's Outside Income Reporting Form. 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~~Conference, or the NCAA ~~(or NAIA).~~.

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

4.7. Disclosure of Criminal Proceedings, Serious Misconduct, ~~and Discipline.~~ Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor ~~involving, has been accused of~~ serious

misconduct in a civil suit or internal process at any prior institution where Coach was employed, 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 harassment prohibited by law, including sexual violence, harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs dishonesty or fiscal misconduct. Any disclosure after the use date of a deadly weapon or causes serious bodily injury this Agreement shall be made as soon as possible, but no later than 72 hours after Coach is on notice of any accusation.

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 University’s designated media outlets.

4.9. Attendance at Specific Gatherings. Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The Boise State Athletics Hall of Fame Dinner
- b) The biennial BAA/Alumni Auction
- c) The Lyle Smith Golf Tournament
- d) The Dairy Booster Auction
- e) The annual BAA Endowment Dinner
- f) All Department staff meetings called by the Athletic Director
- g) Athletic Department Graduation Reception
- h) BAA Appreciation Day
- i) Dinner on the Blue

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

- a) A 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~~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'~~days' absence of Coach from duty without the ~~University (College)'s~~University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)'s~~University's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University ~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA ~~(NAIA)~~;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA ~~(NAIA)~~, by one of— Coach's

assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~ Conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose ~~Serious Misconduct~~ any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.7 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 (College)'s~~ University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University ~~(College)~~ shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

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

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

5.2.2. In the event that the University ~~(College)~~ terminates this Agreement for its own convenience, the University ~~(College)~~ shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in Section 3.1.1(a), excluding all deductions required by law,

on the regular paydays of the University ~~(College)~~ until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. ~~in~~

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other employment during the original term of this Agreement and, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay period by reducing the gross salary set forth in Section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue 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 employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. ~~Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end.~~ Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation ~~received from the~~ paid to Coach by University ~~(College)~~ after the date Coach obtains other employment, to which Coach is obtained not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

In addition, Coach will be entitled to continue with the University benefits they are eligible for as if Coach remained a University employee until the term of this Agreement ends or until Coach other employment whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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

5.3.1. 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 employment with the University ~~(College)~~ before the end of the Agreement term.

5.3.2. 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)~~.

5.3.3. 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, an amount equal to: Coach's base salary at the following sum: _____, time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any softball team participating in any professional league or conference in the United States or Canada.

_____ The liquidated damages shall be due and payable within ~~twenty (20)~~sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

If Coach terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts such employment.

The University, in its sole discretion, may elect to waive a portion of the liquidated damages due to the University.

Coach's obligation, if any, to repay relocation expenses is based on duration of employment and not related to reason for termination and is separate from any obligation to pay liquidated damages.

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

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

5.4. Termination due to Disability or Death of Coach.

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

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

5.4.3. If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the University ~~(College)'s~~'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)~~.

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

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

5.7. Waiver of Rights.— Because 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 (College) (Faculty Staff) Handbook and the University's policies.~~

ARTICLE 6

6.1—~~Board.~~ Approval. This Agreement shall not be effective until and 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~~agreement shall be subject to the approval of the Board, if required, the ~~Chief Executive Officer~~President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board 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 (College)'s~~University's direction or for the ~~University (College)'s~~University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University ~~(College)~~. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

6.6. Governing Law.– This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. –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 ~~(College)~~: Boise State University
Director of Athletics
1910 University Drive
Boise, Idaho 83725-1020

with a copy to: Chief Executive Officer Boise State University

Office of the President
1910 University Drive
Boise, Idaho 83725-1000

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

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

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

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

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

Coach

Signature: _____
Printed Name: _____
~~Chief Executive Officer~~
Date: _____

Signature: _____
Printed Name: _____
Date: _____

University

Coach

Jeramiah Dickey
Director of Athletics

Justin Shults

Date

Date

Dr. Marlene Tromp
President

Date

Approved by the Idaho State Board of Education on the ____ day of _____,
20__.December, 2024.

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

EMPLOYMENT AGREEMENT

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

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate Sport softball 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 Athletic Director (Director) or the Director's designee. Coach shall abide by the reasonable instructions of the Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (the President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in Section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of number five (#5) years, commencing on date August 1, 2024 and terminating, without further notice to Coach, on date July 31, 2029 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 \$120,000, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the Board;
- b) The base salary will increase annually on August 1 by at least 5% at the sole discretion of the Director after determination by the Director that the annual goals the Director sets for the Coach are successfully achieved. Coach may be eligible to receive a Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. A CEC, if granted, and in what amounts, will be at the Athletic Director's sole discretion; and
- c) The opportunity to receive such employee benefits as the University provides generally to non-faculty professional 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, Coach does not accrue and use annual leave (vacation) hours but may take leave (other than sick leave) with prior written approval of the Director; and
- d) Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Coach shall be responsible for insurance premiums for personal use of the vehicle; and
- e) The opportunity to receive such employee benefits as 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; provided that any furlough applied to Coach must be applied to all other employees of a comparable level.

Name Shults Contract
20##2024 to 20##2029

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 may be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

Regular Season:

Regular Season Conference Champion 5% of salary

Conference Tournament Champion 5% of salary

NCAA At-Large Tournament Invitation 3% of salary

Maximum Cumulative Regular Season 10% of salary

Post-Season:

NCAA Tournament Win (per win) 3% of salary

Participate in NCAA Super Regional's 5% of salary

Participate in College World Series 7% of salary

Win College World Series 14% of salary

Maximum Cumulative Post-Season 14% of salary

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be paid on the first regular pay date in ~~Month~~August, as long as Coach remains continuously employed as the Head Coach on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate ("APR") ranks nationally within softball as follows:

a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 2% of salary; or

b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or

c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or

d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary.

~~Name Shults~~ Contract
~~20##2024~~ to ~~20##2029~~

Any supplemental compensation awarded as Academic Achievement Incentive Pay, shall be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association ("NCAA"), as long as Coach remains continuously employed as Head Coach on that date.

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

If Coach qualifies for any supplemental compensation, the amount paid to the Coach will be calculated on the percentage of base salary at time of occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2.1 and 3.2.2, above. If Coach is Head Coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

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. Coach is not entitled to supplemental compensation if Coach is placed on administrative leave or otherwise not performing the duties of Coach during the time the applicable achievement is attained.

Any such supplemental compensation actually paid to Coach shall be reported to the Board on an annual basis.

3.2.4. Coach agrees that the University has the priority right to operate 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 University's 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 University's 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's camps and/or clinics, the University shall pay Coach supplemental compensation during each year of his employment as a coach at the University.

- 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, Mountain West Conference (Conference), Board, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
 - ii) Payment for use of University facilities; and
 - iii) Provision of proof of liability insurance

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

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 ~~{Sport}~~softball conference of which the University is a member (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. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises will be provided to Director through the Countable Coach Form. The applicable laws, policies, rules, and regulations include: (a) the policies of the Department; (b) the University's Policy Manual; (c) Board policies; (d) the rules and regulations of the Conference; and (e) NCAA rules and regulations.

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 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 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. 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 the President 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.

4.7. Disclosure of Criminal Proceedings, Serious Misconduct, and Discipline. Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Coach was employed, 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 harassment prohibited by law, including sexual harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or dishonesty or fiscal misconduct. Any disclosure after the date of this Agreement shall be made as soon as possible, but no later than 72 hours after Coach is on notice of any accusation.

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 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 perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is

received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

4.9. Attendance at Specific Gatherings. Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The Boise State Athletics Hall of Fame Dinner
- b) The biennial BAA/Alumni Auction
- c) The Lyle Smith Golf Tournament
- d) The Dairy Booster Auction
- e) The annual BAA Endowment Dinner
- f) All Department staff meetings called by the Athletic Director
- g) Athletic Department Graduation Reception
- h) BAA Appreciation Day
- i) Dinner on the Blue

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, 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 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 any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.7 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 for Convenience of University.

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

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

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other employment during the original term of this Agreement and, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment.

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 employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

In addition, Coach will be entitled to continue with the University benefits they are eligible for as if Coach remained a University employee until the term of this Agreement ends or until Coach other employment whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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

supplemental compensation, or outside compensation relating to 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. Termination by Coach for Convenience.

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

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

5.3.3. If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, an amount equal to: Coach's base salary at the time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any softball team participating in any professional league or conference in the United States or Canada.

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 (8) percent per annum until paid.

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If Coach terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts such employment.

The University, in its sole discretion, may elect to waive a portion of the liquidated damages due to the University.

Coach's obligation, if any, to repay relocation expenses is based on duration of employment and not related to reason for termination and is separate from any obligation to pay liquidated damages.

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

5.3.5. Except as 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.

5.4. Termination due to Disability or Death of Coach.

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

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

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

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

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

5.7. Waiver of Rights. Because 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, and the University's 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. 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:

Justin Shults

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 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.

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

Jeramiah Dickey
Director of Athletics

~~Name of Coach~~ Justin Shults

Date

Date

Dr. Marlene Tromp
President

Date

Approved by the Idaho State Board of Education on the ____ day of ~~Month~~ December, ~~20##~~ 2024.

~~Name Shults~~ Contract
~~20##2024~~ to ~~20##2029~~
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Coach Justin Shults Maximum Compensation Calculation - 2024-2029

		2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
3.1.1a	Annual Base Salary	\$120,000	\$126,000	\$132,300	\$138,915	\$145,861
3.2.1	Additional Pay based on Regular Season	\$12,000	\$12,600	\$13,230	\$13,892	\$14,586
	Additional Pay based on Post-Season	\$16,800	\$17,640	\$18,522	\$19,448	\$20,421
3.2.2	Additional Pay based on Academic Achievement	\$6,000	\$6,300	\$6,615	\$6,946	\$7,293
	Total Maximum potential annual compensation under Employment Agreement	\$154,800	\$162,540	\$170,667	\$179,200	\$188,160

BOISE STATE UNIVERSITY

Softball GPA and APR History/National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2019-20	2020-21	2021-22	2022-23 (May 2024 release)
Softball	1000	1000	1000	1000
National % Rank by Sport	90-100	90-100	90-100	90-100

REPORT YEAR

Raw Score for single year

Percentile Rank for Sport

MULTI-YEAR APR (4-Year Rolling Average)

Softball	992	991	994	1000
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SINGLE YEAR GRADE POINT AVERAGE (GPA) SCORES

	2020-21	2021-22	2022-23	2023-24
Softball	3.35	3.43	3.50	3.53

**Salary and Incentive Comparisons
Head Women's Basketball Coaches in Mountain West Conference**

Coach	School	Base Salary	Incentives
Justin Shults	Boise State	\$ 120,000.00	See contract
Jen Fisher	Colorado State	\$ 105,845.00	NA
Stacy May-Johnson	Fresno State	\$ 130,000.00	Employee will receive an annual bonus in the amounts set out below (non-incremental); provided that the team's annual NCAA Academic Progress Rate (APR) is at or above 930 as applicable for that fiscal year. Any adjustments in NCAA policy will be reflected appropriately and will be implemented by mutual consent and the specific goals are met are as follows: 1) Achievement of Annual NCAA APR a. Above 960 provides \$5,000 b. Above 975 provides \$10,000 c. Above 985 provides \$15,000 - Only one may be provided 2) Annual Team GPA (Fall/Spring Semesters) a. 2.6 to 2.999 provides \$5,000 b. 3.0 to 3.599 provides \$10,000 c. 3.6 and above provides \$15,000 - Only one may be provided 3) Mountain West Conference Achievement - Regular-season co-champion or champion provides \$15,000 4) Participation and Advancement in NCAA Tournament a. At-Large Participation in Regional \$15,000 b. Advancement to Super Regional \$30,000 c. Advancement to College World Series provides \$50,000 d. National Championship provides \$60,000 - Only one may be awarded 5) National rankings by USA Today/NFCA or ESPN.com/USA Softball a. Top 25 provides \$5,000 b. Top 10 provides \$10,000 - Only one may be awarded 6) Coach of the Year Honors a. Mountain West Conference Coach of the Year provides \$5,000 b. NFCA National Coach of the Year provides \$10,000 - Only one may be awarded
Victoria Hayward	Nevada	\$ 129,000.00	For each year that the Program's single year APR is at the level required by Paragraph 4.2 c.8, the University shall pay the Employee, as additional compensation, not subject to COLA, retirement contributions, or retirement deductions, for the Program's achievement of the following: Athletic Performance: a. For winning Conference Coach of the Year: \$2,500. b. For winning the Mountain West Conference Regular Season Championship: \$2,500. c. For winning the Mountain West Conference Tournament: \$5,000. d. For At-large NCAA Tournament Bid: \$5,000. e. Winning an NCAA Regional: \$2,000. f. Winning a NCAA Super Regional: \$2,500. g. Winning a NCAA Championship: \$15,000. Academic Performance: For the Team achieving an APR of 985 or higher for the academic year: \$2,500. These amounts are cumulative.
Nicole Dickson	New Mexico	\$ 100,000.00	Incentive Salary: In addition to the compensation set forth above, Coach is eligible for incentive payments according to the following categories of professional achievement. a. <u>Mountain West Conference Achievement</u> i. Regular Season Champion; or, ii. Mountain West Conference Champion b. <u>Coaching Recognition</u> i. Mountain West Coach of the Year c. <u>Student Athlete Academic Performance</u> i. Academic Progress Rate (APR) 985 or Greater \$5,000 \$2,500 \$2,500 1. APR for spring semester classes is not calculated until October of the calendar year, and this incentive does not vest until that time.

Salary and Incentive Comparisons
Head Women's Basketball Coaches in Mountain West Conference

			The San Diego State University Research Foundation shall pay to the Employee an annual bonus, based upon the criteria set below so long as Employee is employed by San Diego State University as Head Coach-Softball. The annual bonus determination process for non-academic related bonuses will begin at the completion of each Softball season (defined as June 30). The process will continue until all applicable data has been quantified and confirmed but will be paid within 90 days of the end of the Softball season. Supplemental compensation is neither reported to CalPERS, nor eligible for inclusion in any CalPERS retirement calculation. Employee will receive an annual bonus in the amounts set out below (non-incremental) provided that Softball team's annual NCAA Academic Progress Rate (APR) is at or above 930 (as applicable for the previous fiscal year) and the specific goals are met as outlined below. Only the highest single award in NCAA team achievement will be recognized with no accumulation of bonuses within the NCAA category. Any adjustments in NCAA policy will be reflected appropriately and will be implemented by mutual consent. 1) Conference Competition: a) Should Softball team win Conference Regular Season Championship or Conference Championship Tournament, Head Coach-Softball is eligible to receive a bonus equal to one (1) month rate of her then annual base salary. 2) NCAA Competition: a) Should Softball team participate in NCAA competition, Head Coach-Softball is eligible to receive (non-cumulative)-highest of below. i) Appearance one (1) month rate ii) Super Regional Appearance one and ¼ (1.25) month rate iii) College World Series participant one and ½ (1.5) month rate iv) College World Series Championship Series participant one and ¾ (1.75) month rate v) College World Series Champion two (2) month rate 3) Other: a) MW Conference Coach of Year \$2,500 b) National Coach of Year \$5,000 4) Academic Performance: a) If the Softball team has a cumulative GPA above 2.80 at the conclusion of the academic year, the Head Coach-Softball is eligible for a \$2,000 bonus. b) If the Softball team has APR (Four-year trailing average) score of 950 or higher at the conclusion of the academic year, the Head Coach-Softball is eligible for \$2,000 bonus.																																				
Stacey Nuvelman Deniz	San Diego State	\$ 120,000.00																																					
Tammy Lohmann	San Jose State	NA	NA																																				
Kristie Fox	UNLV	NA	NA																																				
			<table><tr><th>Academic Achievements</th><th>Amount</th></tr><tr><td>Team maintains a single-year Academic Progress Rate (APR) of 980 or above or a multiyear APR of 950 or above.</td><td>\$1,000</td></tr><tr><td>Team maintains an average GPA of 3.40 or higher for an academic year.</td><td>\$1,000</td></tr></table> *Note: APR-associated incentive compensation may be paid annually and will be triggered upon the publication of the single-year or multi-year APR of 980 or 950, respectively. GPA-associated incentive compensation may be paid at the conclusion of each academic year. <table><tr><th>Conference Achievements</th><th>Amount</th></tr><tr><td>Team accomplishes one of the following: 1) wins the conference regular season as champion or co-champion OR 2) wins the conference tournament championship, OR 3) obtains an NCAA Regional at-large selection bid. This incentive compensation applies to only one of the above achievements. If the Team accomplishes two of the three or all three, double or triple compensation will not be paid.</td><td>\$8,750 (2023-24 Season) \$9,166 (2024-25 Season) \$9,583 (2025-26 Season)</td></tr><tr><td>Coach receives "Coach of the Year" honors from the conference</td><td>\$1,000</td></tr></table> <table><tr><th>Coach Award Achievements (Coach may only earn one annually; maximum annual payment of \$10,000)</th><th>Amount</th></tr><tr><td>Coach receives National Fastpitch Coaches Association Regional Coach of the Year</td><td>\$3,000</td></tr><tr><td>Coach receives National Fastpitch Coaches Association Coach of the Year</td><td>\$10,000</td></tr></table> <table><tr><th>Team Honors (Coach may earn only one annually; maximum annual payment of \$25,000)</th><th>Amount</th></tr><tr><td>NCAA Tournament Super Regional Appearance; OR</td><td>\$10,000</td></tr><tr><td>College World Series Appearance; OR</td><td>\$15,000</td></tr><tr><td>College World Series Champion</td><td>\$25,000</td></tr></table> <table><tr><th>Final National Team Ranking in USA Today or Associated Press (Coach may earn only one annually; maximum annual payment of \$12,500)</th><th>Amount</th></tr><tr><td>Team is ranked in the top 25</td><td>\$5,000</td></tr><tr><td>Team is ranked in the top 15</td><td>\$7,500</td></tr><tr><td>Team is ranked in the top 10</td><td>\$10,000</td></tr><tr><td>Team is ranked in the top 5</td><td>\$12,500</td></tr></table> *Note: These achievements may be paid annually and will be triggered upon the publication of final rankings in USA Today or the Associated Press. Payment will be made for only the highest achievement that has occurred (e.g., If the Team finishes in the Top 15, then \$7,500 would be awarded; NOT \$7,500 for the Top 15 AND \$5,000 for the Top 25).	Academic Achievements	Amount	Team maintains a single-year Academic Progress Rate (APR) of 980 or above or a multiyear APR of 950 or above.	\$1,000	Team maintains an average GPA of 3.40 or higher for an academic year.	\$1,000	Conference Achievements	Amount	Team accomplishes one of the following: 1) wins the conference regular season as champion or co-champion OR 2) wins the conference tournament championship, OR 3) obtains an NCAA Regional at-large selection bid. This incentive compensation applies to only one of the above achievements. If the Team accomplishes two of the three or all three, double or triple compensation will not be paid.	\$8,750 (2023-24 Season) \$9,166 (2024-25 Season) \$9,583 (2025-26 Season)	Coach receives "Coach of the Year" honors from the conference	\$1,000	Coach Award Achievements (Coach may only earn one annually; maximum annual payment of \$10,000)	Amount	Coach receives National Fastpitch Coaches Association Regional Coach of the Year	\$3,000	Coach receives National Fastpitch Coaches Association Coach of the Year	\$10,000	Team Honors (Coach may earn only one annually; maximum annual payment of \$25,000)	Amount	NCAA Tournament Super Regional Appearance; OR	\$10,000	College World Series Appearance; OR	\$15,000	College World Series Champion	\$25,000	Final National Team Ranking in USA Today or Associated Press (Coach may earn only one annually; maximum annual payment of \$12,500)	Amount	Team is ranked in the top 25	\$5,000	Team is ranked in the top 15	\$7,500	Team is ranked in the top 10	\$10,000	Team is ranked in the top 5	\$12,500
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Todd Judge	Utah State	\$ 110,000.00																																					

**Liquidated Damages
Head Women's Basketball Coaches in Mountain West Conference**

Coach	School	Length of Contract	2024 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
Justin Shults	Boise State	5 years ending July 31, 2029	\$ 120,000	Yes	Sliding Scale	See contract
Jen Fisher	Colorado State	At will	NA	NA	NA	NA
Stacy May-Johnson	Fresno State	5 years ending June 1, 2026	\$ 130,000	Yes	Flat Rate	and assistant coaching staff. If Employee chooses to resign her position as Fresno State Head Softball Coach prior to the completion of the Term of the Appointment, she shall pay the Athletic Corporation an early departure fee of \$62,000.00 unless the resignation is directly related to Employee's health or family concerns to the Employee and the Employee does not accept comparable employment for at least two years from the effective date of her resignation from the University. If the Employee is on furlough and receiving a reduced salary as the result of the furlough, the amount that the Employee would owe for the early departure fee will be reduced by the same proportionate percentage that her salary was reduced as a result of the furlough.
Victoria Hayward	Nevada	5 years ending May 22, 2029	\$ 129,000	Yes	Tied to years in contract	a. If the Employee terminates this Agreement for convenience between the Effective Date and June 30, 2025: \$129,000; b. If the Employee terminates this Agreement for convenience between July 1, 2025 and June 30, 2026: \$64,500; c. If the Employee terminates this Agreement for convenience between July 1, 2026, and June 30, 2027: \$32,250; d. If the Employee terminates this Agreement for convenience between July 1, 2027, and June 30, 2028: \$15,000; e. If the Employee terminates this Agreement for convenience between July 1, 2028, and May 22, 2029: \$15,000. The liquidated damages shall be due and payable within ninety (90) calendar days of the effective date of the termination, or in accordance with a payment schedule agreed upon by the President of the University and the Employee in writing, and any unpaid amount shall bear simple interest at a rate of eight (8) percent per annum until paid.
Nicole Dickson	New Mexico	5 years ending June 30, 2027	\$ 100,000	Yes	Tied to years in contract	Coach understands and agrees that termination of this Contract pursuant to this Section prior to the expiration of the Contract Term 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 during the Contract Term then Coach agrees to pay to the University as liquidated damages, and not as a penalty, as follows: If termination occurs in Contract Employment Year One: \$200,000.00 If termination occurs in Contract Employment Year Two: \$100,000.00 If termination occurs in Contract Employment Year Three: \$50,000.00 If termination occurs in Contract Employment Year Four: \$25,000.00 If termination occurs in Contract Employment Year Five: \$0 (zero) Liquidated damages may be modified to a lesser amount at the discretion of the DIA, with approval of the University President. In the event that Coach terminates this Contract and, for a period of two years following the date of termination, is not employed as a Softball Coach, Coach shall not be required to pay liquidated damages pursuant to this Section.

**Liquidated Damages
Head Women's Basketball Coaches in Mountain West Conference**

Stacey Nuveman Deniz	San Diego State	4 years ending June 30, 2026	\$ 120,000	Yes	Tied to years in contract	Early Termination by Coach. In the event that Employee voluntarily terminates her employment from the position of Head Coach-Softball with the University for other Softball-related employment, this contract will be terminated, and the Employee will have the following buyout obligations payable to the University upon separation: <table><tr><td>1. Before June 30, 2022:</td><td>\$504,300</td></tr><tr><td>2. Before June 30, 2023:</td><td>\$384,300</td></tr><tr><td>3. Before June 30, 2024:</td><td>\$258,300</td></tr><tr><td>4. Before June 30, 2025:</td><td>\$132,300</td></tr><tr><td>5. Before June 30, 2026:</td><td>\$0</td></tr></table> Should Employee accept head coaching position at the University of California, Los Angeles (UCLA) before June 30, 2026 then buyout obligation shall be \$0.	1. Before June 30, 2022:	\$504,300	2. Before June 30, 2023:	\$384,300	3. Before June 30, 2024:	\$258,300	4. Before June 30, 2025:	\$132,300	5. Before June 30, 2026:	\$0
1. Before June 30, 2022:	\$504,300															
2. Before June 30, 2023:	\$384,300															
3. Before June 30, 2024:	\$258,300															
4. Before June 30, 2025:	\$132,300															
5. Before June 30, 2026:	\$0															
Tammy Lohmann	San Jose State	NA	NA	NA	NA	NA										
Kristie Fox	UNLV	NA	NA	NA	NA	NA										
Todd Judge	Utah State	3 year ending June 30, 2026	\$ 110,000	Yes	Tied to years in contract	7. Termination for Convenience 7.1. Termination for Convenience by Coach. 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 all compensation otherwise due under this Agreement. In the event this Agreement is terminated by Coach <i>for convenience</i> and more than one year remains on the Term of the Agreement, Coach shall pay to USU liquidated damages in an amount of fifteen thousand dollars (\$15,000.00), unless otherwise negotiated by the Coach and the Director. Any such negotiations shall be in good faith between the Parties and consider the current circumstances of the Team, any assistant coaches, and associated student-athletes; the time remaining in both the Term and the then present season of competition (<i>e.g.</i>, mid-season, post season, etc.), and anticipated expenses that would be incurred by USU in replacing the Coach.										

BOISE STATE UNIVERSITY

SUBJECT

Employment contract for Head Women's Basketball Coach Gordon Presnell

REFERENCE

February 2011	The Idaho State Board of Education (Board) approved a two-year employment agreement with Head Women's Basketball Coach Gordon Presnell.
December 2014	The Board approved a five-year employment agreement with Coach Presnell.
August 2016	The Board approved a new three-year employment agreement with Coach Presnell.
August 2017	The Board approved a new five-year rolling employment agreement with Coach Presnell.
December 2018	The Board approved an amendment to the 2017 employment agreement with Coach Presnell regarding incentive pay.
June 2019	The Board approved a new four year and nine month employment agreement with Coach Presnell.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University seeks to renew and extend the contract for its Head Women's Basketball Coach, Gordon Presnell. The contract is similar to the standard issued by Boise State University and is in conformance with the Board's template.

Under Coach Presnell's leadership, the Boise State Women's Basketball team continues to excel as evidenced by the following performance measures:

- 751 career wins, ranking Presnell 6th among active Division I women's basketball head coaches
- 243 wins since joining the Mountain West (4th all time)
- 134 Mountain West victories (2nd all time)
- 20 Mountain West Tournament wins (2nd most all time)
- 14 winning seasons at Boise State (including 10 of the last 11)
- 4 regular season titles and 6 conference tournament titles

**CONSENT
DECEMBER 18, 2024**

- First coach to win 4 consecutive Mountain West tournament titles
- Named to the WBCA Academic Top 25 in 3 straight seasons

The current contract term extends to March 2027; the new contract seeks to establish a fixed, five-year term to provide continuity in program leadership.

IMPACT

Coach Presnell's salary is funded with program revenues, media, donations and other non-appropriated funds. The salary and incentive structures have changed from the current contract. Terms are as follows:

Term: Fixed term contract of five years.

Base Compensation:

April 1, 2024 – March 31, 2025 = \$350,000;
April 1, 2025 – March 31, 2026 = \$360,000;
April 1, 2026 – March 31, 2027 = \$370,000;
April 1, 2027 – March 31, 2028 = \$380,000;
April 1, 2028 – March 31, 2029 = \$390,000;

Buy-Out Provision: If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, an amount equal to: Coach's base salary at the time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any women's basketball team participating in any professional league or conference in the United States or Canada.

Incentives:

Pay for Performance – Athletic:

Regular Season:

Conference Regular Season Champion	6% of salary
Conference Tournament Champion	6% of salary
NCAA At-Large Tournament Invitation	4% of salary

CONSENT
DECEMBER 18, 2024

<i>Maximum Cumulative Regular Season</i>	<i>12% of salary</i>
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Post-Season:

National Invitation Tournament win	2% of salary
NCAA Tournament Win (per win)	4% of salary
NCAA Tournament Elite 8 Appearance	6% of salary
NCAA Tournament Final Four Appearance	8% of salary
NCAA Tournament National Champion	16% of salary

<i>Maximum Cumulative Post-Season</i>	<i>16% of salary</i>
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Pay for Performance – Academic

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate (“APR”) ranks nationally within women’s basketball as follows:

- a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or
- b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or
- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary; or
- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 6% of salary

ATTACHMENTS

Attachment 1 – Proposed Contract
Attachment 2 – Redline of Proposed Contract to Model Agreement
Attachment 3 – Redline of Proposed Contract to Current Agreement as amended
Attachment 4 – Maximum Compensation Calculation
Attachment 5 – APR Summary
Attachment 6 – Base Salary and Incentive Comparison
Attachment 7 – Liquidated Damages Comparison

BOARD STAFF COMMENTS AND RECOMMENDATIONS

The proposed employment contract agreement is in substantial compliance with the Board-approved model contract, with a base salary of \$350,000 being consistent with other head women’s basketball coaches in the Mountain West Conference. The contract is a 5-year fixed term with a set \$10,000 increase annually. Proposed incentives are aligned with performance expectations and are designed to reward both academic and athletic success. The contract provides reasonable terms regarding termination and liquidated damages, ensuring fairness for both parties.

**CONSENT
DECEMBER 18, 2024**

The contract does contemplate Athletic Achievement Incentives as noted in the contract (Attachment 1 – Articles 3.2.1 through 3.2.3.) The dollar incentive is tied to the NCAA Academic Progress Rate (APR) Standards that are reported to the Board annually.

Should the University terminate the Coach for convenience, the University would be obligated to pay the Coach any compensation to which the Coach was contractually entitled before the termination date, but which was unpaid as of that date. Additionally, the University shall be obligated to pay the Coach, as liquidated damages not a penalty, the annual salary until the term of the agreement ends or the Coach obtains reasonable comparable employment, whichever occurs first. If the Coach terminates the Agreement for convenience, he will be responsible for liquidated damages and not a penalty in the amounts noted in Attachment 1 – Section 5.2.

Board staff recommends approval of the proposed employment agreement for Head Women's Basketball Coach Gordon Presnell.

BOARD ACTION

I move to approve the request by Boise State University to enter a new multi-year employment agreement as proposed herein with Gordon Presnell, Head Women's Basketball Coach.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

EMPLOYMENT AGREEMENT

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

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in Section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on April 1, 2024 and terminating, without further notice to Coach, on March 31, 2029 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 as follows:
April 1, 2024 – March 31, 2025 = \$350,000;
April 1, 2025 – March 31, 2026 = \$360,000;
April 1, 2026 – March 31, 2027 = \$370,000;
April 1, 2027 – March 31, 2028 = \$380,000;
April 1, 2028 – March 31, 2029 = \$390,000;
payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the Board;
- b) Coach may be eligible to receive a Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. A CEC, if granted, and in what amounts, will be at the Athletic Director's sole discretion; and
- c) The opportunity to receive such employee benefits as the University provides generally to non-faculty professional employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; and
- d) Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Coach shall be responsible for insurance premiums for personal use of the vehicle; and
- e) The opportunity to receive such employee benefits as 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; provided that any furlough applied to Coach must be applied to all other employees of a comparable level.

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 may be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

Regular Season:

Conference Regular Season Champion	6% of salary
Conference Tournament Champion	6% of salary
NCAA At-Large Tournament Invitation	4% of salary

Maximum Cumulative Regular Season 12% of salary

Post-Season:

National Invitation Tournament Win	2% of salary
NCAA Tournament Win (per win)	4% of salary
NCAA Tournament Elite 8 Appearance	6% of salary
NCAA Tournament Final Four Appearance	8% of salary
NCAA Tournament National Champion	16% of salary

Maximum Cumulative Post-Season 16% of salary

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be paid on the first regular pay date in May, as long as Coach remains continuously employed as the Head Coach on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate ("APR") ranks nationally within women's basketball as follows:

- a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; **or**
- b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; **or**
- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary; or

- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 6% of salary.

Any supplemental compensation awarded as Academic Achievement Incentive Pay, shall be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association (“NCAA”), as long as Coach remains continuously employed as Head Coach on that date.

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

If Coach qualifies for any supplemental compensation, the amount paid to the Coach will be calculated on the percentage of base salary at time of occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2.1 and 3.2.2, above. If Coach is Head Coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

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. Coach is not entitled to supplemental compensation if Coach is placed on administrative leave or otherwise not performing the duties of Coach during the time the applicable achievement is attained.

Any such supplemental compensation actually paid to Coach shall be reported to the Board on an annual basis.

3.2.4. Coach agrees that the University has the priority right to operate 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 University’s 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 University’s 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’s camps and/or clinics, the University shall pay Coach supplemental compensation during each year of his employment as a coach at the University.

- 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, Mountain West Conference (Conference), Board, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
 - ii) Payment for use of University facilities; and
 - iii) Provision of proof of liability insurance

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

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 women's basketball conference of which the University is a member (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. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises will be provided to Director through the Countable Coach Form. The applicable laws, policies, rules, and regulations include: (a) the policies of the Department; (b) the University's Policy Manual; (c) Board policies; (d) the rules and regulations of the Conference; and (e) NCAA rules and regulations.

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 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 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. 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 the President 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.

4.7. Disclosure of Criminal Proceedings, Serious Misconduct, and Discipline. Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Coach was employed, 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 harassment prohibited by law, including sexual harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or dishonesty or fiscal misconduct. Any disclosure after the date of this Agreement shall be made as soon as possible, but no later than 72 hours after Coach is on notice of any accusation.

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 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 perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this

prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

4.9. Attendance at Specific Gatherings. Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The Boise State Athletics Hall of Fame Dinner
- b) The biennial BAA/Alumni Auction
- c) The Lyle Smith Golf Tournament
- d) The Dairy Booster Auction
- e) The annual BAA Endowment Dinner
- f) All Department staff meetings called by the Athletic Director
- g) Athletic Department Graduation Reception
- h) BAA Appreciation Day
- i) Dinner on the Blue

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, 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 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 any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.7 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 for Convenience of University.

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

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

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other employment during the original term of this Agreement and, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment.

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 employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

In addition, Coach will be entitled to continue with the University benefits they are eligible for as if Coach remained a University employee until the term of this Agreement ends or until Coach other employment whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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

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

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

5.3.3. If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, an amount equal to: Coach's base salary at the time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any women's basketball team participating in any professional league or conference in the United States or Canada.

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 (8) percent per annum until paid.

If Coach terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts such employment.

The University, in its sole discretion, may elect to waive a portion of the liquidated damages due to the University.

Coach's obligation, if any, to repay relocation expenses is based on duration of employment and not related to reason for termination and is separate from any obligation to pay liquidated damages.

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

5.3.5. Except as 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.

5.4. Termination due to Disability or Death of Coach.

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

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

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

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

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

5.7. Waiver of Rights. Because 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, and the University's 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. 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
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with a copy to: Boise State University
 Office of the President
 1910 University Drive
 Boise, Idaho 83725-1000

Coach: Gordon Presnell
 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 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.

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

Jeramiah Dickey
Director of Athletics

Gordon Presnell

Date

Date

Dr. Marlene Tromp
President

Date

Approved by the Idaho State Board of Education on the ____ day of December, 2024.

(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 (College), the University)~~ and
_____~~Gordon Presnell~~ (Coach).

ARTICLE 1

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

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

1.3. Duties. -Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)'s~~University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. -The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in ~~Sections 3.2.1 through (depending on supplemental pay provisions used)~~Section 3.2 shall cease.

ARTICLE 2

2.1. Term. -This Agreement is for a fixed-term appointment of ~~(—five (5) years,~~ commencing on _____ April 1, 2024 and terminating, without further notice to Coach, on _____ March 31, 2029 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) ~~a)~~ — An annual salary of \$_____ per year, as follows:
April 1, 2024 – March 31, 2025 = \$350,000;
April 1, 2025 – March 31, 2026 = \$360,000;
April 1, 2026 – March 31, 2027 = \$370,000;
April 1, 2027 – March 31, 2028 = \$380,000;
April 1, 2028 – March 31, 2029 = \$390,000;
payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and ~~Chief Executive Officer~~ President and approved by the Board;
- ~~b)~~ Coach may be eligible to receive a Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. A CEC, if granted, and in what amounts, will be at the Athletic Director's sole discretion; and
- ~~c)~~ The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty ~~exempt professional~~ 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
- ~~ed)~~ Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Coach shall be responsible for insurance premiums for personal use of the vehicle; and

- e) The opportunity to receive such employee benefits as the University (College)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands and agrees that financial conditions may require the Chief Executive Officer President, in the Chief Executive Officer's President's discretion, to institute furloughs or to take such other actions consistent with Board policy as the Chief Executive Officer President may determine to be necessary to meet such challenges-; provided that any furlough applied to Coach must be applied to all other employees of a comparable level. 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 may be eligible to receive supplemental compensation as follows:

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

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

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

~~3.2.6 (SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE)) Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College)~~
3.2.1 Athletic Achievement Incentive Pay.

Regular Season:

<u>Conference Regular Season Champion</u>	<u>6% of salary</u>
<u>Conference Tournament Champion</u>	<u>6% of salary</u>
<u>NCAA At-Large Tournament Invitation</u>	<u>4% of salary</u>

Maximum Cumulative Regular Season 12% of salary

Post-Season:

<u>National Invitation Tournament Win</u>	<u>2% of salary</u>
<u>NCAA Tournament Win (per win)</u>	<u>4% of salary</u>
<u>NCAA Tournament Elite 8 Appearance</u>	<u>6% of salary</u>
<u>NCAA Tournament Final Four Appearance</u>	<u>8% of salary</u>

NCAA Tournament National Champion 16% of salary

Maximum Cumulative Post-Season 16% of salary

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be paid on the first regular pay date in May, as long as Coach remains continuously employed as the Head Coach on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate ("APR") ranks nationally within women's basketball as follows:

- a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or
- b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or
- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary; or
- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 6% of salary.

Any supplemental compensation awarded as Academic Achievement Incentive Pay, shall be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association ("NCAA"), as long as Coach remains continuously employed as Head Coach on that date.

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

If Coach qualifies for any supplemental compensation, the amount paid to the Coach will be calculated on the percentage of base salary at time of occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2.1 and 3.2.2, above. If Coach is Head Coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

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. Coach is not entitled to supplemental compensation if Coach is placed on administrative leave or otherwise not performing the duties of Coach during the time the applicable achievement is attained.

Any such supplemental compensation actually paid to Coach shall be reported to the Board on an annual basis.

3.2.4. Coach agrees that the University has the priority right to operate 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 University (College)'s University's camps and/or clinics in Coach's Coach's capacity as a University (College)-employee.- Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s (Sport)University's 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)University's camps and/or clinics, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport)a coach at the University (College). This amount shall be paid (terms of payment)-.

(SUMMER CAMP—OPERATED BY COACH) If the University allows Coach mayto operate a summer youth (Sport) camp camps and/or clinics at the University (College) under the following conditions:

- b) a) The summer youth camp, such operation reflects positively on the University (College) and the Department; shall be according to a written agreement which shall include conditions such as:
- 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 compliesi) Coach compliance with all NCAA (NAIA),, Mountain West Conference (Conference), Board, 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 useii) Payment for use of University facilities; and~~
- ~~iii) Provision 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 and/or clinic~~ to be held by ~~the~~ Coach after the effective date of such termination, suspension, or reassignment, and the University ~~(College)~~ shall be released from all obligations relating thereto.

~~3.2.7—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 ~~(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), any University selected vendors,~~ Coach shall submit all outside consulting agreements to the University ~~(College)~~ for review and approval prior to execution. ~~Coach shall also report such outside income to the University (College) in accordance with NCAA (or NAIA) rules. Section 4.2 of this Agreement.~~ 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.

~~3.34. 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~~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 women's basketball conference, of which the University is a member (Conference), and the NCAA ~~(or NAIA)~~; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the ~~Department's~~Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the ~~University (College)'s~~University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall cooperate fully with the University (College) and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit B, will be provided to Director through the Countable Coach Form. The applicable laws, policies, rules, and regulations include: (a) ~~Board policies;~~ (b) ~~University (College)'s (Faculty Staff) Handbook;~~ (c) ~~University (College)'s Administrative Procedures Manual;~~ (d) ~~the~~ the policies of the Department; (e) ~~NCAA (or NAIA) rules and regulations;~~ and (f) ~~the~~ b) the University's Policy Manual; (c) Board policies; (d) the rules and regulations of the (Sport) conference of which the University (College) is a member Conference; and (e) NCAA rules and regulations.

~~4.24.2.~~Outside Activities.— Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would ~~otherwise unreasonably~~ detract from those duties in any manner, or that, in the reasonable opinion of the University ~~(College), the Department,~~ would reflect adversely upon the University

~~(College)~~ or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the ~~Chief Executive Officer~~President, enter into separate arrangements for outside activities and endorsements which are consistent with ~~Coach's~~Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use ~~the University (College)'s~~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 ~~Chief Executive Officer~~President (such approval not to be unreasonably withheld).

4.3. ~~NCAA (or NAIA) Rules.~~ Outside Income. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)'s Chief Executive Officer~~President and the Director (such approval not to be unreasonably withheld) 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 ~~to the University (College)'s Chief Executive Officer whenever reasonably requested, but in no event less than annually before~~in accordance with the close of business on June 30th of each year or the last regular University (College) work day preceding June 30th.Department's Outside Income Reporting Form. 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~~Conference, or the NCAA ~~(or NAIA).~~

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

4.7. Disclosure of Criminal Proceedings, Serious Misconduct, and Discipline. Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor involving, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Coach was employed, 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 harassment prohibited by law, including sexual violence, harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs dishonesty or fiscal misconduct. Any disclosure after the use date of a deadly weapon or causes serious bodily injury this Agreement shall be made as soon as possible, but no later than 72 hours after Coach is on notice of any accusation.

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 University’s designated media outlets.

4.9. Attendance at Specific Gatherings. Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The Boise State Athletics Hall of Fame Dinner
- b) The biennial BAA/Alumni Auction
- c) The Lyle Smith Golf Tournament
- d) The Dairy Booster Auction
- e) The annual BAA Endowment Dinner
- f) All Department staff meetings called by the Athletic Director
- g) Athletic Department Graduation Reception
- h) BAA Appreciation Day
- i) Dinner on the Blue

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

- a) A 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~~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'~~days' absence of Coach from duty without the ~~University (College)'s~~University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)'s~~University's judgment, reflect adversely on the University ~~(College)~~ or its athletic programs;
- f) The failure of Coach to represent the University ~~(College)~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the University-~~(College)~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University-~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA-~~(NAIA)~~;

- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University ~~(College)~~, the Board, the ~~conference~~Conference, or the NCAA ~~(NAIA)~~, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.
- j) The failure of Coach to disclose ~~Serious Misconduct~~any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.7 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 (College)'s~~University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University ~~(College)~~ shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

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

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

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other employment during the original term of this Agreement and, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay period by reducing the gross salary set forth in Section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue 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 employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. ~~Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end.~~ Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation ~~received from the~~ paid to Coach by University (College) after the date Coach obtains other employment, to which Coach is obtained not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

In addition, Coach will be entitled to continue with the University benefits they are eligible for as if Coach remained a University employee until the term of this Agreement ends or

until Coach other employment whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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

5.3.1. 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 employment with the University (College) before the end of the Agreement term.

5.3.2. 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).

5.3.3. 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, an amount equal to: Coach's base salary at the following sum: _____ time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or

c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any women's basketball team participating in any professional league or conference in the United States or Canada.

The liquidated damages shall be due and payable within ~~twenty (20)~~sixty (60) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

If Coach terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts such employment.

The University, in its sole discretion, may elect to waive a portion of the liquidated damages due to the University.

Coach's obligation, if any, to repay relocation expenses is based on duration of employment and not related to reason for termination and is separate from any obligation to pay liquidated damages.

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

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

5.4. Termination due to Disability or Death of Coach.

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

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

5.4.3. If this Agreement is terminated because Coach becomes totally or permanently disabled as defined by the University ~~(College)'s'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)~~.

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

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

5.7. Waiver of Rights. - Because 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 (College) (Faculty Staff) Handbook and the University's policies.~~

ARTICLE 6

6.1 ~~—Board.~~ Approval. This Agreement shall not be effective until and 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~~ agreement shall be subject to the approval of the

Board, if required, the ~~Chief Executive Officer~~President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board 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 ~~(College)~~'s~~University's direction or for the ~~University ~~(College)~~'s~~University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University ~~(College)~~. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

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

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

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

6.6. Governing Law.– This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho. –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 ~~(College):~~ _____ Boise State University
Director of Athletics
_____1910 University Drive
_____Boise, Idaho 83725-1020

with a copy to: Chief Executive Officer Boise State University

_____Office of the President
_____1910 University Drive
_____Boise, Idaho 83725-1000

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

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

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

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

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

Coach

Signature: _____
Printed Name: _____
~~Chief Executive Officer~~
Date: _____

Signature: _____
Printed Name: _____
Date: _____

University Coach

Jeramiah Dickey Gordon Presnell
Director of Athletics

Date Date

Dr. Marlene Tromp
President

Date

Approved by the Idaho State Board of Education on the ____ day of _____,
20__. December, 2024.

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

EMPLOYMENT AGREEMENT

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

ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in Section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~{number}five~~ -(5-#-) years, commencing on ~~{date} April 1, 2024~~ -and terminating, without further notice to Coach, on March 31, 2029 ~~{date}~~ -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 \$ _____, as follows:
April 1, 2024 – March 31, 2025 = \$350,000;
-April 1, 2025 – March 31, 2026 = \$360,000;
April 1, 2026 – March 31, 2027 = \$370,000;
April 1, 2027 – March 31, 2028 = \$380,000;
April 1, 2028 – March 31, 2029 = \$390,000;

payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the Board;

- b) Coach may be eligible to receive a Change in Employee Compensation (CEC) increase, if approved by the Idaho Legislature. A CEC, if granted, and in what amounts, will be at the Athletic Director's sole discretion; and
- c) The opportunity to receive such employee benefits as the University provides generally to non-faculty professional employees, provided that Coach qualifies for such benefits by meeting all applicable eligibility requirements; ~~except that, in accordance with Board Policy H.H.6.b.ii, Coach does not accrue and use annual leave (vacation) hours but may take leave (other than sick leave) with prior written approval of the Director;~~ and
- d) Assignment of one vehicle through the University's Department of Athletics (the Department) trade-out program during the Term of this Agreement, subject to and according to the policy of the Board and any separate agreement(s) relating to the vehicle; specifically, Coach shall be responsible for insurance premiums for personal use of the vehicle; and
- e) The opportunity to receive such employee benefits as 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; provided that any furlough applied to Coach must be applied to all other employees of a comparable level. 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 may be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

Regular Season:

Conference Regular Season Champion 6% of salary

Conference Tournament Champion 6% of salary

NCAA At-Large Tournament Invitation 4% of salary

Maximum Cumulative Regular Season 12% of salary

Post-Season:

National Invitation Tournament Win 2% of salary

NCAA Tournament Win (per win) 4% of salary

NCAA Tournament Elite 8 Appearance 6% of salary

NCAA Tournament Final Four Appearance 8% of salary

NCAA Tournament National Champion 16% of salary

Maximum Cumulative Post-Season 16% of salary

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be paid on the first regular pay date in May, as long as Coach remains continuously employed as the Head Coach on that date.

3.2.2. Academic Achievement Incentive Pay.

Academic Incentive Pay may be earned for the most recent academic year if the annual Team Academic Progress Rate ("APR") ranks nationally within women's basketball as follows:

a) If the annual APR rating is between 50%-59.9% of the 4-year National Ranking, Employee may receive a sum of up to 3% of salary; or

b) If the annual APR rating is between 60%-69.9% of the 4-year National Ranking, Employee may receive a sum of up to 4% of salary; or

- c) If the annual APR rating is between 70%-79.9% of the 4-year National Ranking, Employee may receive a sum of up to 5% of salary; or
- d) If the annual APR rating is 80% or higher of the 4-year National Ranking, Employee may receive a sum of up to 6% of salary.

Any supplemental compensation awarded as Academic Achievement Incentive Pay, shall be paid as soon as reasonably practical following APR rating determination and verification by the National Collegiate Athletic Association ("NCAA"), as long as Coach remains continuously employed as Head Coach on that date.

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

If Coach qualifies for any supplemental compensation, the amount paid to the Coach will be calculated on the percentage of base salary at time of occurrence. Provided, however, if conditions beyond the control of the University prevent the University from hosting home competitions at full capacity, supplemental compensation may be less than the amounts in Sections 3.2.1 and 3.2.2, above. If Coach is Head Coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

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. Coach is not entitled to supplemental compensation if Coach is placed on administrative leave or otherwise not performing the duties of Coach during the time the applicable achievement is attained.

Any such supplemental compensation actually paid to Coach shall be reported to the Board on an annual basis.

3.2.4. Coach agrees that the University has the priority right to operate 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 University's 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 University's 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's camps and/or clinics, the University shall pay

Coach supplemental compensation during each year of his employment as a coach at the University.

- 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, Mountain West Conference (Conference), Board, and University rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
 - ii) Payment for use of University facilities; and
 - iii) Provision of proof of liability insurance

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

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 ~~Sport~~women's basketball conference of which the University is a member (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. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises will be provided to Director through the Countable Coach Form. The applicable laws, policies, rules, and regulations include: (a) the policies of the Department; (b) the University's Policy Manual; (c) Board policies; (d) the rules and regulations of the Conference; and (e) NCAA rules and regulations.

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 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 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. 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 the President 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.

4.7. Disclosure of Criminal Proceedings, Serious Misconduct, and Discipline. Coach warrants that prior to signing this Agreement, Coach has disclosed and will continue to disclose if Coach has been accused of, investigated for, convicted of, or pled guilty or no contest to, or received a withheld judgment for a felony or misdemeanor, has been accused of serious misconduct in a civil suit or internal process at any prior institution where Coach was employed, 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 harassment prohibited by law, including sexual harassment, sexual misconduct, domestic violence, dating violence, stalking, sexual exploitation, or dishonesty or fiscal misconduct. Any disclosure after the date of this Agreement shall be made as soon as possible, but no later than 72 hours after Coach is on notice of any accusation.

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 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 perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that

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

4.9. Attendance at Specific Gatherings. Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The Boise State Athletics Hall of Fame Dinner
- b) The biennial BAA/Alumni Auction
- c) The Lyle Smith Golf Tournament
- d) The Dairy Booster Auction
- e) The annual BAA Endowment Dinner
- f) All Department staff meetings called by the Athletic Director
- g) Athletic Department Graduation Reception
- h) BAA Appreciation Day
- i) Dinner on the Blue

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, 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 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 any criminal proceeding or accusation or finding of serious misconduct as required in Section 4.7 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 for Convenience of University.

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

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

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other employment during the original term of this Agreement and, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment.

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 employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise the University shall constitute a material breach of this Agreement and the University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to Coach by University after the date Coach obtains other employment, to which Coach is not entitled under this provision. Coach acknowledges that the University will withhold taxes and other payroll deductions from the payments due Coach pursuant to this Section 5.2.2, in such amounts and at such times as required by applicable law.

In addition, Coach will be entitled to continue with the University benefits they are eligible for as if Coach remained a University employee until the term of this Agreement ends or

until Coach other employment whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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

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

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

5.3.3. If Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, an amount equal to: Coach's base salary at the time of termination, divided by twelve, such amount multiplied by the number of months remaining of the Term under this Agreement at the time of termination, but in no event to exceed six (6) months, with such product multiplied by:

- a) 1.0 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any member institution of the Mountain West Conference; or
- b) 0.5 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as head coach at any other (i.e., non-Conference member) institution of higher education in the United States; or
- c) 0.25 if Coach has accepted or before the end of the Term of this Employment Contract accepts a position as a coach for any **SPORT**

women's basketball team participating in any professional league or conference in the United States or Canada.

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 (8) percent per annum until paid.

If Coach terminates this Agreement for convenience and does not immediately commence other employment as described above, and therefore does not pay the liquidated damages, but then at a future date within the remaining term of this Agreement, or enters into an agreement to commence in the future, other employment as described above, then liquidated damages will still be owed by Coach and the amount of liquidated damages owed shall be calculated as of the date Coach accepts such employment.

The University, in its sole discretion, may elect to waive a portion of the liquidated damages due to the University.

Coach's obligation, if any, to repay relocation expenses is based on duration of employment and not related to reason for termination and is separate from any obligation to pay liquidated damages.

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

5.3.5. Except as 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.

5.4. Termination due to Disability or Death of Coach.

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

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

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

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

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

5.7. Waiver of Rights. Because 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, and the University's 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. 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
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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:

~~Gordon Presnell~~
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 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.

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

Jeramiah Dickey
Director of Athletics

~~Name of Coach~~ Gordon Presnell

Date

Date

Dr. Marlene Tromp
President

Date

Approved by the Idaho State Board of Education on the ____ day of ~~Month~~ December, ~~20##~~ 2024.

Coach Gordy Presnell Maximum Compensation Calculation - 2024-2029

		2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
3.1.1a	Annual Base Salary		\$350,000	\$360,000	\$370,000	\$380,000
3.2.1	Additional Pay based on Regular Season		\$42,000	\$43,200	\$44,400	\$45,600
	Additional Pay based on Post-Season		\$56,000	\$57,600	\$59,200	\$60,800
3.2.2	Additional Pay based on Academic Achievement		\$21,000	\$21,600	\$22,200	\$22,800
	Total Maximum potential annual compensation under Employment Agreement		\$ 469,000.00	\$ 482,400.00	\$ 495,800.00	\$ 509,200.00

BOISE STATE UNIVERSITY
Women's Basketball APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2019-20	2020-21	2021-22	2022-23 <i>(May 2024 release)</i>
Women's Basketball	1000	957	1000	1000
National % Rank by Sport	90-100	60-70	90-100	90-100

REPORT YEAR
Raw Score for single year
Percentile Rank for Sport

MULTI-YEAR APR (4-Year Rolling Average)

Women's Basketball	1000	990	990	995
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SINGLE YEAR GRADE POINT AVERAGE (GPA) SCORES

	2020-21	2021-22	2022-23	2023-24
Women's Basketball	3.40	3.73	3.72	3.61

**Salary and Incentive Comparisons
Head Women's Basketball Coaches in Mountain West Conference**

Coach	School	Base Salary	Incentives
Stacy McIntyre	Air Force		
Gordy Presnell	Boise State		See Contract
Ryun Williams	Colorado State	\$ 275,000.00	▪ Win either the conference regular season or tournament championship (only one bonus can be earned in a season): \$25,000 ▪ Finish second or third in the conference regular season standings: \$7,500 ▪ Qualify for the NCAA Tournament: \$30,000 ▪ Qualify for the secondary postseason tournament offered by the NCAA (expected to begin in 2024): \$10,000 ▪ Advance to the Sweet 16 of the NCAA Tournament: \$30,000 ▪ Advance to the Elite Eight of the NCAA Tournament: \$30,000 ▪ Advance to the Final Four of the NCAA Tournament: \$30,000 ▪ Win the NCAA Tournament: \$50,000
Jaime White	Fresno State	\$ 290,000	Employee will receive an annual bonus in the amounts set out below (non-incremental); provided that the team's annual NCAA Academic Progress Rate (APR) is at or above 930 as applicable for that fiscal year. Any adjustments in NCAA policy will be reflected appropriately and will be implemented by mutual consent and the specific goals are met are as follows: 1) Achievement of Annual NCAA APR a. Above 960 provides \$10,000 b. Above 980 provides \$15,000 <i>Only one may be awarded</i> 2) Annual Team Grade Point Average (Fall/Spring Semesters) a. 3.1 to 3.299 provides \$5,000 b. 3.3 and above provides \$10,000 <i>Only one may be awarded</i> 3) Mountain West Conference Wins a. 14 wins provides \$5,000 b. 16 wins provides \$10,000 <i>Only one may be awarded</i> 4) Mountain West Conference Achievement a. Regular-season co-champion provides \$10,000 b. Regular-season champion provides \$15,000 <i>Only one may be awarded.</i> c. Tournament championship provides \$20,000 <i>Assumes affiliation with MWC membership. Any change in conference affiliation or in conference membership may require adjustment to reflect the appropriate level of competition.</i> 5) Participation and Advancement in NCAA Tournament a. At-Large First Round bid provides \$20,000 b. Advancement to Second Round provides \$25,000 c. Advancement to "Sweet Sixteen" provides \$30,000 d. Advancement to Elite 8: \$35,000 e. Advancement to "Final Four" provides \$45,000 f. NCAA Runner Up provides \$60,000 g. National Championship provides \$75,000 <i>Only one may be awarded</i> 6) Participation in the WNIT Tournament a. Participation provides \$3,000 b. Advancement to the "Final Four" provides \$7,500 c. WNIT championship provides \$12,500 <i>Only one may be awarded</i> 7) Final National Rankings a. Top 25 ranking provides \$7,500 b. Top 10 ranking provides \$10,000 <i>USA Today Coaches' Poll and/or Associated Press Poll. Only one may be awarded.</i> 8) Individual Honors a. Affiliated Conference Coach of the Year award provides \$7,500 b. WBCA Regional Coach of the Year provides \$10,000 c. National Coach of the Year award provides \$20,000
Amanda Levens	Nevada	\$ 260,000	For each year that the Program's single year APR is at the level required by Paragraph 4.2.c.8, the University shall pay the Employee, as additional compensation, a total maximum amount of \$127,500 per fiscal year, not subject to COLA, retirement contributions, or retirement deductions, for the Program's achievement of the following: Athletic Performance: • For the team winning 20-23 games in a season: \$3000; or • For the team winning 24-28 games in a season: \$5000; or • For the team winning 29 or more games in a season: \$7500; and • For a Conference Regular Season Top 3 (including ties) finish: \$5,000.00 or • For winning or tying the Conference Regular Season Championship: \$10,000.00; and • For winning the Conference Tournament Championship: \$10,000.00; and • For receiving the Conference Coach of the Year Award or/Co-Coach of the Year Award: \$5,000.00; and • In the NCAA Tournament:

Salary and Incentive Comparisons
Head Women's Basketball Coaches in Mountain West Conference

			• In the NCAA Tournament: ○ For the team playing in NCAA Tournament (Round of 68 or 64): \$5,000; - And ○ For playing in the Round of 32: \$5,000; and ○ For playing in the Round of 16: \$5,000; and ○ For playing in the Round of 8: \$5,000; and ○ For the team playing in the Final Four: \$25,000.00; - And • For the team winning the NCAA Championship: \$50,000.00. • In the WNIT Post Season Tournament: ○ For the team playing in the tournament: \$3,000 ○ For the team playing in the Round of 32: \$1,000; ○ For the team playing in the Round of 16: \$1,000; ○ For the team playing in the Round of 8: \$1,000; ○ And ○ For the team playing in the Final Four: \$10,000 ○ For the team winning the WNIT Championship:\$20,000.00. Academic Performance Payment For the team achieving a GPA of 3.25 or higher in the fall or in the spring semester of each academic year: \$2,500																																						
Mike Bradbury	New Mexico	\$ 275,000	<u>Incentive Salary:</u> In addition to the compensation set forth above, Coach is eligible for incentive payments according to the following categories of professional achievement. a. <u>Mountain West Conference Achievement</u> <table><tr><td>i. Mountain West Conference Regular Season Champion</td><td>\$10,000.00</td></tr><tr><td>ii. Mountain West Tournament Champion</td><td>\$10,000.00</td></tr><tr><td>1. Only one incentive may be earned under this category.</td><td></td></tr></table> b. <u>Non-Conference Regular Season Achievement</u> <table><tr><td>i. Win versus non-conference Division 1 Net Top 50 Program</td><td>\$5,000.00 per win</td></tr><tr><td>ii. Win versus non-conference Division 1 Net Top 100 Program</td><td>\$2,500.00 per win</td></tr><tr><td>1. Opposing team Net shall be determined based on a two-year average of the NET Rankings calculated at the end of the current season.</td><td></td></tr></table> c. <u>Coaching Recognition</u> <table><tr><td>i. Mountain West Coach of the Year</td><td>\$5,000.00</td></tr></table> d. <u>Student Athlete Academic Performance</u> <table><tr><td>i. Academic Progress Rate (APR) 975 to 984</td><td>\$10,000.00</td></tr><tr><td>ii. Academic Progress Rate (APR) 985 or greater</td><td>\$12,500.00</td></tr></table> e. <u>Primary NCAA Post Season Tournament Achievement</u> <table><tr><td>i. NCAA At-Large Appearance Only</td><td>\$10,000.00</td></tr><tr><td>ii. NCAA First Round Win</td><td>\$7,500.00</td></tr><tr><td>iii. NCAA Sweet Sixteen Appearance</td><td>\$10,000.00</td></tr><tr><td>iv. NCAA Elite Eight Appearance</td><td>\$12,500.00</td></tr><tr><td>v. NCAA Final Four Appearance</td><td>\$15,000.00</td></tr><tr><td>vi. NCAA National Champions</td><td>\$25,000.00</td></tr></table> f. <u>Secondary NCAA-Sponsored Post Season Tournament</u> <table><tr><td>i. Appearance in Tournament</td><td>\$5,000.00</td></tr></table> For NCAA Post Season Achievement ("March Madness"), the incentive earned shall correspond to the highest level of achievement attained, not to exceed a maximum incentive payment of Twenty-Five Thousand Dollars (\$25,000.00). Incentive payments will be paid no later than May 30th of the Contract Employment Year in which the professional achievement was earned. 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. <table><tr><td><u>Regular Season Gross Ticket Revenue</u></td><td></td></tr><tr><td>\$400,000 or more in gross ticket revenue</td><td>\$10,000.00</td></tr><tr><td>\$500,000 or more in gross ticket revenue</td><td>\$25,000.00</td></tr></table> If earned, for the Regular Season Gross Ticket Revenue achievement category, a maximum of one incentive payment shall be paid per Contact Year, not to exceed a maximum incentive payment of Twenty-Five Thousand Dollars (\$25,000.00). The incentive payment for ticket revenue will be issued to the Lobo Women's Basketball Enhancement account.	i. Mountain West Conference Regular Season Champion	\$10,000.00	ii. Mountain West Tournament Champion	\$10,000.00	1. Only one incentive may be earned under this category.		i. Win versus non-conference Division 1 Net Top 50 Program	\$5,000.00 per win	ii. Win versus non-conference Division 1 Net Top 100 Program	\$2,500.00 per win	1. Opposing team Net shall be determined based on a two-year average of the NET Rankings calculated at the end of the current season.		i. Mountain West Coach of the Year	\$5,000.00	i. Academic Progress Rate (APR) 975 to 984	\$10,000.00	ii. Academic Progress Rate (APR) 985 or greater	\$12,500.00	i. NCAA At-Large Appearance Only	\$10,000.00	ii. NCAA First Round Win	\$7,500.00	iii. NCAA Sweet Sixteen Appearance	\$10,000.00	iv. NCAA Elite Eight Appearance	\$12,500.00	v. NCAA Final Four Appearance	\$15,000.00	vi. NCAA National Champions	\$25,000.00	i. Appearance in Tournament	\$5,000.00	<u>Regular Season Gross Ticket Revenue</u>		\$400,000 or more in gross ticket revenue	\$10,000.00	\$500,000 or more in gross ticket revenue	\$25,000.00
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Stacie Terry-Hutson	San Diego State	\$ 278,220	<u>Bonus structure-</u> a. MWC Regular Season or Tournament Championship-\$17,000 b. NCAA Tournament-highest of below <table><tr><td>i. Appearance-\$25,000</td></tr><tr><td>ii. Final Four appearance-\$35,000</td></tr><tr><td>iii. Championship-\$50,000</td></tr></table> c. WNIT Post-Season Appearance-\$17,000 d. MWC Coach of Year-\$5,000 e. National Coach of Year-\$15,000 f. Team cumulative GPA above 2.80-\$10,000 g. APR (4 year average) above 950-\$10,000 h. Win 20 or more games-\$10,000	i. Appearance-\$25,000	ii. Final Four appearance-\$35,000	iii. Championship-\$50,000																																			
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Salary and Incentive Comparisons
Head Women's Basketball Coaches in Mountain West Conference

April Phillips	San Jose State	\$ 235,008	Incentive compensation criteria: a) Conference Championship Regular season - \$15,000 Conference tournament - \$15,000 or NCAA at-large bid - \$15,000 b) Every win in post-season game of NCAA tournament - \$5,000 c) WNIT post season bid - \$5,000 WNIT championship - \$10,000 d) Conference coach-of-the-year - \$10,000 e) If the team's most recent single year APR score is 970 or higher - \$5,000 The APR number will be set annually by October 1st during the remaining years of the contract. f) If the team wins 20 regular season games or more - \$10,000 (does not include the Mountain West Conference Tournament). g) If the team wins 20 regular season games, the term of this agreement will be extended one year.
Lindy La Rocque	UNLV	\$ 150,000	Beginning in the second year of the employment contract, for each year that the Program's single year APR is at 930 or above, the University shall pay the Employee, as additional compensation, the additional amounts set forth below for the Program's achievement of the following: MW Regular Season (not cumulative): \$7,500 14 wins or more Or \$12,500 Undefeated season MW Conference Performance: \$15,000 Winning the MW Conference Regular Season Championship \$10,000 Tying for the MW Conference Regular Season Championship \$15,000 MW Tournament Championship \$15,000 MW Coach of the Year Award or Co-Coach of the Year Award \$10,000 WCBA Regional Coach of the Year Award \$20,000 National Coach of the Year Award NCAA Tournament (not cumulative): \$20,000 Playing in the First Round \$20,000 Playing in the Second Round \$25,000 Playing in the Sweet 16 \$30,000 Playing in the Elite 8 \$35,000 Playing in the Final Four \$45,000 Playing in the National Championship \$75,000 Winning the NCAA Championship WNIT Post Season Tournament (not cumulative): \$5,000 WNIT appearance \$7,500 Final Four \$20,000 Winning the WNIT Championship Academic Achievements APR (not cumulative): \$5,000 Single year APR 980 or above (immediate proceeding year) Or \$10,000 Multi-Year APR meets or exceeds National Average Academic Achievements GPA (not cumulative): \$5,000 3.25-3.49 cumulative team GPA Or \$10,000 3.50-4.0 cumulative team GPA The Athletic Performance Payment shall not be earned and payable unless the Program's single year APR is achieved and maintained at the minimum level set forth above for the immediately preceding academic year. In the event Employee earns the Athletic Performance Payment but Employee's employment is
			terminated on or before February 15th of that year, whether: (i) by University for cause pursuant to Article 6.1.c and d; or (ii) by Employee for the Employee's convenience pursuant to Article 6.2, Employee shall forfeit the Athletic Performance Payment.
Wesley Brooks	Utah State	\$ 250,000	Not available

Salary and Incentive Comparisons
Head Women's Basketball Coaches in Mountain West Conference

a. <u>Additional Compensation</u> *: \$15,000			
*Includes, but is not limited to, compensation related to appearances for the Cowboy Joe Club, Marketing & Branding, Outreach (Athletics, University, etc.), Radio Show, TV show, etc.			
The Additional Compensation will be earned and payable in twelve (12) equal installments on a monthly basis.			
b. <u>Academic Progress Rate (APR) Achievement Award</u> : \$7,500-\$10,000			
Heather Ezell	Wyoming	\$	245,004
Employee shall receive \$7,500 for each year in which the most recent single-year (annual) APR score for women's basketball is between 985 and 999 as reported on the official NCAA APR Report. Employee shall receive \$10,000 for each year in which the most recent single-year (annual) APR score for women's basketball is 1,000 as reported on the official NCAA APR Report.			
Thus, the following incentives are feasible:			
• Women's basketball does not earn a 985 or above = \$0 • Women's basketball earns between a 985-999 = \$7,500 • Women's basketball earns 1,000 = \$10,000			
Any incentive compensation for achieving the Academic Progress Rate (APR) Achievement			

Liquidated Damages
Head Women's Basketball Coaches in Mountain West Conference

ATTACHMENT 7

Coach	School	Length of Contract	2024 Salary (total comp)	Liquidated Damages Clause?	Type of L.D. Clause	Amount(s) over time
Stacy McIntyre	Air Force					
Gordy Presnell	Boise State	5 years		Yes	Tied to years in contract	See Contract
Ryun Williams	Colorado State	3 years (extended)	\$ 275,000.00	Yes	Tied to years in contract	If Williams leaves CSU for another coaching job between now and March 15, 2026, he would owe the school \$50,000. The buyout drops to zero after March 15, 2026.
Jaime White	Fresno State	4 years	\$ 290,000	Yes	Tied to years in contract	Liquidated Damages. The University and Employee agree that coaches of intercollegiate athletic teams at the University conduct their professional activities under circumstances unique in the University community and among University employees, including evaluation and scrutiny of program performance by the public and the media and control by external rules and regulations. The Employee engenders the loyalty and commitment of student-athletes and fans, which can be lost if the Employee leaves the University prior to the expiration of the Term of Appointment. The amount, nature and extent of such costs are difficult if not impossible to compute and ascertain with certainty but which will include and not be limited to: (i) searching, recruiting and hiring another Head Women's Basketball coach and (ii) buying out the contract, if necessary, of a new Head Women's Basketball coach and assistant coaching staff. If Employee chooses to resign her position as Fresno State Head Women's Basketball Coach prior to the completion of the Term of the Appointment, she shall be obligated to pay 50 percent of her base salary for the applicable contract year to the Fresno State Athletic Corporation ("Athletic Corporation") within 30 days of the effective date of resignation.
Amanda Levens	Nevada	5 years	\$ 260,000	No	NA	NA
Mike Bradbury	New Mexico	5 years	\$ 275,000	Yes	Tied to years in contract	Termination by Request of Coach: Coach may terminate this Agreement at any time upon thirty (30) days' written notice 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. 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 susceptible to precise calculation or quantification. Therefore, if Coach terminates this Agreement within Contract Year One (1) of the term of this Agreement (July 1, 2023 – June 30, 2024), then Coach shall pay the University liquidated damages, and not as penalty, the sum of One Hundred Thousand Dollars (\$100,000.00) within sixty (60) days of the termination of this Agreement. If Coach terminates this Agreement within Contract Year Two (2) of the term of this Agreement (July 1, 2024 – June 30, 2025), then Coach shall pay the University liquidated damages, and not as penalty, the sum of Seventy-five Thousand Dollars (\$75,000.00) within sixty (60) days of termination of this Agreement. If Coach terminates this Agreement within Contract Year Three (3) of the term of this Agreement (July 1, 2025 – June 30, 2026), then Coach shall pay the University liquidated damages, and not as penalty, the sum of Fifty Thousand Dollars (\$50,000.00) within sixty (60) days of termination of this Agreement. If Coach terminates this Agreement within the Contract Year Four (4) or Five (5) of the term of this Agreement then Coach shall not be obligated to pay the University liquidated damages. Pursuant to this Section, any liquidated damages sum shall be paid in full to the University within sixty (60) days of termination. Failure to pay the full liquidated damages sum shall constitute a material and actionable breach of this Agreement. The liquidated damages shall be the University's sole and exclusive quantification and limitation of Coach's damages owed to the University pursuant to this Section and the University shall not be liable for damages or damages sustained by Coach related to Coach's termination of this Agreement.

Liquidated Damages
Head Women's Basketball Coaches in Mountain West Conference

ATTACHMENT 7

seek no other remedies or damages whatsoever against Coach related to Coach's termination of this Agreement.

Stacie Terry-Hutson	San Diego State	4 years	\$ 278,220	Yes	Tied to years in contract	Section 7.04 of the Appointment Letter is amended to indicate that Coach shall have the following buyout obligations payable to the University upon separation: a. Before April 30, 2021: \$250,000 b. After April 30, 2021 and Before April 30, 2023: \$100,000 c. After April 30, 2023: \$0
April Phillips	San Jose State	5 years	\$ 235,008	Yes	Tied to years in contract	In the event the Employee negotiates employment at another organization prior to the expiration of this appointment, Employee agrees to pay the University a buy-out settlement as follows: if Employee leaves between the time period of April 8, 2022 through March 31, 2023, the Employee will pay \$150,000; if Employee leaves between April 8, 2023 and March 31, 2024 the Employee will pay \$150,000; If Employee leaves between the time period of April 8, 2024 through March 31, 2025 the Employee will pay \$135,000; if the Employee leaves between April 8, 2025 and March 31, 2026 the Employee will pay \$75,000; if the Employee leaves between the time period of April 8, 2026 and March 31, 2027 the Employee will pay \$50,000. In all such circumstances, Employee shall also waive any claims for payments from the University or the Tower Foundation remaining under the terms of this appointment.
Lindy La Rocque	UNLV	5 years	\$ 300,000	Yes	Tied to years in contract	Employee shall pay to the University an amount equal to the sum of (i) Employee Base Salary as defined in Article 5.1 of this Agreement and (ii) Media and Public Appearance Fee as defined in Article 5.6.a of this Agreement for the period remaining in the Term (partial months shall be prorated), multiplied by the following percentages based on the effective date of termination: If terminated on or before June 30, 2025 – 75%; or If terminated on or after July 1, 2025 – 25%. The liquidated damages shall be due and payable within twenty (20) calendar days of the effective date of the termination, or in accordance with a payment schedule agreed upon by the President of the University and the Employee in writing, and any unpaid amount shall bear simple interest at a rate of eight (8) percent per annum until paid.
Wesley Brooks	Utah State	5 years	\$ 250,000	Yes	Tied to years in contract	As for Brooks' buyout, Utah State would be required to pay 75 percent of his "cumulative remaining salary, which is the pro-rated amount of total compensation due under this offer letter" if it was to terminate this contract for convenience (meaning without cause) before the conclusion of the 2028-29 season. If Brooks terminates the contract for convenience before March 31, 2025, Utah State would be due 80 percent of his cumulative remaining salary. On or after April 1, 2025, that figure dips to 60 percent for the remainder of his tenure.
Heather Ezell	Wyoming	5 years	\$ 252,408	Yes	Tied to years in contract	In the event Employee terminates this Agreement to accept employment in intercollegiate or professional athletics, Employee shall owe the University liquidated damages in an amount equal to the base salary for each of the remaining years of the Agreement (the "University Liquidated Damages").

UNIVERSITY OF IDAHO

SUBJECT

Renewal by amendment of existing retail lease for Vandal Store in Boise.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.2(a)

BACKGROUND/DISCUSSION

Since 2010, the University of Idaho has occupied retail space in downtown Boise to sell UI branded apparel and merchandise. UI is requesting permission to extend that leasing arrangement as provided by the attached draft lease amendment. While UI occupation of this space has been covered by a series of short-term leases in the past, prior Board of Regents' policy did not require Regents' approval for each renewal so long as no single term exceeded five years, or the rent did not exceed the approval threshold established by the then current Board policy. However, August 2023 Board policy changes now require Regents' approval for any extension of an existing term of a lease when such extension results in a cumulative period of occupation exceeding five years. The terms of this lease have remained essentially unchanged (except for market lease rate escalations in downtown Boise) since 2010 and this lease is simply for another three-year period.

IMPACT

Initial monthly base rent for the renewal term is \$3104/mo. The Vandal Store is operated as a university auxiliary service and business revenues and costs are received and paid in accordance with those policies.

ATTACHMENTS

Attachment 1 – Draft Lease Amendment

STAFF COMMENTS AND RECOMMENDATIONS

Board Policy V.I.2(a) – Institutional Approval Authorization Limits requires Board approval for all transactions for institutional leases of real property (as lessee or lessor) if lease amount is over \$2M, or the term of the lease exceeds 5 years.

The policy was updated in August 2023 to additionally include the following language that pertains to this three-year lease renewal extension for retail space for UI's Vandal Store in Boise, "If the lease term including renewal terms did not exceed 5 years under the original term of a lease, but through amendment the term is extended, Board approval is required." The lease term commences February 1, 2025, and is scheduled to terminate on January 31, 2028.

The lease terms and details are in substantial conformance with Board policy.

CONSENT
DECEMBER 18, 2024

Staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho for authority to amend the current lease with Eastman Building LLC in substantial conformance to the form submitted to the Board in Attachment 1 and to authorize the University's Associate Vice President for Budget and Planning to execute the lease amendment and any related transactional documents.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

SIXTH AMENDMENT TO LEASE
EXTENSION OF LEASE TERM

THIS SIXTH AMENDMENT TO LEASE (this "Sixth Amendment") is made and entered into as of _____ by and between Eastman Building, LLC, an Idaho limited liability company (hereinafter "Landlord"), whose business address is P.O. Box 4067, Boise, Idaho 83711, and The Board of Regents of the University of Idaho (hereinafter "Tenant"), whose business address is University of Idaho, c/o Vice President Finance and Administration, P.O. Box 443168, Moscow, Idaho 83844-3166. Landlord and Tenant are sometimes referred to in this Sixth Amendment as the "Party" or "Parties" as the case may be.

WITNESSETH

WHEREAS, Eastman Building, LLC, as successor in interest to Eastman Investors, L.P., as the Landlord, and Tenant, entered into that certain written Lease Agreement, dated June 3, 2010, as subsequently modified by the First Amendment to Lease, dated November 17, 2014, the Second Amendment to Lease, dated March 1, 2018, the Third Amendment to Lease, dated March 27, 2020, the Fourth Amendment to Lease, dated February 28, 2021, and the Fifth Amendment to Lease, dated October 15, 2021 (collectively the "Lease"), whereby Landlord leases to Tenant and Tenant leases from Landlord the premises therein described consisting of approximately 1,693 square feet of rentable space in the Eastman Garage Shops (the "Facility") located at 821 West Idaho Street, Boise, Idaho in which the University of Idaho Vandal retail store has been and are now being conducted (the "Premises"). Reference is hereby made to said Lease for full particulars and all other proper and necessary purposes; and

WHEREAS, Tenant's Lease Term is scheduled to expire on January 1, 2025 with no options to renew. Tenant now desires to extend the Lease Term for an additional three (3) year period with no options to renew and Landlord is agreeable to such extension pursuant to the rental rate specified herein and the other terms and conditions hereinafter set forth.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and promises hereinafter set forth, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend and extend the Lease as follows:

1. THE LEASE TERM is hereby extended for an additional three (3) year period from its presently scheduled expiration date of January 31, 2025 to a new expiration date of January 31, 2028. The period of time from February 1, 2025 through January 31, 2028 is hereby defined as the "Renewal Term".
2. THE BASE RENT for the Renewal Term is hereby established as follows:

<u>Effective</u>	<u>Monthly</u>	<u>Annually</u>	<u>Per Sq. Ft.*</u>
2/1/25 – 1/31/26	\$3,104	\$37,248	\$22.00
2/1/26 – 1/31/27	\$3,197	\$38,364	\$22.66
2/1/27 – 1/31/28	\$3,293	\$39,516	\$23.34

*Monthly rents are rounded to the nearest whole dollar.

Said Base Rent shall be paid monthly, in advance, in accordance with the terms of the Lease and shall be in addition to Tenant's obligation to pay its share of common area expenses, taxes and Facility insurance charges, and other charges, fees and expenses as specified in the Lease.

3. Landlord and Tenant hereby acknowledge and agree that Tenant has been and is now operating in the Premises since approximately July 1, 2010, with the express understanding that Tenant accepts the Premises in its "AS IS" condition and neither Tenant nor Landlord has any obligation to remodel or otherwise perform any improvement work in and to the Premises as a condition for this Sixth Amendment to become effective.
4. Tenant hereby confirms its willingness and intention to comply with Landlord's reasonable Rules and Regulations regarding day-to-day operations of the Facility such as use of common areas, trash storage and disposal, signage, etc.
5. In the event it is necessary for any Party to this Sixth Amendment to institute suit to enforce the terms hereof, the prevailing Party shall be entitled to an award for reasonable attorney's fees and costs of suit as set forth in the Lease.
6. This Sixth Amendment shall be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors in interest, and assigns.
7. Brokers. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Sixth Amendment other than Select Commercial Property Services, LLC ("Landlord's Agent"), whose commission shall be paid by Landlord pursuant to a separate written agreement with Landlord's Agent, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Sixth Amendment or the Lease. ms of this Article 7 shall survive the expiration or earlier termination of the Lease Term.
8. Authority. The persons executing this Sixth Amendment on behalf of Landlord and Tenant each represents and warrants that all necessary actions have been duly taken to permit such person to execute this Sixth Amendment and that each undersigned person has been duly authorized and instructed to execute this Sixth Amendment.
9. Tenant's Representations and Warranties. Tenant hereby represents, warrants and agrees that: (1) there exists no breach, default or event of default by Landlord under the Lease, or any event or condition which, with notice or passage of time or both, would constitute a breach, default or event of default by Landlord under the Lease; (2) the Lease continues to be a legal, valid and binding agreement and obligation of Tenant; and (3) Tenant has no current offset or defense to Tenant's performance or obligations under the Lease.
10. Entire Agreement. This Sixth Amendment represents the entire understanding between the Parties regarding the subject matter hereof and supersedes all other negotiations, agreements, representations and covenants, oral or written between Landlord and Tenant with respect thereto.
11. Conflicting Terms. Except as specifically provided herein, all other terms and conditions of the Lease will continue in full force and effect except for any initial free rent, tenant improvements or other concessions. To the extent that the terms of the Lease conflict with the terms hereof, this Sixth Amendment shall control.

12. Counterparts, Electronic Signatures. This Sixth Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. Electronic copies of signatures to this Sixth Amendment shall count the same as originals.

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amendment on the day and year first above written.

LANDLORD:
Eastman Building, LLC
an Idaho limited liability company

TENANT:
The Board of Regents of the
University of Idaho

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

UNIVERSITY OF IDAHO

SUBJECT

Renewal of existing farm lease for UI College of Agricultural and Life Science's Aberdeen Research and Extension Center.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.2(a)

BACKGROUND/DISCUSSION

Since 2008, the University of Idaho's Aberdeen Research and Extension Center has leased a 5.2-acre field from an adjoining property owner. The property has been continuously used for field research at very low cost to the College of Agricultural and Life Sciences. UI is requesting permission to extend that leasing arrangement as provided by the attached draft lease. While UI use of this small field has been covered by a series of short-term leases, prior Board of Regents' policy did not require Regents' approval for each renewal so long as no single term exceeded five years, or the rent did not exceed the approval threshold established by the then current Board policy. However, August 2023 Board policy changes now require Regents' approval for any extension of an existing term of a lease when such extension results in a cumulative period of occupation exceeding five years. The terms of this lease have remained essentially unchanged since 2008 but are modified in the draft renewal to at least partially address the change in Board policy by extending the next term over five years but with an early termination provision. This will reduce the frequency of future resubmissions for this low-cost arrangement.

IMPACT

The College will cover the annual rent of \$910.

ATTACHMENTS

Attachment 1 – Draft Lease Agreement

STAFF COMMENTS AND RECOMMENDATIONS

Board Policy V.I.2(a) – Institutional Approval Authorization Limits requires Board approval for all transactions for institutional leases of real property (as lessee or lessor) if lease amount is over \$2M, or the term of the lease exceeds 5 years.

The policy was updated in August 2023 to additionally include the following language that pertains to this farm lease renewal for UI College of Agricultural and Life Science's Aberdeen Research and Extension Center, "If the lease term including renewal terms did not exceed 5 years under the original term of a lease, but through amendment the term is extended, Board approval is required."

The lease term commences January 1, 2025, and is scheduled to terminate on December 31, 2031.

The lease terms and details are in substantial conformance with Board policy.

Staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho for authority to enter into a lease with Austin Poulson in substantial conformance to the form submitted to the Board in Attachment 1 and to authorize the University's Associate Vice President for Budget and Planning to execute the lease and any related transactional documents.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

SITE LEASE

THIS SITE LEASE is entered into between AUSTIN POULSON, whose address is 2831 W 1500 S, Aberdeen ID 83210 ("Landlord") and the BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and body politic and corporate organized and existing pursuant to the constitution and laws of the State of Idaho ("Tenant"). This agreement is hereinafter referred to as the "Site Lease".

RECITALS

A. Landlord is the owner of certain real property graphically shown and attached hereto as Exhibit A ("Premises") and desires to lease such property to the Tenant for the purpose of land management including but not limited to raising crops and conducting other activities related to Tenant's operation of the Aberdeen Research & Extension Center; and

B. Tenant owns property adjacent to Premises and manages said adjacent property as the University of Idaho Aberdeen Research & Extension Center; and for purposes of convenient management of Tenant's operations Tenant desires to lease said Premises from Landlord; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals:** The parties acknowledge the foregoing Recitals are true and are incorporated into this Site Lease as if set forth in full.

2. **Premises:** Landlord hereby leases to Tenant, subject to the conditions expressed herein, certain real property located in Bingham County, Idaho, as shown in Exhibit A. As used herein the term "Premises" refers solely to the real property, excluding any buildings, personal property or other improvements to be constructed thereon from time to time during the term of this Site Lease.

3. **Term:** The Term of this Site Lease shall be a period commencing on January 1, 2025 and expiring December 31, 2031, unless earlier terminated pursuant to paragraph 9 hereof.

4. **Rent:** The Premises are leased to the Tenant for \$910 per year for the term of this Site Lease. Rent shall be paid to Landlord at the address given for Landlord herein on or before January 31 for each year of the term.

5. **Development:** Tenant shall not be permitted to construct any permanent improvements on Premises without the written consent of Landlord.

6. **Reversion of Buildings and Improvements:** Upon termination of this lease all buildings, improvements, and other appurtenances (if any) to the Premises shall be deemed to be part of the Premises and shall revert to the Landlord and shall become the sole and absolute property of the Landlord upon termination. Tenant shall be entitled to no compensation for any

value attributed to the buildings or improvements reverting to the Landlord under the terms of this Site Lease. Tenant may remove Tenant's personal property from the Premises prior to termination and reversion.

7. **Permanent Easements:** At the Tenant's request or as may be reasonably required, the Landlord shall grant to public entities, public service corporations, or to the Tenant such rights-of-way, utility, or other permanent easements on, over or through the Premises and adjacent property owned by Landlord for telephone, electricity, water, sanitary or storm sewers or both, site drainage and for other utilities and municipal or special district services necessary or appropriate to serve improvements constructed thereon by Tenant.

8. **Right to Assign:** Tenant shall not assign this Site Lease or sublet the Premises, or any part or portion thereof, without the prior written consent of the Landlord. Conveyance of Landlord's ownership interest in Premises to any third party shall require the consent of the Tenant. In the event of such consent and conveyance of the property on which the Premises are located, Landlord shall be released from any and all obligations or duties arising under this Site Lease and Landlord's rights and obligations hereunder shall be assigned to the third party causing such successor in interest to expressly assume in writing all of Landlord's duties and obligations pursuant to this Lease. In the event Tenant fails to consent to the conveyance of Landlord's interest to a third party, Landlord shall have the unilateral right to terminate Lease on December 31, of the calendar year for which the consent was denied by Tenant.

9. **Optional Termination:** Prior to December 31, 2031, Tenant shall have the right, in its unilateral discretion, to terminate this Lease upon ninety (90) days written notice to Landlord. Reversion of buildings and improvements (if any) in the event of optional termination shall be in accordance with Section 6 of this Site Lease and reversion shall occur on the date noticed for optional termination. No reimbursement of that year's Rent to Tenant shall be due when early termination is executed as provided by this section.

10. **Utilities and Taxes:** Landlord agrees to pay all real estate taxes and assessments (should property be subject to any such taxes and assessments). Utilities (if any) shall be arranged for a paid by the Tenant.

11. **Insurance and Indemnification:** Each party shall be responsible only for the acts, omissions or negligence of such party and such party's own employees and agents. Nothing in this Agreement shall extend the tort responsibility or liability of the University of Idaho or the State of Idaho beyond that required by law, including the Idaho Tort Claims Act, Idaho Code section 6-901, *et seq.*

Each party shall be responsible for damage to property of the other party caused by such party and such party's employees and agents in the performance of the Agreement. If The University's liability for a property claim or damage is not covered by the University's self-insurance or other property coverage, the University shall pay the costs arising from such claim or damage to the extent funds are legally available therefor. If a claim or damage arises from more than one party's performance of the Agreement or is not allocable to any party, each party shall pay the costs to such party arising from the claim or damage.

12. **Hazardous/Materials:** In the event any hazardous materials are found to exist on the Premises prior to the date of this Site Lease in violation of any environmental laws or if any appropriate government agency or authority requires testing to determine whether any hazardous materials are in violation of any environmental laws, Landlord, at Landlord's cost and expense, shall cause such testing to be performed and shall cause any such hazardous materials to be removed, remediated or abated in compliance with all environmental laws. Landlord hereby agrees to indemnify, defend, and hold Tenant harmless from and against any and all claims, damages, liabilities, costs, expenses (including reasonable attorneys' fees), causes of action and judgments arising out of or related to hazardous materials existing in, or under the premises prior to the date of this Site Lease. As used herein, the term "environmental laws" shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA) the Resource Conservation Recovery Act, as amended (RCRA), the Federal Water Pollution Control Act, the Clean Air Act and any similar local, state or federal law, rule, ordinance or regulation. As used herein, the term "hazardous materials" shall mean any hazardous substance, pollutants, contaminants, or other hazardous waste or toxic substances defined in any environmental laws including, without limitation, petroleum and petroleum products, asbestos and asbestos containing materials, PCBs and urea-formaldehyde.

Tenant shall not, nor shall it allow others to, accumulate, use, or store on the Premises materials classified as hazardous, biomedical or toxic waste except in compliance with all state, federal, or local laws, rules or regulations. Tenant shall comply with any lawful order by an entity reposed with authority to regulate the use, accumulation, storage or disposal of hazardous waste. Tenant shall not be responsible for any of such materials placed on the Premises by or through the Landlord prior to or during this Site Lease.

13. **Zoning/Building Restrictions:** This Site Lease is subject to all applicable zoning ordinances and restrictions and all limitations of record and is subject to any and all easements for public utilities of record. Landlord warrants that such ordinances, restrictions, limitations and easements do not prevent the use of the Premises as provided for in this Site Lease.

14. **Waste and Nuisance Prohibited:** Tenant shall comply, during the term of this Site Lease, with all applicable laws affecting the Premises. Tenant shall not commit, or suffer to be committed, any waste on the Premises or improvements, or any nuisance.

15. **Remedies and Forbearance/Waivers:** No delay or omission on the part of the Landlord or Tenant to exercise any right or power granted herein shall impair any such right or power nor shall be construed as a waiver thereof, and every such right or power may nevertheless be exercised.

16. **Officials, Agents, and Employees Not Personally Liable:** It is agreed that in no event shall any official, officer, employee or agent of the Tenant be in any way personally liable or responsible for any covenant or agreement herein contained, whether expressed or implied, nor for any statement, representation or warranty made herein or in any way connected with this Site Lease.

17. **Quiet Enjoyment:** Landlord covenants that the Tenant shall have the peaceful and quiet enjoyment of the Premises for the term of the Site Lease.

18. **Right of Entry:** Tenant shall permit the Landlord and the agents and employees of the Landlord to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same for compliance with the terms of this Site Lease; provided, however, that Landlord shall first give twenty four (24) hours written notice of its desire to inspect the Premises and such inspection shall be accompanied by a designated representative of the Tenant. Such notice for right of entry and inspection procedures shall not apply during an emergency in which such notice is impractical and Landlord's access to the Premises is necessary for preservation of life and/or property.

19. **Default:** In the event Landlord shall at any time deem Tenant to be in breach of this Site Lease, Landlord shall promptly notify Tenant, in writing, stating specifically the nature of any such alleged breach. Tenant shall not be deemed to be in default hereunder unless Tenant fails to commence to cure any such default within ninety (90) calendar days after its receipt of such written notice and to diligently proceed to cure such default within a reasonable time. In the event of default Landlord shall have all rights and remedies provided by law.

20. Section Intentionally left blank.

21. **Integration:** This Site Lease embodies the entire agreement regarding the disposition of the rights associated with the Premises and represents the understanding of the parties relating to the subject matter herein and supersedes all prior understandings relating thereto. This Site Lease shall not be modified except in writing signed by all parties to be bound.

22. **Execution of Documents:** The parties agree that they shall sign or cause to be signed all documents necessary to the effectuation of this Site Lease or any of the provisions herein.

23. **Warranty of Title:** Landlord warrants to Tenant that it has the power and authority to enter into this Site Lease and that the execution, delivery of this Site Lease and the performance of the contractual obligations set forth herein are not in violation of any federal, state, or local statute, ordinance, rule or regulation and that no consents not already obtained are required. Landlord further warrants that Landlord has good and marketable title to Premises, free and clear of all claims, liens and encumbrances.

24. **Notices:** All notices under this Site Lease shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the date of mailing if mailed to the party to whom notice is to be given by registered or certified United States mail, postage prepaid, and properly addressed as follows:

If to the Tenant:	Regents of the University of Idaho Attn: Vice President for Finance and Administration 875 Perimeter Dr MS 3168 Moscow ID 83844-3168
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If to the Landlord: Austin Poulson
 2831 W 1500 S
 Aberdeen ID 83210

The addresses provided above may be changed and additional addresses or notices may be specified from time to time by notice given in writing in accordance with this Section.

25. **Binding Effect:** This Site Lease shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

26. **Severability:** If any term or provision of this Site Lease or the application of it to any person or entity or circumstances shall to any extent be invalid or unenforceable, the remainder of this Site Lease or the application of such term or provision to persons, entities or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Site Lease shall be valid and shall be enforced to the extent permitted by law.

27. **Headings:** Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this Site Lease.

28. **Counterparts:** This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

29. **Time of the Essence:** Time is of the essence of this Site Lease, and of each and every covenant, term, condition, and provisions thereof.

30. **Nondiscrimination and Affirmative Action:** Landlord and Tenant shall not discriminate against any employee or applicant for employment in the performance of this Site Lease, with respect to tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, age, status as disabled or a veteran, or physical or mental handicaps, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Site Lease. Landlord and Tenant certify that they do not, and will not maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, the Landlord and Tenant agree to take affirmative action to employ, train, advance in employment, and retain individuals in accordance with applicable laws and regulations including:

A) For nondiscrimination based on race, color, religion, sex or national origin, this includes, but is not limited to, the U.S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319). Grantee disputes related to compliance with its obligations shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (See 41 CFR 60-1.1).

B) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended

(38 U.S.C. 4012)(the Act); Executive Order 11701, January 24, 1973 (38 CFR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250).

C) For nondiscrimination based on the Handicapped this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793)(the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 FR Part 60- 741).

D) For nondiscrimination based on Age this includes, but is not limited to, executive Order 11141, February 12, 1964 (29 CFR 2477).

Landlord and Tenant shall include the terms of this clause in every subcontract or purchase order exceeding \$50,000 and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

30. **Venue, Governing Law:** Any legal proceeding instituted between the parties shall be in the courts of the County of Bingham, State of Idaho, and each of the parties agrees to submit to the jurisdiction of such courts. It is further agreed that this Agreement shall be governed by the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties have caused this Site Lease to be executed effective as of the day and year first above written.

TENANT:

LANDLORD:

REGENTS OF THE
UNIVERSITY OF IDAHO

AUSTIN POULSON

By _____
Kim Salisbury,
AVP Budget & Planning

By _____
Austin Poulson

Date: _____

Date: _____

18, 2024
Exhibit A



UNIVERSITY OF IDAHO

SUBJECT

Renewal of existing lease at UI Research Park in Post Falls for American Wagyu Association.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.2(a)

BACKGROUND/DISCUSSION

Since 2011 the UI Research Park in Post Falls has leased commercial space to American Wagyu Association, a Texas corporation registered to conduct business in Idaho. UI developed the facilities in Post Falls to promote local economic development by providing suitable commercial space to serve business needs and for companies to receive support and collaborate with on-site UI expertise. This is one of several private entity tenants in this facility that operates at this site with recurring, shorter term lease renewals or amendments.

The attached draft lease revises prior terms of an existing lease arrangement. In the past such periodic short-term renewals or amendments for low value leases did not require Board approval when the new term is for a period of less than five years. However, August 2023 Board policy changes appear to require Board approval for any extension of an existing term of a lease when such extension results in a cumulative period of occupation exceeding five years. For this one-year renewal, UI is proposing to adjust rent based on actual operating costs rather than setting a fixed rental cost to cover those anticipated expenses.

IMPACT

UI collects lease revenue from its operation of the Research Park to cover expenses of occupancy and management of the facility.

ATTACHMENTS

Attachment 1 – Draft Lease Amendment

STAFF COMMENTS AND RECOMMENDATIONS

Board Policy V.I.2(a) – Institutional Approval Authorization Limits requires Board approval for all transactions for institutional leases of real property (as lessee or lessor) if lease amount is over \$2M, or the term of the lease exceeds 5 years.

The policy was updated in August 2023 to additionally include the following language that pertains to this lease renewal for commercial space at UI Research Park in Post Falls for American Wagyu Association, “If the lease term including renewal terms did not exceed 5 years under the original term of a lease, but through amendment the term is extended, Board approval is required.”

TENANT LEASE

THIS TENANT LEASE (“Lease”) is made by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“Landlord”) and American Wagyu Association, a Texas corporation authorized to do business in the State of Idaho (“Tenant”). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises (hereinafter defined) upon all terms and conditions provided herein.

ARTICLE 1

PREMISES/ FACILITY/PARKING

1.1 Premises

The premises comprise the area shown as Suite #120 and Room #316 (1883 sf) on the floor plan attached hereto as Exhibit A (“Premises”). Premises is located at 958 S Lochsa St, Post Falls ID 83854 and located in a building, together with related driveways, parking areas, fixtures and improvements (“Facility”).

1.2 Common Areas

Subject to the terms of this Lease, Tenant shall have the non-exclusive right in common with other occupants of the Facility, to use certain access roads, parking areas, sidewalks, entrances, corridors, grounds, lobby areas, meeting rooms, common restrooms, and other building amenities within the Facility provided and designated from time to time by Landlord for the general use and convenience of the occupants of the Facility (collectively, “Common Areas”).

1.3 Parking

Tenant’s use of the Common Areas shall include use, on an unassigned basis, of those portions of the Common Areas designated by Landlord from time to time for Tenant parking and access to such parking. Parking spaces available to Tenant shall be used for parking only by vehicles no larger than full-sized passenger automobiles. No overnight parking for Tenant vehicles is permitted without the written consent of Landlord. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant’s employees, suppliers, shippers, customers or invitees to be loaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Section, Landlord shall have the right, in addition to all other rights and remedies that it may have under this Lease, to remove or tow away the vehicle involved without prior notice to Tenant and the cost thereof shall be paid to Landlord within ten (10) days after notice from Landlord to Tenant.

ARTICLE 2

LEASE TERM/CONDITION OF PREMISES

2.1 Lease Term

Lease term shall commence on November 1, 2024, and shall terminate on October 31, 2025. Landlord may terminate Lease prior to October 31, 2025. Tenant may also terminate Lease prior

to October 31, 2025, but Tenant may only for an early termination date to occur after April 30, 2025. Either party choosing to terminate early shall provide no less than sixty days' written notice to the other party.

2.2 Improvement to Premises and Acceptance of Condition of Premises

If improvements to the Premises and/or Facility are deemed necessary by the parties, Landlord shall arrange and perform that work and make the installations in the Premises and/or Facility substantially as listed in Exhibit B (the "**Improvements to Premises**"). If no work is deemed necessary by Landlord and Tenant, Exhibit B shall simply state "No improvements to Premises or Facility necessary", and such statement shall be deemed as Tenant's acknowledgement and acceptance of Premises and Facility "AS IS". Other than as listed in Exhibit B, Landlord has no obligation to improve, alter or remodel the Premises or Facility beyond repair and maintenance of the existing facility infrastructure as provided herein and Tenant hereby acknowledges that no improvements beyond those specified in Exhibit B shall be provided by Landlord. All such installations provided herein shall immediately become and remain the property of Landlord.

ARTICLE 3

PAYMENT OF RENT/ADDITIONAL RENT

3.1 Amount and Payment of Monthly Rent and Additional Rent

Tenant agrees to pay monthly rent of \$3248.87 for each month of the Lease term to Landlord on or before the first day of that month for which rent is due, e.g. payment for January shall be due on January 1. If the first day of the month falls on a weekend or holiday payment shall be due the first University business day thereafter. Payment must be RECEIVED by the close of business on the due date to be considered timely. Without separate invoice from Landlord, Tenant shall make its monthly rent check payable to "Bursar, University of Idaho" and forward payment to "UI Student Accounts/Accounts Receivable, 875 Perimeter MS 4250, Moscow ID 83844-4250", or to such other address as Landlord may designate in writing. Such payment shall include Tenant's specific account code provided by Lessor. All other monies besides monthly rent payable by Tenant to Landlord under this Lease shall be deemed to be additional rent and shall be separately invoiced by Landlord and payable and recoverable as rent in the manner herein provided and Landlord shall have all rights against Tenant for default in any such payment. Rent shall be paid to Landlord during the entire term of this Lease, without abatement, deduction or set-off of any kind. Tenant's obligation to pay all rent due under this Lease shall survive the expiration or earlier termination of this Lease. Should this Lease commence on a day other than the first day of the month or terminate on a day other than the last day of the month, the rent for such partial month shall be prorated.

3.2 Late Payment Charge

If Tenant fails to pay any rent within fifteen (15) days of when due (as provided in Section 3.1 above), Tenant shall pay to Landlord a late payment charge for each occurrence of \$20 to help defray the additional cost to Landlord for processing such late payments. If Tenant fails to pay any rent when due for any period exceeding thirty days, such unpaid amounts shall, in addition to late payment of \$20 also pay an additional delinquency fee that shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum. These provisions for late charges

shall be in addition to Landlord's other rights and remedies hereunder or at law or in equity and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

3.3 Personal Property Taxes

Tenant shall pay prior to delinquency all personal property taxes and business taxes with respect to all property and business activities of Tenant on Premises and shall provide promptly upon request of Landlord written proof of such payments.

ARTICLE 4

Article 4 intentionally deleted for the purposes of this Lease.

ARTICLE 5

SECURITY DEPOSIT

5.1 Security Deposit

Landlord has previously collected a security deposit in the amount of \$454 as security for the faithful performance and observance by Tenant of all the terms, covenants, conditions, provisions and agreements of this Lease ("**Security Deposit**"). This amount is separate from and in addition to the amount due as "monthly rent" as provided by Section 3.1 of this Lease. If Tenant shall default with respect to any covenant or condition of this Lease including, but not limited to the payment of rent, Landlord may, but shall not be obligated to, apply all or any part of such deposit to the payment of any sum in default or any other sum which Landlord may be required to spend or incur by reason of Tenant's default, and, in such event, Tenant shall, upon demand, deposit with Landlord the amount so applied so that Landlord shall have the full deposit on hand at all times during the term of this Lease. If Tenant shall have fully complied with all the covenants and conditions of this Lease, the Security Deposit or any balance thereof shall be refunded to Tenant upon Landlord's final inspection of the Premises and within thirty (30) days after Tenant has vacated the same and after any accrued charges for which Tenant is responsible (such as but not limited to repair of damages to the Premises attributable to Tenant) and have been determined and paid in full. Tenant agrees that if this Security Deposit is insufficient to compensate Landlord for any damages, costs, and expenses not covered thereby, including loss of rental income during any period reasonably required to repair physical damages to Premises or to clean Premises, Tenant shall pay the balance thereof, immediately upon demand.

ARTICLE 6

USE AND OCCUPANCY

6.1 Permitted Use, Signage and Preservation of Business Incubator Setting

Premises shall be occupied and used only for the specific purpose of office space for breed registry administration and support and for no other business or purpose without the prior written consent of Landlord. Tenant shall not display any sign or advertisement on the exterior of Premises or Facility without the written consent of Landlord and such consent may be withheld at the sole discretion of Landlord. Landlord shall place upon a common sign structure in the

Facility's courtyard a business identification panel with Tenant's business name. Such panel shall be designed and placed by Landlord at no additional cost to Tenant beyond monthly rent.

No act shall be done in or about the Premises or Common Areas that is unlawful or that will increase the existing rate of insurance on the Building. Tenant shall not commit or allow to be committed any waste upon the Premises or Facility, or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other tenant or occupant in the Facility. Tenant shall not, without the written consent of Landlord, use any apparatus, machinery, or device in the Premises, which will cause any substantial noise or vibration about the Premises. If any of Tenant's office machines and equipment should disturb the quiet enjoyment of any other tenants in the Facility, then Tenant shall take such action as may be necessary to eliminate the disturbance (subject to any Premises or Facility alteration approvals from Landlord). Tenant shall comply with all state, federal, and local laws, ordinances, and regulations relating to its use of the Premises and shall observe such reasonable rules and regulations as may be adopted and distributed to Tenant in writing by Landlord for the safety, care and cleanliness of the Premises or the Facility, and for preservation of a professional business incubator setting at the Facility.

6.2 Compliance with Environmental Laws

Tenant represents, warrants, and covenants to Landlord that:

(a) Tenant and Premises will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subparagraph (h), all as amended and modified from time to time (collectively, "**Environmental Laws**"). All governmental permits relating to the use or operation of the Premises required by applicable Environmental Laws are and will remain in effect, and Tenant will comply with them.

(b) Tenant will not permit any release, generation, manufacture, storage, treatment, transportation, or disposal of hazardous material, as that term is defined in subparagraph (h), on, in, under, or from Premises in violation of any Environmental Laws. Tenant will promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any hazardous material has been or is threatened to be released, generated, manufactured, stored, treated, transported, or disposed of, on, in, under, or from Premises in violation of any Environmental Laws; and if any hazardous material is found on Premises in violation of any Environmental Laws, Tenant, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the hazardous material to the complete satisfaction of Landlord and the appropriate governmental authorities.

(c) Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of Premises or compliance with Environmental Laws. Tenant will promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of Landlord. Tenant will keep Premises free of any lien imposed pursuant to Environmental Laws.

(d) Landlord will have the right at all reasonable times and from time to time to conduct environmental audits of Premises, and Tenant will cooperate in the conduct of those audits. The audits will be conducted by a person(s) of Landlord's choosing, and if any hazardous material is detected or if a violation of any of the warranties, representations, or covenants contained in this paragraph is discovered, the fees and expenses of such person(s) will be borne by Tenant and will be paid as additional rent under this Lease on demand by Landlord.

(e) If Tenant fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any hazardous material from Premises and/or Facility. The costs of hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Lease, whether or not a court has ordered the cleanup, and those costs will become due and payable on demand by Landlord. Tenant will give Landlord, its agents, and employees, access to Premises to remove or otherwise clean up any hazardous material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, and this Lease will not be construed as creating any such obligation.

(f) Tenant will indemnify and hold harmless Landlord and its employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of any kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to the acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors, subtenants, and invitees with respect to (1) the generation, manufacture, operations involving, transport, treatment, storage, handling, production, processing, disposal, release, or threatened release of any hazardous materials which are on, from, or affecting the Premises, including, without limitation, the soil, water, vegetation, buildings, and improvements on the Premises; (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (3) any lawsuit brought or threatened, settlement reached, or governmental order relating to such hazardous materials; and (4) any violations of laws, orders, regulations, requirements, or demands of governmental authorities, or any reasonable policies or requirements of Landlord, which are based upon or in any way related to such hazardous material including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. This indemnification will survive this Lease.

(g) At the end of this Lease, Tenant will surrender Premises to Landlord free of any and all hazardous materials and in compliance with Environmental Laws affecting Premises.

(h) For the purpose of this Section, the term "**hazardous materials**" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 et seq.); and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations now enacted or enacted after this date.

(i) The provisions of this Section shall be in addition to any and all obligations and liabilities Tenant may have to Landlord and common law, will survive this Lease.

6.3 Relocation

Landlord shall have the right, at its option and upon at least thirty (30) days' written notice to Tenant, to relocate Tenant and to substitute for the Premises described above other spaces in the Facility containing at least as much useable area as the original Premises. Such substituted Premises shall be improved by Landlord at its expense, with improvements at least equal in quantity and quality to those in the original Premises. Landlord shall pay the expenses reasonably incurred by Tenant in connection with such substitution of Premises, including, but not limited to costs of moving, telecommunication infrastructure relocation, etc., up to an amount that shall not exceed \$4.00 per useable square foot of the new Premises.

ARTICLE 7 UTILITIES AND SERVICES

7.1 Utilities and Telecommunications

Subject to operating cost adjustments as provided in Section 7.4 below, utility services available to Facility and/or Premises (municipal water, sewer, garbage collection, electric, heat, cooling) shall be provided at no additional cost to Tenant beyond Tenant's monthly rent payment. In the event such services used by Tenant exceed the amounts or types typical for office space use, Landlord may, upon notice and explanation to Tenant, invoice for such excessive or unusual uses separately as additional rent.

Landlord shall provide for Tenant's routine use of facility telecommunications infrastructure from the interior wall plate to the telecommunications room to the extent deemed necessary by Landlord to provide Tenant access to voice and Internet service. Landlord shall be solely responsible for maintaining and altering all telecommunications infrastructure within the facility and this Lease does not permit Tenant's installation of, or modification to such telecommunication systems. Tenant shall not be granted access to any facility telecommunications rooms. Tenant request for additions, removals or alterations of telecommunications infrastructure within the facility shall be submitted to Landlord in writing. Landlord may approve or reject such proposal at its sole discretion. Prior to commencement of Tenant's approved additions, removal, or alterations, Tenant shall be notified of any cost assigned to Tenant attributable to Tenant's request and shall be separately invoiced by Landlord and such costs shall be paid for by Tenant as additional rent.

Landlord shall provide Tenant limited bandwidth access to the Internet. Subject to Tenant's compliance with Landlord's rules and policies regarding Internet use, Landlord shall provide and maintain such basic Internet connectivity at no additional cost. Internet connectivity provided by Landlord is not guaranteed at all times, but Landlord shall make reasonable efforts to maintain connectivity for Tenant. Landlord is not responsible for any costs resulting from the loss of data or business interruptions due to temporary loss of Internet service. Tenant shall be solely responsible for securing its networked devices and protect them from attack, compromise,

misuse, etc. Tenant shall keep network-connected devices upgraded with current security patches and use firewalls, anti-virus software, etc. for device protection. If Tenant has a network-connected device that experiences a security issue, such as a computer virus; complaint; security incident; DMCA report; etc., Landlord reserves the right to immediately and completely disconnect all Tenant-related devices from the network until the issue is resolved to Landlord's satisfaction. Tenant wireless network access shall be limited to Premises. Building common areas may not have tenant wireless coverage. Tenant wireless networks shall not be open to the public. The provided network service is intended for the use of Tenant employees and is not to be used by guests, vendors, family, etc. Tenant servers providing service to the Internet must be privately hosted outside of Landlord's network. No servers will be located in Premises.

Tenant shall arrange and separately pay for its voice telecommunications services, such services are not provided by this Lease. Tenant and/or Tenant's voice telecommunication service provider shall coordinate service with Landlord prior to initiation of service. Tenant shall pay (based on a separate invoice from Landlord) any costs imposed on Landlord for Tenant's voice telecommunication service connectivity. Landlord will not be responsible for E911 services for Tenant location. Tenant will be responsible for communicating E911 information to its telecommunication service provider and ensuring its proper provision.

7.2 Maintenance, Janitorial, and Shared Equipment Services

Subject to operating cost adjustments as provided in Section 7.4 below, Landlord shall provide regular maintenance and janitorial services for interior and exterior of Premises and Facility, including Common Areas at no additional cost to Tenant beyond Tenant's monthly rent payment.

7.3 Landlord's Liability

Landlord shall not be liable to Tenant for any loss or damage caused by or resulting from any variation, interruption, or failure of such utilities and services due to any cause whatsoever. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements, or due to accident or strike, or conditions or events beyond Landlord's reasonable control shall be deemed an eviction of Tenant or relieve Tenant from any of Tenant's obligations hereunder.

7.4 Operating Cost Adjustment During Term

Operating costs for Premises are included in the monthly rent up to the amount of actual facility operating costs from the most recent reporting period ("**Base Year Operating Expense**"). The components and actual amounts of Base Year Operating Expenses are attached and incorporated herein as shown in **Exhibit C** as "recoverable expenses". Total facility operating costs (based on full building occupancy) shall be calculated by Landlord at the end of each year of the Term (or partial year of the Term if permitted Lease termination or cancellation occurs before the end of any year of the Term). Tenant's share of facility operating costs is 10%. If during any year of the Term the actual operating costs for that year are greater than the Base Year Operating Expense, Tenant shall pay its pro-rata share of the increase in actual operating costs of the facility for that year in which such actual operating costs exceed Base Year Operating Expense.

The increase shall be referred to as the "Adjustment Amount". The Adjustment Amount shall be considered additional rent and included as a single additional payment within thirty (30) days of billing notification by Landlord or Landlord's billing agent. In the last year of the Term, the Adjustment Amount shall be paid upon notification of billing for the Adjustment Amount which may be calculated and noticed after the Term and Lease have expired. Expense information to support the determination of any increase in actual operating costs for each year of the Term shall be provided by Landlord within a reasonable time upon request by Tenant.

ARTICLE 8

CARE OF PREMISES/END OF TERM

8.1 Landlord's Responsibility

As long as Tenant is not in default of any of the provisions of this Lease, Landlord shall maintain Premises and Building in reasonably good condition except for damage occasioned by the act or omission of Tenant, the repair of which shall be paid for by Tenant.

8.2 Tenant's Responsibility

Tenant shall take good care of the Premises. Tenant's responsibility shall extend to its visitors, contractors, guests or agents. Tenant shall, at the expiration or termination of this Lease, surrender and deliver the Premises to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable use and wear excepted. At the expiration or termination of this Lease, Landlord shall cause all carpets in Premises to be professionally cleaned and shall thereafter submit a bill to Tenant for the reasonable costs associated with such cleaning. Such bill shall be paid by Tenant as additional rent and shall be due promptly upon receipt by Tenant. Tenant shall be responsible for the cost of replacement of carpet that is damaged as a result of dragging or pushing furniture in the Premises or Common Areas.

Tenant shall not make any alterations, additions or improvements in or to Premises, or make changes to locks on doors, or add, disturb or in any way change any plumbing or wiring without first obtaining the written consent of Landlord. Unless specifically approved by Landlord to the contrary, ALL alterations, additions, or improvements shall be completed by Landlord or Landlord's contractor and shall become the property of Landlord during the Lease term and after termination. If such approval is given, it shall assign costs for completing such work to Landlord or Tenant and shall also establish if such alterations, additions, and improvements shall be removed by Tenant at Tenant's expense at the end of term.

All damage or injury done to Premises or Common Areas by Tenant or by any persons who may be in or upon Premises and Common Areas with the consent of Tenant, including the cracking or breaking of glass of any windows and doors, shall be paid for by Tenant, and Tenant shall pay all damage to the Facility caused by Tenant's misuse of the Premises or the appurtenances thereto. If Tenant refuses or neglects to pay for repairs and/or maintain the Premises or any part thereof in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant five (5) days' written notice of Landlord's election to do so, to make such repairs or perform such maintenance on for the account of Tenant. In such event, such work shall be paid for by Tenant as additional rent and shall be due promptly upon receipt of a bill therefor. Anything to the contrary herein notwithstanding, in the event that an emergency condition should

exist because of the failure of Tenant to perform any of its obligations to repair or maintain Premises in accordance with this Lease, Tenant shall not be entitled to any notice and Landlord may immediately assume all or any portion of such obligations and Tenant shall be responsible for all costs of remedy. For the purposes of the preceding sentence, the phrase "**emergency condition**" shall mean any condition constituting an immediate risk of injury to person, serious damage to property or impairment of Landlord's or another tenant's or occupant's business. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby or to any abatement of rent. Tenant shall not put any curtains, draperies or other hangings on or beside the windows in the Premises without first obtaining Landlord's consent. All normal repairs necessary to maintain the Premises in a tenantable condition shall be done by or under the direction of Landlord and at Landlord's expense except as otherwise provided herein. Landlord shall be the sole judge as to what repairs are necessary.

Tenant shall not make any alterations, additions or improvements in or to Common Areas.

8.3 Surrender of Possession

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender Premises to Landlord.

8.4 Removal of Property

Any trade fixtures, equipment, or other personal property placed in the Premises by Tenant and not affixed to the walls, ceiling, floors, or other part thereof, shall remain the property of Tenant, and provided that Tenant is not in default of performance of this Lease, they may be removed by Tenant at any time during the term hereof.

Those trade fixtures or equipment which must necessarily be affixed to the walls, ceiling, floors, or other part of the Premises in such a manner that damage thereto will result from the installation or removal thereof, shall not be installed without the prior consent in writing and approval of the manner of installation by Landlord. If so installed, they shall remain a part of the Premises and not be removed therefrom unless Landlord shall demand their removal, in which event they shall promptly be removed by Tenant, and Tenant shall be responsible for repair of all damage to any part of the Premises occasioned by their installation or removal. If Tenant shall fail to remove any other property of any nature whatsoever from the Premises or Facility at the termination of this Lease, or when Landlord has the right of re-entry, Landlord may, at its option, remove and store said property without liability for loss thereof or damage thereto, such storage to be for the account and at the expense of Tenant. If Tenant shall not pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Landlord may, at its option, sell, or permit to be sold, any or all of such property at public or private sale, in such manner at such times and places as Landlord, in its sole discretion, may deem proper, without notice to Tenant, and shall apply the proceeds of such sale as follows: first, to the cost and expense of such sale, including advertising costs and reasonable attorneys' fees actually incurred; second, to the payment of the costs or charges for storing any such property; third, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the term hereof; and, fourth, the balance, if any, to Tenant.

ARTICLE 9
ACCESS

9.1 Access

Tenant will permit Landlord and its agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same or for the purpose of cleaning, repairing, altering or improving the Premises or Building. Nothing contained in this Article 9 shall be deemed to impose any obligation upon Landlord not expressly stated elsewhere in this Lease. When reasonably necessary, Landlord may temporarily close entrances, doors, corridors, or other facilities without liability to Tenant by reason of such closure and without such action by Landlord being construed as an eviction of Tenant or relieve Tenant from the duty of observing and performing any of the provisions of this Lease. Landlord shall have the right to require Tenant to exclusively use service or delivery access routes as designated by Landlord from time to time. Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective tenants at any time during the Lease term.

ARTICLE 10
DAMAGE OR DESTRUCTION

10.1 Damage or Destruction

If Premises shall be damaged, either wholly or in part, by fire or other casualty, Landlord may, at its option, restore the Premises to their previous condition, and in the meantime, the monthly rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof. Notwithstanding the foregoing, if the fire or other casualty results from or arises out of Tenant's willful or negligent act or omission, monthly rent shall not be abated. If the Building shall be destroyed or damaged by fire or other casualty to the extent that more than twenty percent (20%) thereof is damaged, notwithstanding that the Premises may be unaffected directly by such destruction or damage, Landlord may, at its election, terminate this Lease upon thirty (30) days' prior written notice.

ARTICLE 11
INDEMNITY AND INSURANCE

11.1 Indemnification

Tenant shall defend and indemnify Landlord and hold it harmless from and against any and all liability, damages, costs or expenses, including attorneys' fees, arising from any act, omission or negligence of Tenant, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Tenant in and about the Facility, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Facility; provided that the foregoing provision shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from injuries to third parties caused by the willful act or negligence of Landlord, or of any officer, contractor, licensee, agent, servant, employee, guest, invitee or visitor of Landlord.

Landlord shall not be liable for any loss or damage to personal property or loss of income sustained by Tenant, or other persons, which may be caused by the Facility or the Premises, or any appurtenances thereto, being out of repair, or by the bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any tenant or occupant of the Facility, or of any other person, or by any other cause of whatsoever nature, unless caused by the gross negligence or willful misconduct of Landlord.

11.2 Insurance Coverage

By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord in this Lease. Failure to maintain the required insurance may result in termination of this Lease at Landlord's option.

Tenant shall, at Tenant's sole cost and expense, throughout the term of this Lease, obtain and maintain insurance of the types and in the amounts described below:

Commercial General and Umbrella Liability Insurance. Tenant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence and in the aggregate. If such CGL insurance contains a general aggregate limit, and if Tenant owns or operates more than one location other than the location under this Lease, then the CGL shall be endorsed to show that "limits apply per location". CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. The policy shall be on a primary occurrence form non-contributable to insurance carried by Landlord.

Workers' Compensation. Where required by law, Tenant shall maintain all statutorily required coverages including Employer's Liability.

All policies (except Workers Compensation and personal property) shall name Landlord as an additional insured. Certificates of Insurance shall be issued to Landlord within five (5) days after the commencement date shown in Section 2.1 of this Lease and prior to any renewal or change of policy term of Tenant's insurance. Additional Insured Endorsement shall be attached to the Certificate. The Certificate shall indicate on the certificate if Tenant's insurance applies at more than the location insured under this Lease. Failure of Landlord to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant's obligation to maintain such insurance.

ARTICLE 12

ASSIGNMENT/ SUBLETTING

12.1 Assignment and Subletting by Tenant Prohibited

This Lease shall not be assigned by Tenant and the Premises shall not be sublet by Tenant.

ARTICLE 13

LIENS/ INSOLVENCY

13.1 Liens and Insolvency

Tenant shall keep the Premises and the Facility free from any liens arising out of any work performed, materials ordered or obligations incurred by Tenant. If Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver or assignee or other liquidating officer is appointed for the business of Tenant, then Landlord may terminate Tenant's right of possession under this Lease at Landlord's option.

ARTICLE 14

DEFAULT

14.1 Default

Time is of the essence hereof, and if at any time the rent or additional rent reserved herein shall become in arrears and be unpaid when due and continue to be unpaid for a period of ten (10) days after written demand for the payment thereof from Landlord specifying such failure to pay, or if Tenant shall default in the performance of any of the other terms, covenants and provisions of this Lease on its part to be performed and such failure is not cured within twenty (20) days after written demand for the performance thereof, or if Premises become vacant or deserted while no rent is being paid, or if Tenant files or has filed against it in any court pursuant to any statute, a petition in bankruptcy or insolvency, or for reorganization or for appointment of a receiver or trustee of all or a substantial portion of the property owned by Tenant, or if Tenant makes an assignment for the benefit of creditors, or any execution or attachment shall be issued against Tenant of all or a substantial portion of Tenant's property, whereby all or any portion of the Premises covered by this Lease or any improvement thereon shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded within thirty (30) days after the determination, issuance of filing of the same, then, and in such event, Landlord shall have the right to terminate this Lease and the term hereof, as well as all of the right, title and interest of Tenant hereunder, by giving Tenant not less than the aforementioned ten (10) days' notice in writing for default on rent and not less than the aforementioned twenty (20) days' notice in writing for all other defaults of such intention and upon the expiration of the time fixed in such notice (if such default shall not have been cured), this Lease and the term hereof, as well as all the right, title and interest of Tenant hereunder, shall wholly terminate in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed by such latter notice were the expiration of the term herein originally granted, and Landlord may enter into and/or repossess said Premises, either by force or

summary proceedings, or otherwise, and Tenant hereby expressly waives service of notice of intention to re-enter or to institute legal proceedings to that end.

In the event of a cancellation or termination hereof by either the issuance of a dispossession warrant or summons, or the service of a notice of termination as hereinabove provided, or otherwise, Tenant shall, nevertheless, remain and continue liable to Landlord in a sum equal to all of the rent and all additional charges for the balance of the term; and Landlord may re-enter said Premises, using such force for that purpose as may be necessary without being liable to any prosecution for said re-entry or for the use of such force, and Landlord may repair or alter said Premises in such manner as to Landlord may seem necessary or advisable, and/or let or relet said Premises or any or all parts thereof for the whole or any part of the remainder of the original term hereof or for a longer or shorter period, in Landlord's name or otherwise, and, out of any rent so collected or received, Landlord shall first pay to itself the expense and cost of retaking, repossessing, repairing and/or altering said Premises and the expenses of removing all persons and property therefrom; second, pay to itself any cost or expense sustained in securing any new tenant or tenants; and third, to pay to itself any balance remaining and apply the whole said balance, or so much thereof as may be required, toward payment of the liability of Tenant to Landlord for the sum equal to the rents reserved herein and then unpaid by Tenant for the remainder of the term. Any entry or re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Tenant from liability hereunder. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning. The failure of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages or otherwise.

Should any rent so collected by Landlord after the payments aforesaid be insufficient fully to pay to Landlord a sum equal to all rent and other charges herein reserved, the balance or deficiency shall be paid by Tenant following receipt of notice from Landlord of the amount of such balance or deficiency that is due. Upon the first day of each month during the term of this Lease, Tenant shall pay to Landlord the amount of said deficiency then existing and shall remain liable for any portion thereof not so paid; and the right of Landlord to recover from Tenant the amount of such deficiency, or a sum equal to the amount of all rent and other charges herein reserved if there shall be no reletting by Landlord, shall survive the issuance of any dispossession warrant or other termination of the term hereof.

Suit or suits for the recovery of any such deficiency or damages, or for a sum equal to any installment or installments of rent or charges payable hereunder may be brought by Landlord, from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by Tenant or no such termination. Rather, Landlord shall have the right to recover from Tenant (in addition to past-due rent and other sums then owing) the total amount of rent which would be payable over the then remaining term of this Lease.

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event

of Landlord obtaining possession of demised Premises, by reason of the violation of Tenant of any of the covenants and conditions of this Lease.

Upon expiration or sooner termination of this Lease, all improvements and additions to the Premises shall become the property of Landlord.

ARTICLE 15
NON-WAIVER

15.1 Non-Waiver

Waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition; or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

ARTICLE 16
NOTICES

16.1 Notices

Any notice authorized to be given from Landlord to Tenant or from Tenant to Landlord shall be sufficiently served or given for all purposes if delivered personally or if sent by United States certified mail, return receipt requested, addressed to the party in question at the following address:

Landlord:	Vice President for Finance and Administration University of Idaho P.O. Box 443164 Moscow, Idaho 83844-3164
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Tenant:	American Wagyu Association Jerry Cassady, Executive Director PO Box 1115 Post Falls ID 83877
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For the purposes of this Lease, a notice served by mail shall be deemed to have been delivered on the date mailed, as indicated by the postal service postmark on the certified mail receipt or on the envelope containing the notice.

ARTICLE 17

Article 17 intentionally deleted.

ARTICLE 18
LANDLORD'S LIABILITY

18.1 Landlord's Liability

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements or for the purpose of binding Landlord personally or the assets of Landlord, except Landlord's interest in the Premises and Facility, but are made and intended for the purpose of binding only Landlord's interest in the Premises. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Landlord or its agents or employees, and their respective heirs, legal representatives, successors and assigns on account of the Lease or on account of any covenant, undertaking or agreement of Landlord in this Lease contained. In the event this Lease is assigned by Landlord, Landlord's liability hereunder shall terminate upon the effective date of said assignment.

ARTICLE 19
GENERAL PROVISIONS

19.1 Time is of the Essence

In all instances where Tenant is required by the terms and provisions of this Lease to pay any sum or to do any act at a particular time or within an indicated period, it is understood and agreed that time is of the essence.

19.2 Waiver of Jury Trial

Landlord and Tenant hereby agree that each of them shall waive trial by jury in any action, proceeding or counterclaims brought by either Landlord or Tenant against the other. This waiver applies to any matters whatsoever arising out of or in any way connected with this Lease, or the relationship of Landlord and Tenant, or Tenant's use of the Premises, or any emergency statute, or any remedy authorized by statute.

19.3 Successors

Except as otherwise specifically provided, the terms, covenants, and conditions, contained in this Lease shall apply to and bind the heirs, successors, executors, administrators, and permitted assignees of the parties to this Lease.

19.4 Joint and Several Liability

If there is more than one Tenant, the obligations imposed by this Lease upon Tenant shall be joint and several.

19.5 Entire Agreement - Captions

This Lease contains the entire agreement of the parties. No representations, promises, or agreements oral or otherwise between the parties not contained in this Lease shall be of any force and effect. Neither this Lease nor any provisions hereof may be changed, waived, discharged, or terminated except in writing executed by Landlord and Tenant. The captions for Lease sections

are for convenience only and shall have no effect upon the construction or interpretation of any part of this Lease.

19.6 Severability

The illegality, invalidity or unenforceability of any term, condition, or provision of the Lease shall in no way impair or invalidate any other term, condition, or provision of the Lease. All such other terms, conditions, and provisions shall remain in full force and effect.

19.7 Brokerage Commission

Tenant and Landlord each represents and warrants that it has dealt with no broker, agent or finder in account of this Lease. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, and costs, including attorneys' fees, in connection with any claim for brokerage, finder's, or similar fees, or compensation related to this Lease, which may be made or alleged as a result of acts or omissions of that party.

19.8 Authorization to Sign Lease

If Tenant is a corporation, each individual executing the Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver the Lease on behalf of Tenant in accordance with Tenant's bylaws or a duly adopted resolution of Tenant's Board of Directors, and that the Lease is binding upon Tenant in accordance with its terms. Tenant shall concurrently with its execution of the Lease, deliver to Landlord upon its request, a certified copy of such bylaws or the resolution of its Board of Directors authorizing the execution of the Lease. If Tenant is a partnership or trust, each individual executing the Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver the Lease on behalf of Tenant in accordance with the terms of the partnership or trust agreement, respectively, and that the Lease is binding upon Tenant in accordance with its terms. Tenant shall concurrently with its execution of the Lease deliver to Landlord, upon its request, such certificates or written assurances from the partnership or trust as Landlord may request authorizing the execution of the Lease. If Tenant is a limited liability company, each individual executing the Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver the Lease on behalf of Tenant in accordance with Tenant's Operating Agreement and that the Lease is binding upon Tenant in accordance with its terms.

19.9 Governing Law and Venue

This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Idaho. The venue for any action brought to enforce this Agreement or otherwise shall be in the state district court of Latah County, Idaho.

19.10 Force Majeure

Time periods for Landlord's performance under this Lease, including services to be furnished by Landlord as provided for in this Lease, shall be extended for periods of time during which Landlord's performance is prevented due to circumstances beyond Landlord's control. This would include, without limitation, strikes, embargoes, repairs, alterations, governmental action, acts of God, war, or other strife. Landlord shall not be liable for any costs or damages incurred

by Tenant due to such circumstances. Suspension or interruption of any services provided by Landlord shall not result in any abatement of rent, be deemed an eviction, or relieve Tenant of any obligation under this Lease

19.11 Recordation

This Lease or memorandum hereof, shall not be recorded by Tenant.

19.12 Binding Effect

Submission of this instrument for examination or signature by Tenant does not constitute an offer to lease, or a reservation of or option for a lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

19.13 Building Regulations

Tenant shall obey all written rules and regulations of the Facility as imposed by Landlord from time to time so long as such rules and regulations are necessary for the safety of persons at the Facility, the protection of the Facility from damage, the preservation of the professional business incubator setting, and they do not unreasonably affect Tenant's permitted use of the Premises. Any rules and regulations are in addition to and shall not be construed to modify or amend this Lease in any way. Landlord shall not be liable for failure of any other tenant to obey such rules and regulations. Failure by Landlord to enforce any current or subsequent rules or regulations against any tenant of the Facility shall not constitute a waiver thereof.

19.14 Relationship of Parties

Nothing contained in this Lease shall be construed as creating the relationship of principal or agent, partnership or joint venture. Neither the method of setting monthly rent rates, nor any provision of this Lease, or any act of the parties shall be deemed to create any relationship other than that of landlord and tenant.

19.15 Equal Opportunity

Each party agrees not to discriminate against any employee or applicant for employment in the performance of this Lease with respect to tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, national origin, disability, ancestry, or status as a Vietnam veteran. Breach of this covenant may be regarded as a material breach of this Lease.

19.16 Non-use of Names and Trademarks

No party to this Lease shall, without written consent in each case from the other party, use any name, trade name, trademark, or other designation of any other party hereto (including contraction, abbreviation, or simulation) in advertising, publicity, promotional, or similar activities or context.

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed this Lease
on
the day and year below.

LANDLORD:

Board of Regents of the University of Idaho,
a body politic and corporate organized and
existing under the laws of the State of Idaho

By _____

Kim Salisbury

Its: Associate VP Budget and Planning

Date of Landlord's signature _____

TENANT:

American Wagyu Association,
a Texas corporation, authorized to do
business in the State of Idaho

By _____

Jerry Cassady

Its: Executive Director

Exhibit List

- Exhibit A: Floor Plan of Building Showing Premises Leased
- Exhibit B: List of Improvements or Acknowledgement of Acceptance
- Exhibit C: Base Year Operating Expense

EXHIBIT A LEASED PREMISES



University of Idaho
Research Park

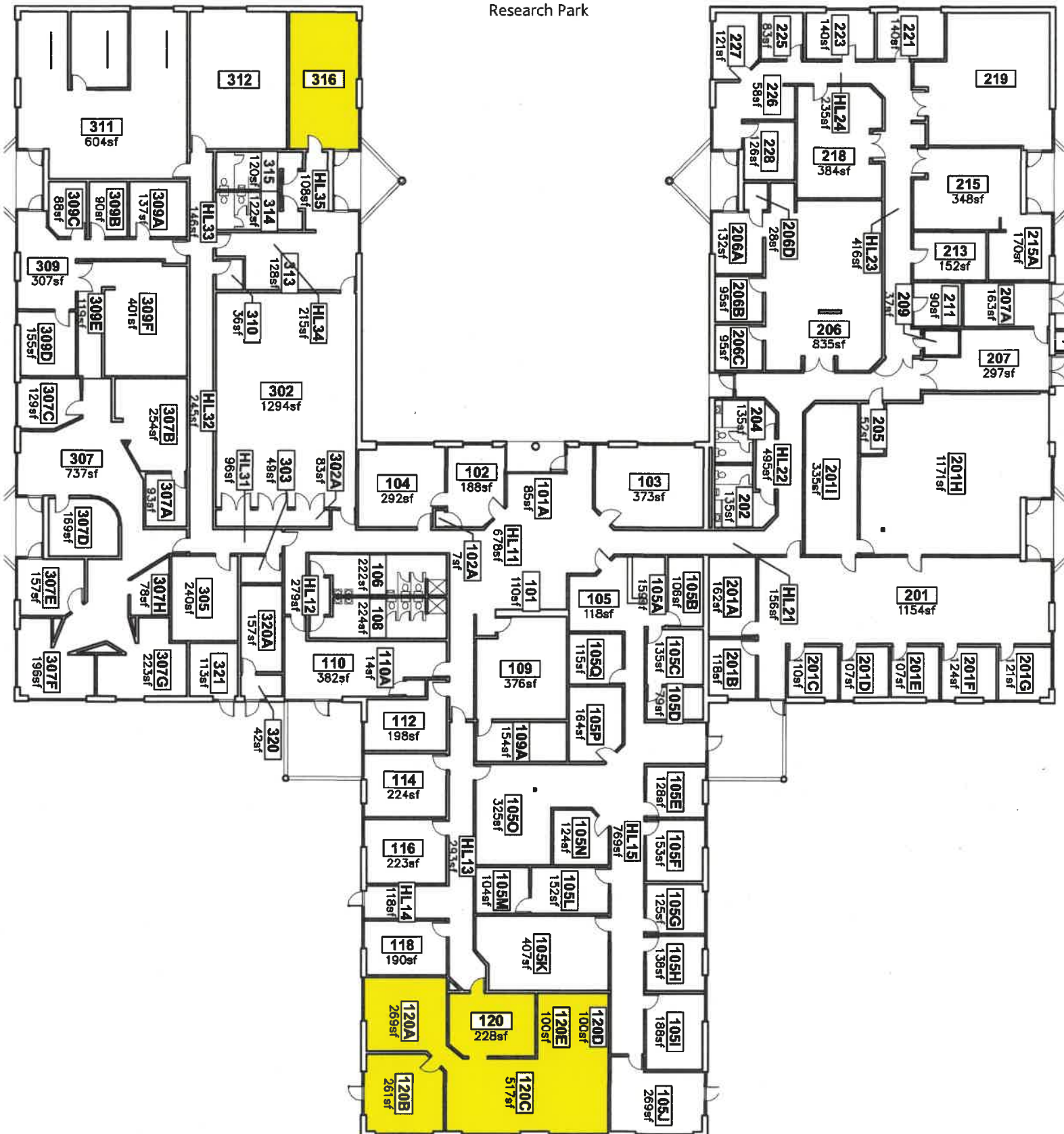


EXHIBIT B ACCEPTANCE OF PREMISES

No improvements to Premises or Facility necessary.

EXHIBIT C BASE YEAR OPERATING EXPENSE

Recoverable Expenses/sf/yr

Management Fees	\$4.16
Utilities/Municipal Services	\$3.75
Repair & Maintenance Service Contracts	\$4.25
Operations/Supplies/Repair/Maintenance	<u>\$4.76</u>
Total Recoverable Expenses	\$16.92

**CONSENT
DECEMBER 18, 2024**

The lease term commences November 1, 2024, and is scheduled to terminate on October 31, 2025.

The lease terms and details are in substantial conformance with Board policy.

Staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho for authority to enter a lease amendment with American Wagyu Association in substantial conformance to the form submitted to the Board in Attachment 1 and to authorize the University's Associate Vice President for Budget and Planning to execute the lease and any related transactional documents.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

UNIVERSITY OF IDAHO

SUBJECT

Renewal of existing lease at UI Research Park in Post Falls for Sun Tropics.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.2(a)

BACKGROUND/DISCUSSION

Since 2016 the UI Research Park in Post Falls has leased commercial space to Sun Tropics, a firm from California that is registered to conduct business in Idaho. UI developed the facilities in Post Falls to promote local economic development by providing suitable commercial space to serve business needs and for companies to receive support and collaborate with on-site UI expertise. This is one of several private entity tenants in this facility that operates at this site with recurring, shorter term lease renewals or amendments.

The attached draft lease revises prior terms of an existing lease arrangement. In the past such periodic short-term renewals or amendments for low value leases did not require Board approval when the new term is for a period of less than five years. However, August 2023 Board policy changes appear to require Board approval for any extension of an existing term of a lease when such extension results in a cumulative period of occupation exceeding five years. For this renewal, UI is proposing to adjust rent based on actual operating costs rather than setting a fixed rental cost to cover those anticipated expenses.

IMPACT

UI collects lease revenue from its operation of the Research Park to cover expenses of occupancy and management of the facility.

ATTACHMENTS

Attachment 1 – Draft Lease Amendment

STAFF COMMENTS AND RECOMMENDATIONS

Board Policy V.I.2(a) – Institutional Approval Authorization Limits requires Board approval for all transactions for institutional leases of real property (as lessee or lessor) if the lease amount is over \$2M, or the term of the lease exceeds 5 years.

The policy was updated in August 2023 to additionally include the following language that pertains to this lease renewal for commercial space at UI Research Park in Post Falls with Sun Tropics, “If the lease term including renewal terms did not exceed 5 years under the original term of a lease, but through amendment the term is extended, Board approval is required.” The lease

**CONSENT
DECEMBER 18, 2024**

term commences October 1, 2024, and is scheduled to terminate on September 30, 2027.

The lease terms and details are in substantial conformance with Board policy.

Staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho for authority to enter a lease amendment with Sun Tropics in substantial conformance to the form submitted to the Board in Attachment 1 and to authorize the University's Associate Vice President for Budget and Planning to execute the lease and any related transactional documents.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

TENANT LEASE

THIS TENANT LEASE ("**Lease**") is made by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and body politic and corporate organized and existing under the constitution and laws of the State of Idaho ("**Landlord**") and Sun Tropics, a California Corporation authorized to conduct business in the State of Idaho ("**Tenant**"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises (hereinafter defined) upon all of the terms and conditions provided herein.

ARTICLE 1

PREMISES/ FACILITY/PARKING

1.1 Premises

The premises comprise the area shown as Suite 206, Rooms 209 and 221 (1362 sf) on the floor plan attached hereto as Exhibit A ("**Premises**"). Premises is located at 958 S Lochsa St, Post Falls ID 83854 and located in a building, together with related driveways, parking areas, fixtures and improvements ("**Facility**").

1.2 Common Areas

Subject to the terms of this Lease, Tenant shall have the non-exclusive right in common with other occupants of the Facility, to use certain access roads, parking areas, sidewalks, entrances, corridors, grounds, lobby areas, meeting rooms, common restrooms, and other building amenities within the Facility provided and designated from time to time by Landlord for the general use and convenience of the occupants of the Facility (collectively, "**Common Areas**").

1.3 Parking

Tenant's use of the Common Areas shall include use, on an unassigned basis, of those portions of the Common Areas designated by Landlord from time to time for Tenant parking and access to such parking. Parking spaces available to Tenant shall be used for parking only by vehicles no larger than full-sized passenger automobiles. No overnight parking for Tenant vehicles is permitted without the written consent of Landlord. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Section, Landlord shall have the right, in addition to all other rights and remedies that it may have under this Lease, to remove or tow away the vehicle involved without prior notice to Tenant and the cost thereof shall be paid to Landlord within ten (10) days after notice from Landlord to Tenant.

ARTICLE 2
LEASE TERM/CONDITION OF PREMISES

2.1 Lease Term

Lease term shall commence on October 1, 2024, and shall terminate on September, 30, 2027. This Lease may also be terminated prior to the Lease termination date by either party. The party choosing to terminate must provide sixty days' written notice to the other party.

2.2 Improvement to Premises and Acceptance of Condition of Premises

If improvements to the Premises and/or Facility are deemed necessary by the parties, Landlord shall arrange and perform that work and make the installations in the Premises and/or Facility substantially as listed in Exhibit B (the "**Improvements to Premises**"). If no work is deemed necessary by Landlord and Tenant, Exhibit B shall simply state "No improvements to Premises or Facility necessary", and such statement shall be deemed as Tenant's acknowledgement and acceptance of Premises and Facility "AS IS". Other than as listed in Exhibit B, Landlord has no obligation to improve, alter or remodel the Premises or Facility beyond repair and maintenance of the existing facility infrastructure as provided herein and Tenant hereby acknowledges that no improvements beyond those specified in Exhibit B shall be provided by Landlord. All such installations provided herein shall immediately become and remain the property of Landlord.

ARTICLE 3
PAYMENT OF RENT/ADDITIONAL RENT

3.1 Amount and Payment of Monthly Rent and Additional Rent

Tenant agrees to pay monthly rent of \$2586.44 for each month of the first year of the Lease term, \$2728.69 for each month of the second year of the Lease Term, and \$2878.77 for each month of the third and final year of the Lease Term. Payment shall be made to Landlord on or before the first day of that month for which rent is due, e.g. payment for January shall be due on January 1. If the first day of the month falls on a weekend or holiday payment shall be due the first University business day thereafter. Payment must be RECEIVED by the close of business on the due date to be considered timely. Without separate invoice from Landlord, Tenant shall make its monthly rent check payable to "Bursar, University of Idaho" and forward payment to "UI Student Accounts/Accounts Receivable, 875 Perimeter MS 4250, Moscow ID 83844-4250", or to such other address as Landlord may designate in writing. Such payment shall include Tenant's specific account code provided by Lessor. All other monies besides monthly rent payable by Tenant to Landlord under this Lease shall be deemed to be additional rent and shall be separately invoiced by Landlord and payable and recoverable as rent in the manner herein provided and Landlord shall have all rights against Tenant for default in any such payment. Rent shall be paid to Landlord during the entire term of this Lease, without abatement, deduction or set-off of any kind. Tenant's obligation to pay all rent due under this Lease shall survive the expiration or earlier termination of this Lease. Should this Lease commence on a day other than the first day of the month or terminate on a day other than the last day of the month, the rent for such partial month shall be prorated.

3.2 Late Payment Charge

If Tenant fails to pay any rent within fifteen (15) days of when due (as provided in Section 3.1 above), Tenant shall pay to Landlord a late payment charge for each occurrence of \$20 to help defray the additional cost to Landlord for processing such late payments. If Tenant fails to pay any rent when due for any period exceeding thirty days, such unpaid amounts shall, in addition to late payment of \$20 also pay an additional delinquency fee that shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum. These provisions for late charges shall be in addition to Landlord's other rights and remedies hereunder or at law or in equity and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

3.3 Personal Property Taxes

Tenant shall pay prior to delinquency all personal property taxes and business taxes with respect to all property and business activities of Tenant on Premises and shall provide promptly upon request of Landlord written proof of such payments.

ARTICLE 4

Article 4 intentionally deleted for the purposes of this Lease.

ARTICLE 5

SECURITY DEPOSIT

5.1 Security Deposit

Upon execution of the Lease, Tenant shall deposit an amount equal to one month's rent (as established in Section 3.1 above for the first year's rent) as security for the faithful performance and observance by Tenant of all the terms, covenants, conditions, provisions and agreements of this Lease ("**Security Deposit**"). This amount is separate from and in addition to the amount due as "monthly rent" as provided by Section 3.1 of this Lease. If Tenant shall default with respect to any covenant or condition of this Lease including, but not limited to the payment of rent, Landlord may, but shall not be obligated to, apply all or any part of such deposit to the payment of any sum in default or any other sum which Landlord may be required to spend or incur by reason of Tenant's default, and, in such event, Tenant shall, upon demand, deposit with Landlord the amount so applied so that Landlord shall have the full deposit on hand at all times during the term of this Lease. If Tenant shall have fully complied with all the covenants and conditions of this Lease, the Security Deposit or any balance thereof shall be refunded to Tenant upon Landlord's final inspection of the Premises and within thirty (30) days after Tenant has vacated the same and after any accrued charges for which Tenant is responsible (such as but not limited to repair of damages to the Premises attributable to Tenant) and have been determined and paid in full. Tenant agrees that if this Security Deposit is insufficient to compensate Landlord for any damages, costs, and expenses not covered thereby, including loss of rental income during any period reasonably required to repair physical damages to Premises or to clean Premises, Tenant shall pay the balance thereof, immediately upon demand.

ARTICLE 6
USE AND OCCUPANCY

6.1 Permitted Use, Signage and Preservation of Business Incubator Setting

Premises shall be occupied and used only for the specific purpose of laboratory space for research and development and scale up for production of fruit flavorings and for no other business or purpose without the prior written consent of Landlord. Tenant shall not display any sign or advertisement on the exterior of Premises or Facility without the written consent of Landlord and such consent may be withheld at the sole discretion of Landlord. Landlord shall place upon a common sign structure in the Facility's courtyard a business identification panel with Tenant's business name. Such panel shall be designed and placed by Landlord at no additional cost to Tenant beyond monthly rent.

No act shall be done in or about the Premises or Common Areas that is unlawful or that will increase the existing rate of insurance on the Building. Tenant shall not commit or allow to be committed any waste upon the Premises or Facility, or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other tenant or occupant in the Facility. Tenant shall not, without the written consent of Landlord, use any apparatus, machinery, or device in the Premises, which will cause any substantial noise or vibration about the Premises. If any of Tenant's office machines and equipment should disturb the quiet enjoyment of any other tenants in the Facility, then Tenant shall take such action as may be necessary to eliminate the disturbance (subject to any Premises or Facility alteration approvals from Landlord). Tenant shall comply with all state, federal, and local laws, ordinances, and regulations relating to its use of the Premises and shall observe such reasonable rules and regulations as may be adopted and distributed to Tenant in writing by Landlord for the safety, care and cleanliness of the Premises or the Facility, and for preservation of a professional business incubator setting at the Facility.

6.2 Compliance with Environmental Laws

Tenant represents, warrants, and covenants to Landlord that:

(a) Tenant and Premises will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subparagraph (h), all as amended and modified from time to time (collectively, "**Environmental Laws**"). All governmental permits relating to the use or operation of the Premises required by applicable Environmental Laws are and will remain in effect, and Tenant will comply with them.

(b) Tenant will not permit any release, generation, manufacture, storage, treatment, transportation, or disposal of hazardous material, as that term is defined in subparagraph (h), on, in, under, or from Premises in violation of any Environmental Laws. Tenant will promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any hazardous material has been or is threatened to be released, generated, manufactured, stored, treated, transported, or disposed of, on, in, under, or from Premises in violation of any Environmental Laws; and if any hazardous material is found on Premises in violation of any Environmental Laws, Tenant, at its own cost and expense, will immediately take such action as is necessary to

detain the spread of and remove the hazardous material to the complete satisfaction of Landlord and the appropriate governmental authorities.

(c) Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of Premises or compliance with Environmental Laws. Tenant will promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of Landlord. Tenant will keep Premises free of any lien imposed pursuant to Environmental Laws.

(d) Landlord will have the right at all reasonable times and from time to time to conduct environmental audits of Premises, and Tenant will cooperate in the conduct of those audits. The audits will be conducted by a person(s) of Landlord's choosing, and if any hazardous material is detected or if a violation of any of the warranties, representations, or covenants contained in this paragraph is discovered, the fees and expenses of such person(s) will be borne by Tenant and will be paid as additional rent under this Lease on demand by Landlord.

(e) If Tenant fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any hazardous material from Premises and/or Facility. The costs of hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Lease, whether or not a court has ordered the cleanup, and those costs will become due and payable on demand by Landlord. Tenant will give Landlord, its agents, and employees, access to Premises to remove or otherwise clean up any hazardous material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, and this Lease will not be construed as creating any such obligation.

(f) Tenant will indemnify and hold harmless Landlord and its employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of any kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to the acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors, subtenants, and invitees with respect to (1) the generation, manufacture, operations involving, transport, treatment, storage, handling, production, processing, disposal, release, or threatened release of any hazardous materials which are on, from, or affecting the Premises, including, without limitation, the soil, water, vegetation, buildings, and improvements on the Premises; (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (3) any lawsuit brought or threatened, settlement reached, or governmental order relating to such hazardous materials; and (4) any violations of laws, orders, regulations, requirements, or demands of governmental authorities, or any reasonable policies or requirements of Landlord, which are based upon or in any way related to such hazardous material including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. This indemnification will survive this Lease.

(g) At the end of this Lease, Tenant will surrender Premises to Landlord free of any and all hazardous materials and in compliance with Environmental Laws affecting Premises.

(h) For the purpose of this Section, the term "**hazardous materials**" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 et seq.); and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations now enacted or enacted after this date.

(i) The provisions of this Section shall be in addition to any and all obligations and liabilities Tenant may have to Landlord and common law, will survive this Lease.

6.3 Relocation

Landlord shall have the right, at its option and upon at least thirty (30) days' written notice to Tenant, to relocate Tenant and to substitute for the Premises described above other spaces in the Facility containing at least as much useable area as the original Premises. Such substituted Premises shall be improved by Landlord at its expense, with improvements at least equal in quantity and quality to those in the original Premises. Landlord shall pay the expenses reasonably incurred by Tenant in connection with such substitution of Premises, including, but not limited to costs of moving, telecommunication infrastructure relocation, etc., up to an amount that shall not exceed \$4.00 per useable square foot of the new Premises.

ARTICLE 7

UTILITIES AND SERVICES

7.1 Utilities and Telecommunications

Subject to operating cost adjustments as provided in Section 7.4 below, utility services available to Facility and/or Premises (municipal water, sewer, garbage collection, electric, heat, cooling) shall be provided at no additional cost to Tenant beyond Tenant's monthly rent payment. In the event such services used by Tenant exceed the amounts or types typical for office space use, Landlord may, upon notice and explanation to Tenant, invoice for such excessive or unusual uses separately as additional rent.

Landlord shall provide for Tenant's routine use of facility telecommunications infrastructure from the interior wall plate to the telecommunications room to the extent deemed necessary by Landlord to provide Tenant access to voice and Internet service. Landlord shall be solely responsible for maintaining and altering all telecommunications infrastructure within the facility and this Lease does not permit Tenant's installation of, or modification to such telecommunication systems. Tenant shall not be granted access to any facility telecommunications rooms. Tenant request for additions, removals or alterations of telecommunications infrastructure within the facility shall be submitted to Landlord in writing. Landlord may approve or reject such proposal at its sole discretion. Prior to commencement of Tenant's approved additions, removal, or alterations, Tenant shall be notified of any cost

assigned to Tenant attributable to Tenant's request and shall be separately invoiced by Landlord and such costs shall be paid for by Tenant as additional rent.

Landlord shall provide Tenant limited bandwidth access to the Internet. Subject to Tenant's compliance with Landlord's rules and policies regarding Internet use, Landlord shall provide and maintain such basic Internet connectivity at no additional cost. Internet connectivity provided by Landlord is not guaranteed at all times, but Landlord shall make reasonable efforts to maintain connectivity for Tenant. Landlord is not responsible for any costs resulting from the loss of data or business interruptions due to temporary loss of Internet service. Tenant shall be solely responsible for securing its networked devices and protect them from attack, compromise, misuse, etc. Tenant shall keep network-connected devices upgraded with current security patches and use firewalls, anti-virus software, etc. for device protection. If Tenant has a network-connected device that experiences a security issue, such as a computer virus; complaint; security incident; DMCA report; etc., Landlord reserves the right to immediately and completely disconnect all Tenant-related devices from the network until the issue is resolved to Landlord's satisfaction. Tenant wireless network access shall be limited to Premises. Building common areas may not have tenant wireless coverage. Tenant wireless networks shall not be open to the public. The provided network service is intended for the use of Tenant employees and is not to be used by guests, vendors, family, etc. Tenant servers providing service to the Internet must be privately hosted outside of Landlord's network. No servers will be located in Premises.

Tenant shall arrange and separately pay for its voice telecommunications services, such services are not provided by this Lease. Tenant and/or Tenant's voice telecommunication service provider shall coordinate service with Landlord prior to initiation of service. Tenant shall pay (based on a separate invoice from Landlord) any costs imposed on Landlord for Tenant's voice telecommunication service connectivity. Landlord will not be responsible for E911 services for Tenant location. Tenant will be responsible for communicating E911 information to its telecommunication service provider and ensuring its proper provision.

7.2 Maintenance, Janitorial, and Shared Equipment Services

Subject to operating cost adjustments as provided in Section 7.4 below, Landlord shall provide regular maintenance and janitorial services for interior and exterior of Premises and Facility, including Common Areas at no additional cost to Tenant beyond Tenant's monthly rent payment.

7.3 Landlord's Liability

Landlord shall not be liable to Tenant for any loss or damage caused by or resulting from any variation, interruption, or failure of such utilities and services due to any cause whatsoever. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements, or due to accident or strike, or conditions or events beyond Landlord's reasonable control shall be deemed an eviction of Tenant or relieve Tenant from any of Tenant's obligations hereunder.

7.4 Operating Cost Adjustment During Term

Operating costs for Premises are included in the monthly rent up to the amount of anticipated facility operating costs (“**Base Year Operating Expense**”). The components and anticipated amounts of Base Year Operating Expense are attached and incorporated herein as shown in **Exhibit C** as “recoverable expenses”. Total facility operating costs (based on full building occupancy) shall be calculated by Landlord at the end of each year of the Term (or partial year of the Term if permitted Lease termination or cancellation occurs before the end of any year of the Term). Tenant’s share of facility operating costs is 7%. If during any year of the Term the actual operating costs for the then current Landlord fiscal year (which runs July 1 through June 30) are greater than the Base Year Operating Expense, Tenant shall pay its pro-rata share of the increase in actual operating costs of the facility for that year in which such actual operating costs exceed Base Year Operating Expense. The increase shall be referred to as the “Adjustment Amount”. The Adjustment Amount shall be considered additional rent and included as a single additional payment within thirty (30) days of billing notification by Landlord or Landlord’s billing agent. In the last year of the Term, the Adjustment Amount shall be paid upon notification of billing for the Adjustment Amount which may be calculated and noticed after the Term and Lease have expired. Expense information to support the determination of any increase in actual operating costs for each year of the Term shall be provided by Landlord within a reasonable time upon request by Tenant.

ARTICLE 8

CARE OF PREMISES/END OF TERM

8.1 Landlord’s Responsibility

As long as Tenant is not in default of any of the provisions of this Lease, Landlord shall maintain Premises and Building in reasonably good condition except for damage occasioned by the act or omission of Tenant, the repair of which shall be paid for by Tenant.

8.2 Tenant’s Responsibility

Tenant shall take good care of the Premises. Tenant’s responsibility shall extend to its visitors, contractors, guests or agents. Tenant shall, at the expiration or termination of this Lease, surrender and deliver the Premises to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable use and wear excepted. At the expiration or termination of this Lease, Landlord shall cause all carpets in Premises to be professionally cleaned and shall thereafter submit a bill to Tenant for the reasonable costs associated with such cleaning. Such bill shall be paid by Tenant as additional rent and shall be due promptly upon receipt by Tenant. Tenant shall be responsible for the cost of replacement of carpet that is damaged as a result of dragging or pushing furniture in the Premises or Common Areas.

Tenant shall not make any alterations, additions or improvements in or to Premises, or make changes to locks on doors, or add, disturb or in any way change any plumbing or wiring without first obtaining the written consent of Landlord. Unless specifically approved by Landlord to the contrary, ALL alterations, additions, or improvements shall be completed by Landlord or Landlord’s contractor and shall become the property of Landlord during the Lease term and after termination. If such approval is given, it shall assign costs for completing such work to Landlord

or Tenant and shall also establish if such alterations, additions, and improvements shall be removed by Tenant at Tenant's expense at the end of term.

All damage or injury done to Premises or Common Areas by Tenant or by any persons who may be in or upon Premises and Common Areas with the consent of Tenant, including the cracking or breaking of glass of any windows and doors, shall be paid for by Tenant, and Tenant shall pay all damage to the Facility caused by Tenant's misuse of the Premises or the appurtenances thereto. If Tenant refuses or neglects to pay for repairs and/or maintain the Premises or any part thereof in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant five (5) days' written notice of Landlord's election to do so, to make such repairs or perform such maintenance on for the account of Tenant. In such event, such work shall be paid for by Tenant as additional rent and shall be due promptly upon receipt of a bill therefor. Anything to the contrary herein notwithstanding, in the event that an emergency condition should exist because of the failure of Tenant to perform any of its obligations to repair or maintain Premises in accordance with this Lease, Tenant shall not be entitled to any notice and Landlord may immediately assume all or any portion of such obligations and Tenant shall be responsible for all costs of remedy. For the purposes of the preceding sentence, the phrase "**emergency condition**" shall mean any condition constituting an immediate risk of injury to person, serious damage to property or impairment of Landlord's or another tenant's or occupant's business. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby or to any abatement of rent. Tenant shall not put any curtains, draperies or other hangings on or beside the windows in the Premises without first obtaining Landlord's consent. All normal repairs necessary to maintain the Premises in a tenable condition shall be done by or under the direction of Landlord and at Landlord's expense except as otherwise provided herein. Landlord shall be the sole judge as to what repairs are necessary.

Tenant shall not make any alterations, additions or improvements in or to Common Areas.

8.3 Surrender of Possession

Upon expiration of the term of this Lease, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender Premises to Landlord.

8.4 Removal of Property

Any trade fixtures, equipment, or other personal property placed in the Premises by Tenant and not affixed to the walls, ceiling, floors, or other part thereof, shall remain the property of Tenant, and provided that Tenant is not in default of performance of this Lease, they may be removed by Tenant at any time during the term hereof.

Those trade fixtures or equipment which must necessarily be affixed to the walls, ceiling, floors, or other part of the Premises in such a manner that damage thereto will result from the installation or removal thereof, shall not be installed without the prior consent in writing and approval of the manner of installation by Landlord. If so installed, they shall remain a part of the Premises and not be removed therefrom unless Landlord shall demand their removal, in which event they shall promptly be removed by Tenant, and Tenant shall be responsible for repair of all damage to any part of the Premises occasioned by their installation or removal. If Tenant shall

fail to remove any other property of any nature whatsoever from the Premises or Facility at the termination of this Lease, or when Landlord has the right of re-entry, Landlord may, at its option, remove and store said property without liability for loss thereof or damage thereto, such storage to be for the account and at the expense of Tenant. If Tenant shall not pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Landlord may, at its option, sell, or permit to be sold, any or all of such property at public or private sale, in such manner at such times and places as Landlord, in its sole discretion, may deem proper, without notice to Tenant, and shall apply the proceeds of such sale as follows: first, to the cost and expense of such sale, including advertising costs and reasonable attorneys' fees actually incurred; second, to the payment of the costs or charges for storing any such property; third, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the term hereof; and, fourth, the balance, if any, to Tenant.

ARTICLE 9
ACCESS

9.1 Access

Tenant will permit Landlord and its agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same or for the purpose of cleaning, repairing, altering or improving the Premises or Building. Nothing contained in this Article 9 shall be deemed to impose any obligation upon Landlord not expressly stated elsewhere in this Lease. When reasonably necessary, Landlord may temporarily close entrances, doors, corridors, or other facilities without liability to Tenant by reason of such closure and without such action by Landlord being construed as an eviction of Tenant or relieve Tenant from the duty of observing and performing any of the provisions of this Lease. Landlord shall have the right to require Tenant to exclusively use service or delivery access routes as designated by Landlord from time to time. Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective tenants at any time during the Lease term.

ARTICLE 10
DAMAGE OR DESTRUCTION

10.1 Damage or Destruction

If Premises shall be damaged, either wholly or in part, by fire or other casualty, Landlord may, at its option, restore the Premises to their previous condition, and in the meantime, the monthly rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof. Notwithstanding the foregoing, if the fire or other casualty results from or arises out of Tenant's willful or negligent act or omission, monthly rent shall not be abated. If the Building shall be destroyed or damaged by fire or other casualty to the extent that more than twenty percent (20%) thereof is damaged, notwithstanding that the Premises may be unaffected directly by such destruction or damage, Landlord may, at its election, terminate this Lease upon thirty (30) days' prior written notice.

ARTICLE 11
INDEMNITY AND INSURANCE

11.1 Indemnification

Tenant shall defend and indemnify Landlord and hold it harmless from and against any and all liability, damages, costs or expenses, including attorneys' fees, arising from any act, omission or negligence of Tenant, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Tenant in and about the Facility, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Facility; provided that the foregoing provision shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from injuries to third parties caused by the willful act or negligence of Landlord, or of any officer, contractor, licensee, agent, servant, employee, guest, invitee or visitor of Landlord.

Landlord shall not be liable for any loss or damage to personal property or loss of income sustained by Tenant, or other persons, which may be caused by the Facility or the Premises, or any appurtenances thereto, being out of repair, or by the bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any tenant or occupant of the Facility, or of any other person, or by any other cause of whatsoever nature, unless caused by the gross negligence or willful misconduct of Landlord.

11.2 Insurance Coverage

By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord in this Lease. Failure to maintain the required insurance may result in termination of this Lease at Landlord's option.

Tenant shall, at Tenant's sole cost and expense, throughout the term of this Lease, obtain and maintain insurance of the types and in the amounts described below:

Commercial General and Umbrella Liability Insurance. Tenant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence and in the aggregate. If such CGL insurance contains a general aggregate limit, and if Tenant owns or operates more than one location other than the location under this Lease, then the CGL shall be endorsed to show that "limits apply per location". CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. The policy shall be on a primary occurrence form non-contributable to insurance carried by Landlord.

Workers' Compensation. Where required by law, Tenant shall maintain all statutorily required coverages including Employer's Liability.

All policies (except Workers Compensation and personal property) shall name Landlord as an additional insured. Certificates of Insurance shall be issued to Landlord within five (5) days after the commencement date shown in Section 2.1 of this Lease and prior to any renewal or change of policy term of Tenant's insurance. Additional Insured Endorsement shall be attached to the Certificate. The Certificate shall indicate on the certificate if Tenant's insurance applies at more than the location insured under this Lease. Failure of Landlord to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant's obligation to maintain such insurance.

ARTICLE 12

ASSIGNMENT/ SUBLETTING

12.1 Assignment and Subletting by Tenant Prohibited

This Lease shall not be assigned by Tenant and the Premises shall not be sublet by Tenant.

ARTICLE 13

LIENS/ INSOLVENCY

13.1 Liens and Insolvency

Tenant shall keep the Premises and the Facility free from any liens arising out of any work performed, materials ordered or obligations incurred by Tenant. If Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver or assignee or other liquidating officer is appointed for the business of Tenant, then Landlord may terminate Tenant's right of possession under this Lease at Landlord's option.

ARTICLE 14

DEFAULT

14.1 Default

Time is of the essence hereof, and if at any time the rent or additional rent reserved herein shall become in arrears and be unpaid when due and continue to be unpaid for a period of ten (10) days after written demand for the payment thereof from Landlord specifying such failure to pay, or if Tenant shall default in the performance of any of the other terms, covenants and provisions of this Lease on its part to be performed and such failure is not cured within twenty (20) days after written demand for the performance thereof, or if Premises become vacant or deserted while no rent is being paid, or if Tenant files or has filed against it in any court pursuant to any statute, a petition in bankruptcy or insolvency, or for reorganization or for appointment of a receiver or trustee of all or a substantial portion of the property owned by Tenant, or if Tenant makes an assignment for the benefit of creditors, or any execution or attachment shall be issued against Tenant of all or a substantial portion of Tenant's property, whereby all or any portion of the Premises covered by this Lease or any improvement thereon shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded within thirty (30) days after the determination, issuance or filing of the

same, then, and in such event, Landlord shall have the right to terminate this Lease and the term hereof, as well as all of the right, title and interest of Tenant hereunder, by giving Tenant not less than the aforementioned ten (10) days' notice in writing for default on rent and not less than the aforementioned twenty (20) days' notice in writing for all other defaults of such intention and upon the expiration of the time fixed in such notice (if such default shall not have been cured), this Lease and the term hereof, as well as all the right, title and interest of Tenant hereunder, shall wholly terminate in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed by such latter notice were the expiration of the term herein originally granted, and Landlord may enter into and/or repossess said Premises, either by force or summary proceedings, or otherwise, and Tenant hereby expressly waives service of notice of intention to re-enter or to institute legal proceedings to that end.

In the event of a cancellation or termination hereof by either the issuance of a dispossessory warrant or summons, or the service of a notice of termination as hereinabove provided, or otherwise, Tenant shall, nevertheless, remain and continue liable to Landlord in a sum equal to all of the rent and all additional charges for the balance of the term; and Landlord may re-enter said Premises, using such force for that purpose as may be necessary without being liable to any prosecution for said re-entry or for the use of such force, and Landlord may repair or alter said Premises in such manner as to Landlord may seem necessary or advisable, and/or let or relet said Premises or any or all parts thereof for the whole or any part of the remainder of the original term hereof or for a longer or shorter period, in Landlord's name or otherwise, and, out of any rent so collected or received, Landlord shall first pay to itself the expense and cost of retaking, repossessing, repairing and/or altering said Premises and the expenses of removing all persons and property therefrom; second, pay to itself any cost or expense sustained in securing any new tenant or tenants; and third, to pay to itself any balance remaining and apply the whole said balance, or so much thereof as may be required, toward payment of the liability of Tenant to Landlord for the sum equal to the rents reserved herein and then unpaid by Tenant for the remainder of the term. Any entry or re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Tenant from liability hereunder. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning. The failure of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages or otherwise.

Should any rent so collected by Landlord after the payments aforesaid be insufficient fully to pay to Landlord a sum equal to all rent and other charges herein reserved, the balance or deficiency shall be paid by Tenant following receipt of notice from Landlord of the amount of such balance or deficiency that is due. Upon the first day of each month during the term of this Lease, Tenant shall pay to Landlord the amount of said deficiency then existing and shall remain liable for any portion thereof not so paid; and the right of Landlord to recover from Tenant the amount of such deficiency, or a sum equal to the amount of all rent and other charges herein reserved if there shall be no reletting by Landlord, shall survive the issuance of any dispossessory warrant or other termination of the term hereof.

Suit or suits for the recovery of any such deficiency or damages, or for a sum equal to any installment or installments of rent or charges payable hereunder may be brought by Landlord, from time to time at Landlord's election, and nothing herein contained shall be deemed to require

Landlord to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by Tenant or no such termination. Rather, Landlord shall have the right to recover from Tenant (in addition to past-due rent and other sums then owing) the total amount of rent which would be payable over the then remaining term of this Lease.

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of demised Premises, by reason of the violation of Tenant of any of the covenants and conditions of this Lease.

Upon expiration or sooner termination of this Lease, all improvements and additions to the Premises shall become the property of Landlord.

ARTICLE 15
NON-WAIVER

15.1 Non-Waiver

Waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition; or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

ARTICLE 16
NOTICES

16.1 Notices

Any notice authorized to be given from Landlord to Tenant or from Tenant to Landlord shall be sufficiently served or given for all purposes if delivered personally or if sent by United States certified mail, return receipt requested, addressed to the party in question at the following address:

Landlord:	Vice President for Finance and Administration University of Idaho P.O. Box 443164 Moscow, Idaho 83844-3164
Tenant:	Sun Tropics, Inc. 2420 Camino Ramon, Suite 100 San Ramon CA 94582

For the purposes of this Lease, a notice served by mail shall be deemed to have been delivered on the date mailed, as indicated by the postal service postmark on the certified mail receipt or on the envelope containing the notice.

ARTICLE 17

Article 17 intentionally deleted.

ARTICLE 18

LANDLORD'S LIABILITY

18.1 Landlord's Liability

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements or for the purpose of binding Landlord personally or the assets of Landlord, except Landlord's interest in the Premises and Facility, but are made and intended for the purpose of binding only Landlord's interest in the Premises. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Landlord or its agents or employees, and their respective heirs, legal representatives, successors and assigns on account of the Lease or on account of any covenant, undertaking or agreement of Landlord in this Lease contained. In the event this Lease is assigned by Landlord, Landlord's liability hereunder shall terminate upon the effective date of said assignment.

ARTICLE 19

GENERAL PROVISIONS

19.1 Time is of the Essence

In all instances where Tenant is required by the terms and provisions of this Lease to pay any sum or to do any act at a particular time or within an indicated period, it is understood and agreed that time is of the essence.

19.2 Waiver of Jury Trial

Landlord and Tenant hereby agree that each of them shall waive trial by jury in any action, proceeding or counterclaims brought by either Landlord or Tenant against the other. This waiver applies to any matters whatsoever arising out of or in any way connected with this Lease, or the relationship of Landlord and Tenant, or Tenant's use of the Premises, or any emergency statute, or any remedy authorized by statute.

19.3 Successors

Except as otherwise specifically provided, the terms, covenants, and conditions, contained in this Lease shall apply to and bind the heirs, successors, executors, administrators, and permitted assignees of the parties to this Lease.

19.4 Joint and Several Liability

If there is more than one Tenant, the obligations imposed by this Lease upon Tenant shall be joint and several.

19.5 Entire Agreement - Captions

This Lease contains the entire agreement of the parties. No representations, promises, or agreements oral or otherwise between the parties not contained in this Lease shall be of any force and effect. Neither this Lease nor any provisions hereof may be changed, waived, discharged, or terminated except in writing executed by Landlord and Tenant. The captions for Lease sections are for convenience only and shall have no effect upon the construction or interpretation of any part of this Lease.

19.6 Severability

The illegality, invalidity or unenforceability of any term, condition, or provision of the Lease shall in no way impair or invalidate any other term, condition, or provision of the Lease. All such other terms, conditions, and provisions shall remain in full force and effect.

19.7 Brokerage Commission

Tenant and Landlord each represents and warrants that it has dealt with no broker, agent or finder in account of this Lease. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, and costs, including attorneys' fees, in connection with any claim for brokerage, finder's, or similar fees, or compensation related to this Lease, which may be made or alleged as a result of acts or omissions of that party.

19.8 Authorization to Sign Lease

If Tenant is a corporation, each individual executing the Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver the Lease on behalf of Tenant in accordance with Tenant's bylaws or a duly adopted resolution of Tenant's Board of Directors, and that the Lease is binding upon Tenant in accordance with its terms. Tenant shall concurrently with its execution of the Lease, deliver to Landlord upon its request, a certified copy of such bylaws or the resolution of its Board of Directors authorizing the execution of the Lease. If Tenant is a partnership or trust, each individual executing the Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver the Lease on behalf of Tenant in accordance with the terms of the partnership or trust agreement, respectively, and that the Lease is binding upon Tenant in accordance with its terms. Tenant shall concurrently with its execution of the Lease deliver to Landlord, upon its request, such certificates or written assurances from the partnership or trust as Landlord may request authorizing the execution of the Lease. If Tenant is a limited liability company, each individual executing the Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver the Lease on behalf of Tenant in accordance with Tenant's Operating Agreement and that the Lease is binding upon Tenant in accordance with its terms.

19.9 Governing Law and Venue

This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Idaho. The venue for any action brought to enforce this Agreement or otherwise shall be in the state district court of Latah County, Idaho.

19.10 Force Majeure

Time periods for Landlord's performance under this Lease, including services to be furnished by Landlord as provided for in this Lease, shall be extended for periods of time during which Landlord's performance is prevented due to circumstances beyond Landlord's control. This would include, without limitation, strikes, embargoes, repairs, alterations, governmental action, acts of God, war, or other strife. Landlord shall not be liable for any costs or damages incurred by Tenant due to such circumstances. Suspension or interruption of any services provided by Landlord shall not result in any abatement of rent, be deemed an eviction, or relieve Tenant of any obligation under this Lease

19.11 Recordation

This Lease or memorandum hereof, shall not be recorded by Tenant.

19.12 Binding Effect

Submission of this instrument for examination or signature by Tenant does not constitute an offer to lease, or a reservation of or option for a lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

19.13 Building Regulations

Tenant shall obey all written rules and regulations of the Facility as imposed by Landlord from time to time so long as such rules and regulations are necessary for the safety of persons at the Facility, the protection of the Facility from damage, the preservation of the professional business incubator setting, and they do not unreasonably affect Tenant's permitted use of the Premises. Any rules and regulations are in addition to and shall not be construed to modify or amend this Lease in any way. Landlord shall not be liable for failure of any other tenant to obey such rules and regulations. Failure by Landlord to enforce any current or subsequent rules or regulations against any tenant of the Facility shall not constitute a waiver thereof.

19.14 Relationship of Parties

Nothing contained in this Lease shall be construed as creating the relationship of principal or agent, partnership or joint venture. Neither the method of setting monthly rent rates, nor any provision of this Lease, or any act of the parties shall be deemed to create any relationship other than that of landlord and tenant.

19.15 Equal Opportunity

Each party agrees not to discriminate against any employee or applicant for employment in the performance of this Lease with respect to tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, national origin, disability, ancestry, or status as a Vietnam veteran. Breach of this covenant may be regarded as a material breach of this Lease.

19.16 Non-use of Names and Trademarks

No party to this Lease shall, without written consent in each case from the other party, use any name, trade name, trademark, or other designation of any other party hereto (including contraction, abbreviation, or simulation) in advertising, publicity, promotional, or similar activities or context.

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed this Lease
on
the day and year below.

LANDLORD:

Board of Regents of the University of Idaho,
a body politic and corporate organized and
existing under the laws of the State of Idaho

By _____

Name _____

Its _____

Date of Landlord's signature _____

TENANT:

Sun Tropics, Inc.
a California corporation, authorized to
conduct business in the State of Idaho

By _____

Name _____

Its _____

Exhibit List

- Exhibit A: Floor Plan of Building Showing Premises Leased
- Exhibit B: List of Improvements or Acknowledgement of Acceptance
- Exhibit C: Base Year Operating Expense

EXHIBIT A LEASED PREMISES



Research Park

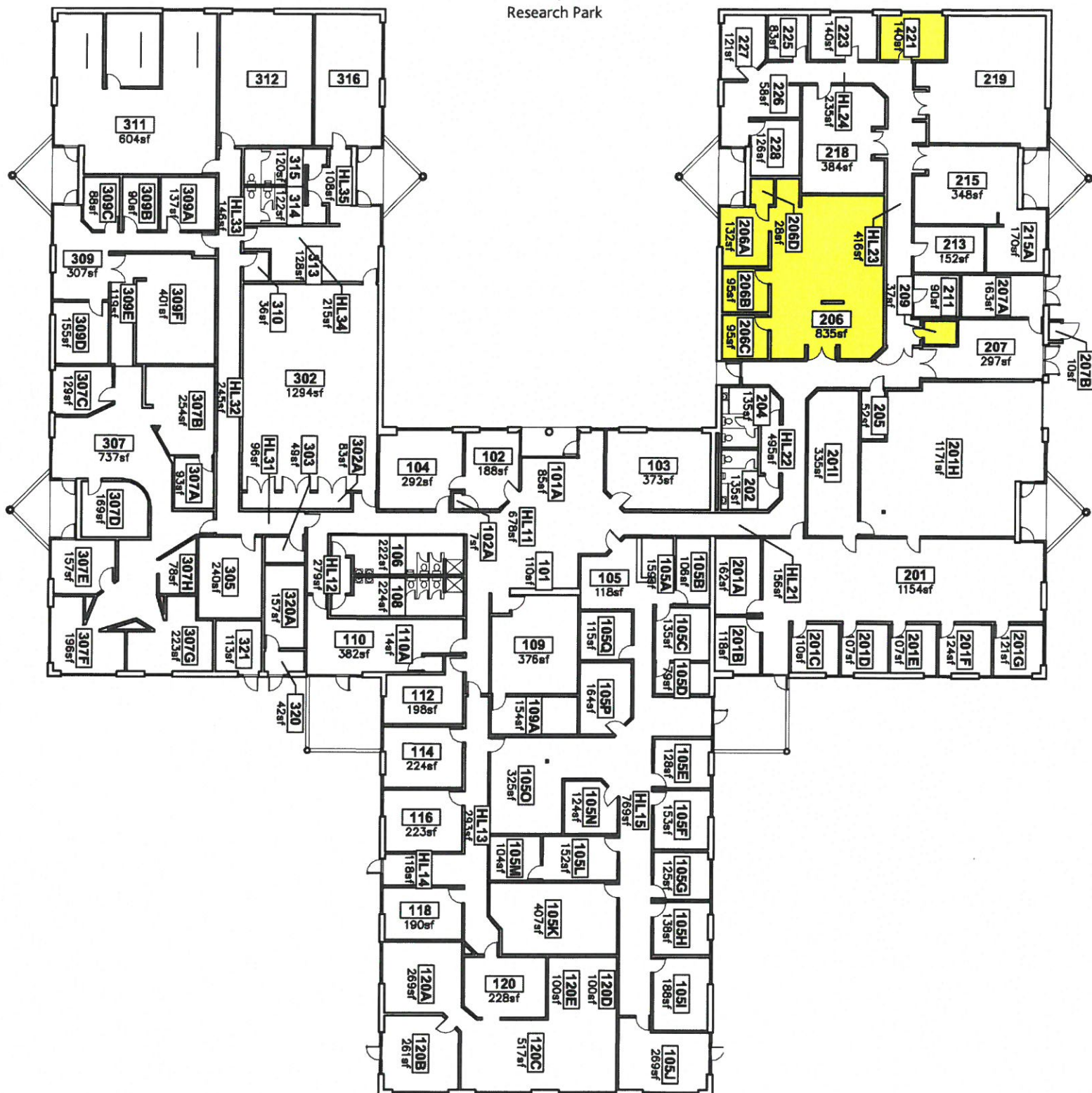


EXHIBIT B ACCEPTANCE OF PREMISES

No improvements to Premises or Facility necessary.

EXHIBIT C BASE YEAR OPERATING EXPENSE

Recoverable Expenses/sf/yr

Management Fees	\$4.16
Utilities/Municipal Services	\$3.75
Repair & Maintenance Service Contracts	\$4.25
Operations/Supplies/Repair/Maintenance	<u>\$4.76</u>
Total Recoverable Expenses	\$16.92

**CONSENT
DECEMBER 18, 2024**

BOISE STATE UNIVERSITY

SUBJECT

Online Program Fee - Generative AI in Education Graduate Certificate

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section III.G. and Section V.R.

BACKGROUND/DISCUSSION

Boise State University is requesting an online program fee for the new, fully online Generative AI in Education graduate certificate program.

The certificate is designed to equip educators with the knowledge and skills needed to effectively implement Generative AI in educational settings. This program provides students with the following:

- Knowledge and skills to effectively integrate Generative AI into their teaching practices;
- Knowledge and understanding of principles, applications, and ethical aspects of Generative AI in educational contexts; and
- Decision-making framework and innovative instructional integration in education practice.

IMPACT

Graduates of this program are equipped to effectively utilize AI in their daily teaching practices to enhance student learning outcomes. The program's size will be scaled to demand, with new instructional costs anticipated at the 31-student threshold.

The \$478 per credit cost for the fully online certificate aligns with the majority of Boise State University's graduate online programs. The total cost for the certificate program will be \$4,302 (9 credits at \$478 per credit).

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Boise State University requests approval to assess an online program fee of \$478 per credit for their existing online Generative AI Education graduate certificate program. In accordance with Board Policy V.R.3.b.ii, institutions may charge an institutional online program fee for any fully online undergraduate, graduate, and certificate program. An online program is defined in this subsection "as one in which all courses are offered and delivered via distance learning modalities, provided however, that the limited on-campus meetings may be allowed if necessary for accreditation purposes or to ensure the program is pedagogically sound". Additionally, "an online program fee shall be in lieu of resident or non-resident tuition (as defined in Idaho Code §33- 3717B) and all other Board approved fees".

CONSENT
DECEMBER 18, 2024

Boise State's request to assess an online program fee of \$478 per credit for the Graduate Certificate in Generative AI Education aligns with criteria as defined in Board Policy V.R.3.b.ii.

Board Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to offer the graduate certificate in Generative AI in Education, an existing fully online certificate, utilizing the online program fee model. The certificate program will charge an online program fee of \$478 per credit.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

CONSENT
DECEMBER 18, 2024

SUBJECT

Higher Education Research Council (HERC) Committee Reappointment

REFERENCE

August 2014	Board appointed Dr. Kelly Beierschmitt to the Higher Education Research Council as the INL representative, replacing Dr. Hill.
October 2014	Board appointed Ms. Robin Woods and re-appointed Dr. Haven Baker to the Higher Education Research Council for a three (3) year term.
August 2016	Board re-appointed Mr. Bill Canon to the Higher Education Research Council for a term expiring June 30, 2019.
October 2018	Board re-appointed Dr. Haven Baker and Ms. Robin Woods as non-institutional representatives for terms expiring June 30, 2020, and approved the appointment of Dr. Todd E. Combs as the INL representative.
June 29, 2020	Board appointed Ms. Heather Messenger and Ms. Eileen Barber as non-institutional representatives for terms expiring on June 30, 2023, and approve the appointment of Dr. Marianne Walck as the INL representative.
December 2021	Board appointed Mr. Doug Sayer as a non-institutional representative for a term expiring on June 30, 2024.
June 2023	Board re-appointed both Ms. Eileen Barber and Ms. Heather Messenger as non-institutional representatives to the Higher Education Research Council for 3-year terms expiring June 30, 2026.
August 2024	Board approved appointment of Dr. Todd E. Combs as the INL Representative.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section III.W., Higher Education Research

BACKGROUND/DISCUSSION

The Higher Education Research Council (HERC) is responsible for implementing the Board's research policy (Board Policy III.W.) and provides guidance to Idaho's four-year public institutions for a statewide collaborative effort to accomplish goals and objectives set forth in Board policy. HERC also provides direction for and oversees the use of research funding provided to the Board by the Legislature to promote research activities that will have a beneficial effect on the quality of education and the economy of the state.

HERC consists of the Vice Presidents of Research from Boise State University, Idaho State University, and the University of Idaho and a representative of Lewis-

**CONSENT
DECEMBER 18, 2024**

Clark State College; a representative of the Idaho National Laboratory (INL); and three (3) non-institutional representatives, with consideration of geographic, private industry involvement and other representation characteristics. The Board shall appoint the three non-institutional representatives. The appointments of the representative of INL shall be subject to approval of the Board. HERC appointments for non-institutional representatives are appointed for staggered three-year terms.

Per the HERC By-laws, adopted in May 2023, the Executive Committee of the Council reviews and makes recommendations to the full Council regarding appointment/reappointment of non-institutional representatives. Doug Sayer was first appointed to the Council in December 2021, with term expiring on December 31, 2024. Doug has expressed interest in reappointment, and the Executive Committee has recommended that he be reappointed for a second term, expiring June 30, 2027.

Doug Sayer is the Chief Business Officer and Co-Founder of Premier Technology, Inc. He is a resident of Pocatello, Idaho and has been an advocate for higher education in various ways over the last 25 years. He has served on several boards that interact with education at the state level and at the academic level, including the Idaho Science and Technology Council, Idaho's Workforce Development Council, the Idaho Innovation Council (Chairman), the IGEM Council (Chairman), the Regional Economic Development Foundation, and The Idaho Governor's Cup (Chairman).

ATTACHMENTS

Attachment 1 – Current HERC Membership

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval.

BOARD ACTION

I move to reappoint Doug Sayer as a non-institutional representative to the Higher Education Research Council, for a three-year term expiring on June 30, 2027.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

HIGHER EDUCATION RESEARCH COUNCIL
December 2024

Dr. Nancy Glenn

Vice President of Research & Economic
Development
Boise State University

Dr. Todd Combs

Deputy Laboratory Director
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Ms. Eileen Barber (06/23-06/26)

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Co-Founder
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Dr. Grace Anderson

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Lewis-Clark State College

Ms. Heather Messenger (06/23-06/26)

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Executive
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Mr. Douglas Sayer (12/24-06/27)

Non-institutional representative
President
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Dr. TJ Bliss
Chief Academic Officer

Mr. John Thomas
HERC Program Manager

IDAHO DEPARTMENT OF EDUCATION

SUBJECT

Emergency Provisional Certificate Recommendations

REFERENCE

April 2019	Board approved SDE recommendations for processing emergency provisional certificates.
August 2019	Board approved SDE revised procedures regarding emergency provisional certificates
August 2021	Board approved SDE revised emergency provisional certificate process
October 2022	Board approved 76 provisional certificates for the 2022-2023 school year.
December 2022	Board approved 87 provisional certificates for the 2022-2023 school year.
February 2023	Board approved 31 provisional certificates for the 2022-2023 school year.
April 2023	Board approved 14 provisional certificates for the 2022-2023 school year.
June 2023	Board approved four (4) certificates for the 2022-2023 school year.
October 2023	Board approved 16 provisional certificates for the 2023-2024 school year. Board approved procedures for processing emergency provisional certificates.
December 2023	Board approved 117 provisional certificates for the 2023-2024 school year.
February 2024	Board approved 26 provisional certificates for the 2023-2024 school year.
April 2024	Board approved 10 provisional certificates for the 2023-2024 school year.
June 2024	Board approved three (3) provisional certificates for the 2023-2024 school year.
August 2024	No applications were received.
October 2024	Board approved 11 provisional certificates for the 2024-2025 school year.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Code § 33-1201 and 33-1203

BACKGROUND

Section 33-1201, Idaho Code, requires that every person who is employed to serve in any elementary or secondary school in as a teacher, supervisor, administrator, education specialist, school nurse or school librarian hold a certificate issued under authority of the State Board of Education, valid for the service being rendered. Section 33-1203, Idaho Code allows the State Board of Education to authorize a provisional certificate for teachers when the candidate has at least two years of

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college training and an emergency has been declared. This section of code does not authorize issuance of emergency provisional certificates for pupil service staff or administrators.

School districts receive the same level of funding for staff with an emergency provisional certificate as they receive for an individual with a standard certificate. Funding for long-term substitutes is at the same level as non-certified classified staff.

DISCUSSION

The Department of Education received 28 complete Emergency Provisional Certificate applications for Instructional certificate(s)/endorsement(s) by October 31, 2024.

The Certification Department of the Idaho Department of Education reviewed each candidate's full application. Each candidate presented below, requesting Instructional certificate(s)/endorsement(s), has completed at least two years of college training, making them eligible for emergency provisional certificate consideration. Each LEA has declared a hiring emergency, summarized the hiring efforts, and attested to the candidate's ability to fill the position.

The Idaho Department of Education is requesting authorization to issue provisional certificates as presented below.

St. Maries Joint School District #041

1. **Applicant Name:** Alyssa Daniel
Certificate: Provisional
Endorsement(s): English (6-12)
College Training: 103 credits
Declared Emergency Date: 9/16/2024
Hire/Assignment Date: 6/12/2023
Summary of Recruitment Efforts: Second provisional application. The school district posted for the position in late Spring of 2023. The HS received one applicant who was interviewed and hired. The four principals and superintendent attended multiple career fairs trying to recruit staff. Calls were made to the attendees of the career fairs, but only received the one applicant.

Blaine County School District #061

2. **Applicant Name:** Karsyn Gerringa
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: 81 credits
Declared Emergency Date: 8/13/2024
Hire/Assignment Date: 8/20/2024
Summary of Recruitment Efforts: Second provisional application. The school opened position in April of 2024. Multiple job platforms and the local newspaper were used to recruit for the position. Notification emails were sent, reaching around 4,500 potential candidates. Only six applicants were received; two

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candidates withdrew, three took positions within the district. The current educator will not be eligible to student teach until fall of 2025.

Garden Valley School District #071

3. **Applicant Name:** Shannon Hugi
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: 48 credits
Declared Emergency Date: 7/13/2024
Hire/Assignment Date: 8/12/2024
Summary of Recruitment Efforts: Positions that were open posted on the district website and EdJobsIdaho. Since opening at the end of the 23-24 SY. Efforts were also made to recruit in person.
4. **Applicant Name:** Heather Jenkins
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: 61 credits
Declared Emergency Date: 7/13/2024
Hire/Assignment Date: 8/12/2024
Summary of Recruitment Efforts: Positions that were open posted on the district website and EdJobsIdaho since opening at the end of the 23-24 SY. Efforts were also made to recruit in person.

West Bonner County School District #083

5. **Applicant Name:** Alex Figueroa-Zepeda
Certificate: Provisional
Endorsement(s): Physical Education (K-12)
College Training: AA with BA anticipated of being complete by June 2025
Declared Emergency Date: 9/18/2024
Hire/Assignment Date: 8/27/2024
Summary of Recruitment Efforts: Second provisional application. On 8/13, the PE/Health position was posted until 8/23 and moved to until filled. It was posted on the district's hiring platform as well as EdJobsIdaho. Three applications were received. The credentialed applicant who applied was offered the Social Studies position. The current candidate is the remaining candidate. School was starting within a week and the board hired Alex for the position. The emergency was declared on 9/18. Alex is currently working towards his BA degree.

Wilder School District #133

6. **Applicant Name:** Eric Lopez
Certificate: Provisional
Endorsement(s): Health (K-12); Physical Education (K-12)
College Training: 179 credits (working towards BA)
Declared Emergency Date: 10/8/2024
Hire/Assignment Date: 8/1/2024
Summary of Recruitment Efforts: The school district advertised the PE/Health position; however, the school did not receive any applicants other than Mr. Lopez,

who has been a valuable asset to the school, and is in the process of finishing his degree. It was anticipated his degree would be completed by the beginning of the school year; extenuating circumstances have pushed his graduation to Spring of 2025.

Cassia County Joint School District #151

7. **Applicant Name:** Halle Cooper
Certificate: Provisional
Endorsement(s): All Subjects
College Training: AA
Declared Emergency Date: 10/21/2024
Hire/Assignment Date: March 2023
Summary of Recruitment Efforts: Second provisional application. School posted it on its district website. She anticipates having her degree in July 2025.
8. Applicant Name: Samantha Evans
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: 61 credits
Declared Emergency Date:
Hire/Assignment Date: 7/31/2024
Summary of Recruitment Efforts: At the conclusion of the 23-24 SY, a position for a 6th grade teacher became available at Raft River Elementary. Due to the rural nature of the school, it is very difficult to hire and retain high quality long-term staff members. Based on the availability of applicants and the needs of the school at the time, Samantha was the best fit for the position. She has worked for the school in a variety of capacities successfully, collaborated well with staff, is a valuable asset to the school, and is a local resident of the community with plans to stay long term. Because of these circumstances, she was offered the position.

Emmett Independent School District #221

9. **Applicant Name:** Megan Deluca
Certificate: Provisional
Endorsement(s): Natural Science (6-12); Biological Science (6-12)
College Training: BA in History
Declared Emergency Date: 8/12/2024
Hire/Assignment Date: 9/9/2024
Summary of Recruitment Efforts: The job was posted through district email, the school district and state websites, and through phone calls and educator recruitment.
10. Applicant Name: Gonzalo Valdez Blanco
Certificate: Provisional
Endorsement(s): Communications (6-12)
College Training: 80 credits
Declared Emergency Date: 8/12/2024
Hire/Assignment Date: 8/7/2024

Summary of Recruitment Efforts: The job was posted last summer and advertised through district email, the school district and state websites, and through phone calls and educator recruitment. Two applicants applied. One applicant did not have a background in communications. The school went with the best candidate.

Gooding Joint School District #231

11. **Applicant Name:** Sonia Romero-Gomez
Certificate: Provisional
Endorsement(s): Bilingual Education (K-12)
College Training: AA (currently enrolled with ISU)
Declared Emergency Date: 9/18/2024
Hire/Assignment Date: 8/9/2024
Summary of Recruitment Efforts: The position was posted on the front page of the district website as well as EdJobsIdaho. Sonia was the only candidate who applied. She is currently enrolled at ISU earning her ELL endorsement. The position had been open since June.

Wendell School District #232

12. **Applicant Name:** Tia Standlee
Certificate: Provisional
Endorsement(s): Health 6-12; Physical Education 6-12; Biological Science 6-12
College Training: AA
Declared Emergency Date: 9/17/2024
Hire/Assignment Date: 4/1/2023
Summary of Recruitment Efforts: Second Emergency Provisional. The district needed to fill these positions. Only one application was received.
13. **Applicant Name:** Angela Villasenor Murillo
Certificate: Provisional
Endorsement(s): World Language Spanish 6-12; English as a Second Language K-12
College Training: AA
Declared Emergency Date: 9/18/2024
Hire/Assignment Date: 6/18/2024
Summary of Recruitment Efforts: School needed and ESL and Spanish teacher for the 24-25 SY. Only one application was received.

Jerome Joint School District #261

14. **Applicant Name:** James Davis
Certificate: Provisional
Endorsement(s): Social Studies (6-12)
College Training: 102
Declared Emergency Date: 8/6/2024
Hire/Assignment Date: 8/12/2024
Summary of Recruitment Efforts: James was hired 8/12/ for the 24-25 SY. It was first advertised through Fast Track on February 20th and then advertised on the district website. A certified person was hired but declined to accept the position and notified the school on July 7th. The position was reposted, but only

three applicants responded. One applicant had a BA but did not complete the application completely. One applicant did not have the required credits. The third was the closest to finishing their degree.

15. Applicant Name: Morgan Durham
Certificate: Provisional
Endorsement(s): Physical Education (K-12)
College Training: 59 credits
Declared Emergency Date: 7/23/2024
Hire/Assignment Date: 8/12/2024
Summary of Recruitment Efforts: Morgan was hired 8/12/ for the 24-25 SY. During the recruitment season, it was evident that there was a lack of qualified teacher applicants for this position. Many hours were spent recruiting applicants. It was first advertised through Fast Track and then advertised on the district website. The school attended multiple educator career fairs. They did receive six applications, but one applicant did not have the required minimum credit requirement, one applicant took a science position, one was out of state, and two applicants did not have a BA degree. Morgan was the best fit.
16. Applicant Name: KelliSue Montague
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: AA
Declared Emergency Date: 9/24/2024
Hire/Assignment Date: 9/16/2024
Summary of Recruitment Efforts: This position was initially opened in April of 2024, along with three other ELA positions to fill at Jerome Middle School. A certified person began the year, taught for one week and notified the principal on September 4th of their resignation. The position was reposted with one applicant applying. She's enrolled in a program, but is not eligible for an Alternative Authorization.
17. Applicant Name: Francisca Peralta
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: AA
Declared Emergency Date: 7/23/2024
Hire/Assignment Date: 8/12/2024
Summary of Recruitment Efforts: This position was initially opened in October of 2023. Five applications were received. One applicant did not realize this was for a Spanish speaking position. Three did not have their BA degrees. The school interviewed two applicants. One accepted a kindergarten position. The second applicant is currently enrolled in a certification program, but not eligible for an Alternative Authorization.
- Richfield School District #316**
18. **Applicant Name:** Tasha Newey
Certificate: Provisional

Endorsement(s): All Subjects K-8

College Training: 89 credits

Declared Emergency Date: 8/1/2024

Hire/Assignment Date: 8/1/2024

Summary of Recruitment Efforts: The school began advertising open elementary positions in May of 2024 on the school website, and on the State provided online recruitment site. Three applications were received. One position was able to be filled in June. This hire then took a job in another district in July. One additional application was received from a certified individual and was hired for their 4th grade opening. The remaining two non-certified applicants were hired for the 6th grade and secondary ELA opening.

Minidoka County School District #331

19. **Applicant Name:** Khali Vandever

Certificate: Provisional

Endorsement(s): All Subjects K-8

College Training: 66 credits

Declared Emergency Date: 8/26/2024

Hire/Assignment Date: 8/28/2024

Summary of Recruitment Efforts: Second Emergency Provisional. The job was posted on the district website and on external employment boards. There was only applicant for the position. The school interviewed the current candidate and hired her on August 28, 2024. She is not eligible to student teach until fall of 2025.

20. **Applicant Name:** April Zepeda Diaz

Certificate: Provisional

Endorsement(s): All Subjects K-8

College Training: AA

Declared Emergency Date: 10/21/2024

Hire/Assignment Date: 8/6/2024

Summary of Recruitment Efforts: The position was posted June through August 2024 on the district website and external employment boards. The school received six applications for the Migrant preschool position, none were certified. The current candidate is enrolled in a program with an anticipated student teaching date of Fall 2025.

Twin Falls School District #411

21. **Applicant Name:** Kaziah Essex

Certificate: Provisional

Endorsement(s): All Subjects K-8

College Training: 53 credits

Declared Emergency Date: 9/9/2024

Hire/Assignment Date: 8/19/2024

Summary of Recruitment Efforts: Twin Falls SD has hired over 25 teachers but still needs to hire more. At this time, they feel that they cannot find a certified or qualified teacher. They are requesting an Emergency to fill the spot. They had five applicants and interviewed two candidates.

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22. Applicant Name: Dusty Futrell
Certificate: Provisional
Endorsement(s): English as a Second Language (K-12)
College Training: AA - currently in progress towards obtaining BA
Declared Emergency Date: 9/9/2024
Hire/Assignment Date: 8/19/2024
Summary of Recruitment Efforts: Second Emergency Provisional application. Twin Falls SD has had 10 ESL positions open. Of those 10, only five have been filled with fully certified educators. At this time, they feel that they cannot find a certified or qualified teacher. They are requesting a second emergency.
23. Applicant Name: Jennifer Kyle Green
Certificate: Provisional
Endorsement(s): Social Studies (6-12)
College Training: 77 credits
Declared Emergency Date: 9/9/2024
Hire/Assignment Date: 8/19/2024
Summary of Recruitment Efforts: Twin Falls SD has hired over 29 teachers but still need to hire more. At this time, they feel that they cannot find a certified or qualified teacher. They are requesting an Emergency to fill the position. They had 11 applications and interviewed four candidates.
24. Applicant Name: Alisa Radmall
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: 52 credits
Declared Emergency Date: 8/12/2024
Hire/Assignment Date: 8/1/2024
Summary of Recruitment Efforts: Twin Falls SD has hired over 25 teachers but still needs to hire more. At this time, they feel that they cannot find a certified or qualified teacher. They are requesting an Emergency to fill the spot. They had 14 applications and interviewed two candidates.
25. Applicant Name: Tanya Tamayo
Certificate: Provisional
Endorsement(s): All Subjects K-8
College Training: 87 credits
Declared Emergency Date: 9/25/2024
Hire/Assignment Date: 8/29/2024
Summary of Recruitment Efforts: Twin Falls SD has hired over 31 elementary teachers but still need to hire more. At this time, they feel that they cannot find a certified or qualified teacher. They are requesting an Emergency to fill the position. They had two applications and interviewed one candidate.
- Filer School District #413**
26. **Applicant Name:** Allix Rodig
Certificate: Provisional

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Endorsement(s): All Subjects K-8

College Training: AA

Declared Emergency Date: 9/1/2024

Hire/Assignment Date: 9/9/2024

Summary of Recruitment Efforts: Second Provisional. Allix will not begin student teaching until Fall of 2025, making her ineligible for an Alternative Authorization. The school opened the position after realizing the 3rd grade teacher was not certified. They interviewed three candidates of which none held a certificate. Allix is currently enrolled in a certification program.

The Academy, INC. #460

27. **Applicant Name:** Cynthia Connelly

Certificate: Provisional

Endorsement(s): All Subjects K-8

College Training: 79 credits

Declared Emergency Date: 9/18/2024

Hire/Assignment Date: 8/1/2024

Summary of Recruitment Efforts: Second provisional application. The school posted the position on the school website, boosted social media and through SchoolSpring. They did not receive any applications for the math teacher position. This candidate taught in the previous year and has made progress towards her bachelor's degree. She is scheduled to finish her BA this year and plans to enroll with ABCTE.

Alturas International Academy #495

28. **Applicant Name:** Madison Popwell

Certificate: Provisional

Endorsement(s): All Subjects K-8

College Training: 93 credits

Declared Emergency Date: 11/14/2024

Hire/Assignment Date: 11/14/2024

Summary of Recruitment Efforts: Madison is replacing a teacher that was let go. Does not currently qualify for an Alternative Authorization.

IMPACT

If the Board approves the request, the Idaho Department of Education will be authorized to issue emergency provisional certificates to the qualifying candidates. An emergency provisional certificate is effective for one (1) year. No financial penalties will be assessed to the LEA while an emergency provisional certificate is in effect.

If the Board does not approve the request, the Idaho Department of Education will not be authorized to issue the requested emergency provisional certificates. The school district would be required to pursue other hiring options and may face financial impact.

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Board staff verified that each candidate has completed at least two years of college training and that the school district declared a hiring emergency. All candidates have been hired by

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a local education agency as teachers for the 2024-2025 school year. Candidates that have already completed a Baccalaureate degree or higher are not eligible to apply through another pathway.

Staff recommends that the Board authorize the Idaho Department of Education to issue one-year provisional certificates for candidates 1-28 as presented above.

BOARD ACTION

I move to authorize the Idaho Department of Education to issue emergency provisional standard instructional certificates for candidates 1-28 as presented above, effective for the 2024-2025 school year only, and pending a cleared background check.

Moved by _____ Seconded by _____ Carried Yes _____ No _____