

EMPLOYMENT AGREEMENT

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

ARTICLE 1

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

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Athletic Director (Director). 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 (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other related 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 with reporting line directly to the Athletic Director, 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 and approximately three (3) months, commencing on January 10, 2021 and terminating, without further notice to Coach, on March 31, 2026 ("Term") unless sooner terminated in accordance with other provisions of this Agreement. Each year hereunder shall run from April 1 to the following March 31; provided that year one shall run from January 10, 2021 through March 31, 2022.

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:
Year 1 - January 10, 2021 – March 31, 2021 = \$312,309.12 (prorated)
April 1, 2021 – March 31, 2022 = \$1,400,000;
Year 2 - April 1, 2022 – March 31, 2023 = \$1,475,000;
Year 3 - April 1, 2023 – March 31, 2024 = \$1,550,000;
Year 4 - April 1, 2024 – March 31, 2025 = \$1,625,000;
Year 5 - April 1, 2025 – March 31, 2026 = \$1,700,000;
payable in biweekly installments in accordance with normal University procedures, and such additional salary increases as may be determined appropriate by the Director and President and approved by the Board;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees of a comparable level, 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;
- c) 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 University and Board. Insurance premiums for the assigned vehicle shall be paid by Coach, without reimbursement. Any vehicle assigned shall be returned in the same or similar condition as it was upon being assigned, reasonable wear and tear excepted;
- d) 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;
- e) Payment or reimbursement of all reasonable moving expenses in accordance with University and Board policy, and State Board of Examiners Moving Policy and Procedures;

- f) Spouse travel to all away games, post-season bowl games and, at the invitation of the Director, other special events;
- g) Spouse and children travel to post-season bowl games; and
- h) Ten (10) complimentary tickets (football, basketball, and otherwise, including parking passes) to University sporting events.

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 shall be eligible to receive supplemental compensation as follows:

3.2.1 Athletic Achievement Incentive Pay.

- a) \$10,000 for the Team's sixth (6th) Conference win against a Mountain West Conference (Conference) opponent.
- b) \$10,000 for the Team's seventh (7th) Conference win against a Conference opponent.
- c) \$15,000 for the Team's eighth (8th) Conference win against a Conference opponent.
- d) \$12,500 if the Team wins against a Power 5 conference opponent (defined as a member in the Pac-12 conference, the Southeastern conference (SEC), the Big Ten conference, the Big 12 conference, or the Atlantic Coast conference (ACC), or any successor or equivalent conference to any of the foregoing) in a non-Conference, regular season game.

For the sake of clarity and the avoidance of doubt, this provision shall not apply to bowl games against Power 5 conference opponents.

- e) \$25,000 if the Team is the Mountain Division Champion.
- f) \$50,000 if the Team is the Conference Champion.

- g) \$15,000 if the Team participates in a non- CFP Bowl game.
- h) \$10,000 if the Team wins a non- CFP Bowl game.
- i) \$50,000 if the Team participates in a New Year's Six Bowl game.
- j) \$75,000 if the Team participates in one of the two semi-final Playoff Bowl games in the College Football Playoff (CFP).
- k) \$100,000 if the Team participates in the CFP Championship Bowl game.
- l) \$100,000 if the Team wins the CFP Championship Bowl game.
- m) \$25,000 if Coach earns Conference Coach of the Year.
- n) \$50,000 if Coach earns National Coach of the Year.

Coach shall be eligible for supplemental compensation from each of the provisions listed above, except in the event the Team shall participate in a New Year's Six or CFP Bowl, then the supplemental compensation relating to participation in a non- New Year's Six or CFP Bowl game, g) and h) above, shall be inapplicable, since the New Year's Six or CFP Bowl game incentives will be applicable.

Any supplemental compensation awarded as Athletic Achievement Incentive Pay shall be payable the first regular pay date in February following the football season, regardless of whether Coach remains continuously employed as head coach to that date (so long as Coach remained continuously employed as head coach through the date of the achievement which triggered such Athletic Achievement Incentive Pay).

Athletic Achievement Incentive Pay is contingent upon a multi-year team APR of 930 or higher and the conditions outlined in Section 3.2.4.

3.2.2. Academic Achievement Incentive Pay.

- a) Grade Point Average (GPA) – \$10,000 if, at the conclusion of the academic year (after the spring semester), the team cumulative GPA (of student-athletes receiving countable financial aid) is a 2.9 or higher.
- b) Academic Progress Rate (APR) – \$10,000 if, at conclusion of the academic year (fall and spring semesters), the team APR meets the number identified below for the corresponding academic year (and consistent with standards of the National Collegiate Athletic

Association (NCAA), which may be adjusted by the NCAA). The football program must not be under any NCAA academic penalty pursuant to the Academic Performance Program or any future NCAA academic program that may enhance or replace it in the future.

- i) Annual APR of 975 or higher for each Academic Year of 2020 – 2021 and 2021 – 2022.
 - ii) Annual APR of 980 or higher for each Academic Year starting in 2022 through the remainder of the Agreement.
- c) Progress Toward Degree – \$10,000 if, in August upon completion of the summer term, 95% of retained scholarship student-athletes meet University, Conference, and NCAA progress toward degree requirements.

Any supplemental compensation awarded as Academic Achievement Incentive Pay will be payable as soon as reasonably practical following APR rating determination and verification by the NCAA each year, regardless of whether Coach remains continuously employed as head coach to that date (so long as Coach remained continuously employed as head coach through the conclusion of the period covered by such APR rating determination), and subject to the conditions outlined in Section 3.2.4. If Coach is head coach for a partial calendar year, Academic Achievement Incentive Pay will be prorated for any partial calendar year.

3.2.3. Academic/Compliance/Social Conduct Incentive Pay.

\$20,000 if:

- a) At least two of the three Academic Achievement Incentives in 3.2.2. are attained and an atmosphere of academic importance is demonstrated; and
- b) Compliance is demonstrated as described below; and
- c) Social Conduct is demonstrated as described below.

Compliance – Dedication to compliance (University, Conference, NCAA) by Coach and members of the staff and student-athletes (exhibit a culture of compliance throughout the football program) including: compliance with Section 4.1.4. of this Agreement, no Level I or II violations, no intentional or multiple Level III violations, and consistent communication and collaboration with the Department's Compliance staff.

Social Conduct – Dedication to social responsibility by Coach and members of the staff and student-athletes including participation in at least two organized charitable and/or community activities by 100% of squad list and full-time staff members at Director's discretion.

At the end of each Spring semester, Coach and the Director shall meet to discuss the Academic/Compliance/Social Conduct Incentive: importance of academics, academic progress, academic performance, difficulty of major course of study, honors such as scholarships, designation as Academic All-American, NCAA Institutional Control expectations as published from time to time, University, Conference, and NCAA rules and regulations, serious misconduct including but not limited to criminal offenses by football program staff or student-athletes, substance abuse testing, and university disciplinary matters, if any, off-field conduct, mentored coaches and student-athletes to be leaders in service worldwide, and otherwise conducted the football program in such a manner that is exemplary of the University's mission and values.

Data used will be from the academic year (fall/spring semesters). Complete data may not be available for these purposes until October of each year.

Any supplemental compensation awarded as Academic/Compliance/Social Conduct Incentive Pay will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA each year, regardless of whether Coach remains continuously employed as head coach to that date (so long as Coach remained continuously employed as head coach through the conclusion of the period covered by such APR rating determination), and subject to the conditions outlined in Section 3.2.4. If Coach is head coach for less than all of the period covered by such APR rating determination, Academic/Compliance/Social Conduct Incentive Pay will be prorated for any partial calendar year.

3.2.4. Conditions for payment of Incentive Pay.

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, subject to the parameters set forth above.

All Incentive Pay amounts outlined in this Section 3.2 shall be cumulative. The cumulative total supplemental compensation payments made as Incentive Pay pursuant to Section 3.2. shall in no event exceed \$200,000 for any one contract Year as those contract years are outlined in 3.1.1(a).

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

3.2.5. Camps and Clinics. 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 reasonably 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 University, Board, Conference, and NCAA, rules and regulations related, directly or indirectly, to the operation of camps and/or clinics;
 - ii) Payment for use of University facilities (at a best-available rate); and
 - iii) Provision of proof of liability insurance.

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

3.3 Deferred Compensation. Participation in a qualified retirement plan to be established by University:

- a) The University shall make nonforfeitable contributions to Coach's account under the qualified retirement Plan
- b) The qualified retirement plan is operated on the basis of a calendar year ending on December 31 ("Plan Year").
- c) University Contributions.
 - i) The University's contributions to the qualified retirement plan shall be equal to \$100,000 annually; provided, however, that if Coach is not employed in the Position for the entire Plan Year (other than the 2021 Plan Year, with respect to which the full \$100,000 shall be contributed), the University's contribution for that Plan Year will be prorated accordingly for that year to reflect the number of months and days of the Plan Year that he remained in the Position.
 - ii) Timing of Contributions. The University's contributions to the qualified retirement plan shall be made in accordance with the terms of the written Plan document.

- ii) Vesting. Qualified retirement plan funds shall vest with Coach on March 31, 2024, if still employed as head coach on that date. All contributions made with respect to the 2024 Plan Year and each Plan Year thereafter shall be immediately vested upon contribution thereof.

3.4. 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 (which approval may not be unreasonably withheld). 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 that compete with those of the University's official supplier, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products that compete with those of the University's official supplier.

3.5. 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(a), except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws, and with the policies, rules and regulations of the University, the Board, the Conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall promote an atmosphere of compliance with the rules and regulations. In accordance with NCAA rules and regulations, Coach must annually pass the NCAA Coaches Certification Test before having any off-campus contact with prospects. Coach shall promote an atmosphere of compliance with the rules and regulations. Coach shall cooperate fully with the University and Department at all times. Director will keep Coach informed, in writing, of the names or titles of employees whom Coach supervises. 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 (which approval may not be unreasonably withheld), who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach shall report such outside income and business interests to the University in accordance with Section 4.3 of this Agreement. Coach may not use nor may Coach authorize third parties to use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President (such approval not to be unreasonably withheld).

4.3. Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President and the Director (such approval not to be unreasonably withheld) for all athletically-related and other business-related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits in accordance with the Department's Outside Income Reporting Form. 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.

Coach shall be provided an annual budget of \$2,100,000 per year for the employment of the ten (10) on-field assistant coaches. A \$50,000 annual increase in the salary pool will begin in year two and continue for each year during the remainder of this Agreement, ending at \$2,300,000 in year five of this Agreement.

Coach shall be provided an annual budget of \$631,000 per year for the employment of support staff. A \$30,000 annual increase in the salary pool will begin in year two and continue for each year during the remainder of this Agreement, ending at \$751,000 in year five of this Agreement.

4.5. Scheduling. Coach shall obtain the approval of the Director (not to be unreasonably withheld) with respect to the scheduling or re-scheduling of Team competitions.

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 giving prior notice to the Director. Coach shall deliver such notice in writing, or by electronic mail, within 48 hours, or as soon as reasonably practical.

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, 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, any assault that employs the use of a deadly weapon or causes serious bodily injury, or any 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) during his employment 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, in each case to the extent such media productions or public appearances are directly connected to the University, Department, or Team. For avoidance of doubt, University shall have no right to act on Coach's behalf with respect to producers of media productions or parties desiring public appearances by Coach, to the extent related to Coach's participation as a private individual. Coach agrees to reasonably cooperate with

the University in order for the Programs to be successful and agrees to provide Coach's reasonable services to and perform on the Programs and to reasonably 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, reasonable 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 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; or terminate this Agreement at any time for Cause, as defined herein.

5.1.1 University and Coach hereby specifically agree that the following shall constitute "Cause" for termination of this Agreement: One or more acts or omissions set forth below, which, singly, or in the aggregate, have directly and substantially affected or impaired Coach's performance of his duties or the interests of the University or the State Board of Education:

- 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, or the failure of Coach to comply with any valid or legal directive of the Director;
- b) The failure of Coach to remedy any violation of any of the material 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, in the University's judgment, reflects materially 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 in a manner which reflects materially adversely on the University or its athletic programs;
- 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;
- i) A violation of any applicable law (but excluding infractions) or of 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, in each case 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;
- k) The Coach's engagement in dishonesty, illegal conduct, or misconduct, which, in each case, is injurious to University or its reputation;
- l) The Coach's embezzlement, misappropriation, or fraud, whether or not related to the Coach's employment with the University;

- m) The Coach's conviction of or plea of guilty or *nolo contendere*, or the entry of a withheld judgment to a crime that constitutes a felony or misdemeanor (but excluding infractions), if such felony or misdemeanor is work-related, materially impairs the Coach's ability to perform duties for the University, or results in reputational harm to the University or the State Board of Education;
- n) The Coach'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 athletic programs;
- o) The Coach's willful 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 athletic programs; or
- p) Coach's engagement in conduct that, in the University's judgment, brings or is reasonably likely to bring University or the State Board of Education negative publicity or into public disgrace, embarrassment, or disrepute.

5.1.2. Termination for Cause shall be effectuated by the University as follows: before the effective date of the 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 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 (other than with respect to compensation or benefits for which he has qualified but which were not yet paid 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, a percentage of the remaining base annual salary set forth in Section 3.1.1(a) through the conclusion of the Term, as follows: 75% of the remaining base annual salary if the Agreement is terminated on or before March 31, 2023; 85% of the remaining base annual salary if the Agreement is terminated between April 1, 2023 and March 31, 2025, inclusive; 100% of the remaining base annual salary if the Agreement is terminated between April 1, 2025 and March 31, 2026 inclusive; excluding all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends.

Liquidated damages are subject to mitigation and offset such that Coach must use reasonable best efforts to obtain other athletic-related employment during the original Term of this Agreement and, in the event Coach obtains other athletic-related employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid to Coach as a result of such other athletic-related employment with respect to the period covered by the original Term hereof.

Coach specifically agrees to inform University within fifteen (15) days of obtaining other athletic-related employment and to advise University of all compensation terms of such employment. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees to negotiate in good faith in an attempt to receive compensation equal to 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 athletic-related 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 his health insurance plan and group life insurance of 3.1.1(b) as if he remained a University employee until the Term of this Agreement ends or until Coach obtains other employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits outside of section 3.1.1 (a) and (b), except as otherwise 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 (other than with respect to compensation or benefits for which he has qualified but which have not been paid as of the date of such termination). If Coach terminates this Agreement for convenience to commence, or enter into an agreement to commence, Similar or Related Employment (as defined in this section 5.3.3), then Coach (or his designee) shall pay to the University, as liquidated damages and not a penalty, the following sum: (a) \$3,000,000 if the Agreement is terminated on or before March 31, 2023; (b) \$2,000,000 if the Agreement is terminated between April 1, 2023 and March 31, 2024, inclusive; and (c) \$1,000,000 if the Agreement is terminated between April 1, 2024 and March 31, 2026, inclusive. The liquidated damages shall be due and payable within sixty (60) days of the effective date of the termination, and any unpaid overdue amount shall bear simple interest at a rate eight (8) percent per annum until paid. For purposes of this Section 5.3.3, "Similar or Related Employment" means employment in football, coaching, or any capacity in sports (whether by title of the position or by performing the duties regularly associated with such position), including, but not limited to, employment (a) as a coach in any division of NCAA or NAIA athletics, (b) with a National Football League (NFL) team, or (c) in sports related media. If Coach terminates this Agreement for convenience and does not immediately commence Similar or Related Employment, and therefore does not pay the liquidated damages, but then at a future date within twelve (12) months of termination for convenience commences, or enters into an agreement to commence in the future, employment as a collegiate head football coach, or professional (NFL) head football coach, or as an assistant coach at a university that is a member of the Conference, 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 as a collegiate or professional head coach or assistant coach at a member institution of the Conference. By way of example only and for the avoidance of doubt, if Coach terminates for convenience on February 1, 2023, and accepts employment as a collegiate or professional head coach on January 15, 2024, the sum of two million dollars (\$2,000,000) would be payable to the University from Coach, or his designee. However, if

Coach terminates for convenience on February 1, 2023, and accepts employment as a collegiate or professional football head coach on July 1, 2026, neither Coach nor his designee would owe the University any 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 for at least ninety (90) consecutive days, 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 for at least ninety (90) consecutive days, 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, IDAPA 08.01.01 et seq., 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 Executive Director of Athletics 1910 University Drive Boise, Idaho 83725-1020
with a copy to:	Boise State University Office of the President 1910 University Drive Boise, Idaho 83725-1000
Coach:	Andrew Avalos Last known address on file with University's Human Resource Services
With a copy to:	Athletes First 23091 Mill Creek Drive Laguna Hills, CA Attn: General Counsel

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.

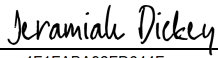
6.14. No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

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

DocuSigned by:


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Jeramiah Dickey

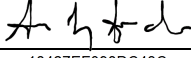
Executive Director of Athletics

4/9/2021 | 4:44 PM PDT

Date

Coach

DocuSigned by:



18427EF098DC43C
Andrew Avalos

Head Football Coach

4/9/2021 | 4:16 PM PDT

Date

DocuSigned by:


AFFACAFF49FD485
Dr. Marlene Tromp

President

4/10/2021 | 10:15 AM PDT

Date

Approved by the Idaho State Board of Education on the 5th day of April 2021.