

**AUDIT COMMITTEE  
OCTOBER 9-10, 2008**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
	<b>FOUNDATION AGREEMENTS</b>	
<b>1</b>	a) Boise State University b) Idaho State University c) University of Idaho	Motion to approve

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**AUDIT COMMITTEE  
OCTOBER 9-10, 2008**

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**SUBJECT**

Board approval of Institution operating agreements with Foundations

**REFERENCE**

June 2008

Audit Committee meeting update for Board of Education

**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND/DISCUSSION**

In June, the Audit Committee informed the Board that the institutions would bring the Foundation operating agreements, (pursuant to the revised policy section V.E., effective July 1, 2008), to the Board for approval.

The Committee agreed on a timeline to complete review of the operating agreements and for approval by the Board. The Audit Committee has worked with the institutions in formulating the three primary foundation agreements for Boise State University (BSU), Idaho State University (ISU), and University of Idaho (UI).

**IMPACT**

According to Board Policy V.E.2.a.(2) the Foundation "shall be brought into substantial conformance with these policies and, upon so doing; the institution shall provide prompt notice to the Board in order that the Board may recognize the affiliated foundation. Upon recognition by the Board, the organization of the nonprofit corporation or foundation is ratified, validated, and confirmed, and it shall be deemed to have been organized as if its organization had taken place under authority of this policy. Likewise, any new foundations established subsequent to implementation of this policy must be brought to the Board for formal recognition before such foundation begins operations."

**ATTACHMENTS**

Attachment 1 – BSU Foundation Operating Agreement	Tab A
Attachment 2 – ISU Foundation Operating Agreement	Tab B
Attachment 3 – UI Foundation Operating Agreement	Tab C

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval of the institutions' Foundation operating agreements.

**AUDIT COMMITTEE  
OCTOBER 9-10, 2008**

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**BOARD ACTION**

A motion to approve the Memorandum of Understanding between the Boise State University Foundation and Boise State University, and to recognize the Boise State University Foundation as an affiliated foundation to benefit Boise State University.

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_No\_\_\_

A motion to approve the Operating Agreement between the Idaho State University Foundation and Idaho State University, and to recognize the Idaho State University Foundation as an affiliated foundation to benefit Idaho State University.

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_No\_\_\_

A motion to approve the Operating Agreement between the University of Idaho Foundation and University of Idaho, and to recognize the University of Idaho Foundation as an affiliated foundation to benefit University of Idaho.

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_No\_\_\_

# Memorandum of Understanding Between the Boise State University Foundation and Boise State University

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Boise State University ("University") and Boise State University Foundation, an Idaho nonprofit corporation ("Foundation").

## RECITALS

A. The Foundation was organized and incorporated in 1964 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University.

B. The Foundation exists independent from the University to advance the educational opportunities and environment at the University by raising and managing private resources supporting the mission and priorities of the University, and by providing opportunities for students and a margin of institutional excellence unavailable with state funds.

C. The Foundation accomplishes its work by funding positions and programs which appeal to long-term, trust-based relationships with prospective donors and friends of the University.

D. The Foundation is dedicated to assisting the University in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the University.

E. As stated in its articles of incorporation, the Foundation is a separately incorporated 501 (c) (3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

F. In connection with its fund-raising and asset-management activities, the Foundation may require expertise in planning for and managing private contributions and works with both the University and outside consultants to assist and advise in such activities.

G. This MOU is intended to further define the relationship between the University and the Foundation and to set forth policies and procedures that will contribute to the coordination of their collaborative activities.

H. This MOU has been reviewed and approved by the State Board of Education.

### **AGREEMENT**

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

#### **I. Acknowledgment of University Governance**

A. The parties acknowledge that the State Board of Education is responsible for the governance of the University to include overseeing the mission, leadership, and operations; setting priorities and long-term plans; is legally responsible for the performance and oversight; and is responsible for the employment, compensation, and evaluation of all employees, including the President. The University President is the Chief Executive Officer of the University and is authorized to act on behalf of the University by the State Board of Education.

B. The parties agree that all actions taken pursuant to this MOU shall be in accordance with all University and State Board of Education policies and procedures governing the University.

#### **II. Acknowledgment of Foundation Governance**

A. The parties acknowledge that the Foundation is a separately incorporated 501(c)(3) nonprofit organization created to raise, manage, distribute, and steward private resources to support the various missions of the University.

B. The parties acknowledge that the Foundation's board of directors is responsible for the operations, control and management of the Foundation including assets of the Foundation and the prudent management of gifts consistent with donor intent.

C. The parties acknowledge that the Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

D. The parties agree that all actions taken pursuant to this MOU shall be in accordance with the Foundation's articles and bylaws. In carrying out its purposes, the Foundation shall not engage in activities that conflict with federal

or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations), applicable policies of the State Board of Education, or the role and mission of the University.

E. All Foundation organizational documents, including but not limited to the articles of incorporation and bylaws, shall be provided to the State Board of Education. Any proposed amendments or changes to such documents shall be provided to the State Board of Education in advance of their presentation for approval by the approving bodies.

### III. The Foundation's General Relationship to the University

A. The Foundation shall continue to develop its own strategic plan in collaboration with University leadership. This plan will serve to shape the focus of the Foundation Board and inform the University and Foundation staff working on behalf of the Foundation of Foundation objectives.

B. The Foundation shall work with University personnel to identify, cultivate, solicit and steward donor support of University priorities.

C. The Foundation may provide resources and distribute gifts to the University in support of its programs and mission.

D. The Foundation shall maintain its own directors and officers liability insurance.

E. No Foundation employee shall receive direct payments, compensation, or other benefits from the University, provided, however, that Foundation employees may be subject to a form of employee loaning arrangement with the University as set forth in Section IX below.

F. For informational purposes, the Foundation shall provide the University President with an annual report regarding the Foundation's programs, as well as the Foundation's audited financial statement and other such other reasonable information as requested.

1. Not less than annually, the Foundation shall provide a written report to the University President setting forth the following items:

- a) the annual financial audit report;
- b) an annual report of Foundation transfers made to the University, summarized by department;
- c) an annual report of unrestricted funds received by the Foundation;
- d) an annual report of unrestricted funds available for use during the current fiscal year;
- e) a list of all of the Foundation's officers, directors, and employees;
- f) a list of University employees for whom the Foundation made payments to the University for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
- g) a list of all state and federal contracts and grants managed by the Foundation;
- h) an annual report of the Foundation's major activities;
- i) an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the University; and
- j) an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.

G. The Foundation may make restricted donations to the University. Such donated funds will only be expended by the University pursuant to the terms of such restrictions. The Foundation may also make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with state law and University policies. All expenditures noted in this section must comply with the I.R.S. 501 (c) (3) code and be consistent with the Foundation's sole mission to support the University.



H. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University and, if required by applicable law or policy, the State Board of Education.

#### IV. The University's General Relationship to the Foundation

A. The University President shall be responsible for communicating University priorities and long-term plans to the Foundation.

B. The University recognizes that the Foundation is a private, nonprofit corporation with the authority to keep all records and data confidential consistent with the law.

C. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University.

D. The University President shall work closely with the Foundation board and shall assume a prominent role in fund-raising activities. The President shall also attend Foundation board meetings by invitation, but shall not serve as a Foundation board member and shall not vote at such meetings.

E. The University shall establish and enforce policies that support the Foundation's ability to respect the privacy and preserve the confidentiality of donor records.

F. The Foundation Board of Directors shall have sole responsibility and authority for Foundation policy-making, financial oversight, spending authority, investment decisions, or supervision of Foundation employees.

1. No University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees, including loaned employees.

G. No University employee shall receive direct payments, compensation, or other benefits from the Foundation.

H. The University shall continue to require all of its affiliated foundations and nonprofit organizations to direct revenue, including gift and membership dues, to the Foundation for management. Each separate affiliated nonprofit organization or foundation has as its corporate or organizational purpose the enhancement

and improvement of the University or its parts. As such, the parties acknowledge that it is proper and prudent for the Foundation to manage the funds of those affiliated foundations or nonprofit organizations.

I. The University and the Foundation acknowledge that the Foundation, as an independent entity, carries out functions for the benefit of the University. As such, the University shall share certain information with regard to donors, alumni and other such information needed by the Foundation to carry out its beneficial functions for the University. All such information shall be held by the Foundation as confidential and shall only be used in a manner that benefits the University.

J. The University will, on a regular basis and no less than once a year, transfer duplicate graduate (alumni) records to include all demographic and relationship data that might assist the Foundation in carrying out its mission. The University shall retain for its own purposes, student and graduate data to full-fill its service mission. Such transfer shall be accomplished via separate agreement between the parties.

#### V. Foundation Name, Seal and Logotype

Consistent with its mission to help to advance the plans and objectives of the University, the University grants the Foundation the limited, non-exclusive use of the name, Boise State University, for use in advancement purposes; however, the Foundation shall operate under its own seal and logotype and shall not use the University seal, logo or other identifying marks in the promotion of its own organizational business and activities.

#### VI. Foundation Responsibilities

##### A. Fund-Raising

1. The Foundation shall endeavor to create a relationship of trust, understanding and confidence conducive to increasing levels of private support for the mission and priorities of the University and shall accept gifts on behalf of the University.

2. The Foundation, in consultation with the University President, shall plan and execute comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These activities and any related services shall be provided by the Foundation as an independent organization.

3. The Foundation shall establish, adhere to, and periodically assess its gift and grant management and acceptance policies. It shall promptly acknowledge and issue receipts for all gifts and grants on behalf of the Foundation and the University and provide appropriate recognition and

stewardship of such gifts and grants. No gifts, grants or transfers of real or personal property will be accepted by the Foundation which do not comply with state law, State Board of Education policy, and University policy.

4. The Foundation shall not accept gifts or grants containing a condition committing the University contractually without prior written approval of the University President or VP for Finance and Administration.

5. The University shall coordinate fund-raising initiatives through the Foundation.

6. The University leadership shall work in conjunction with the Foundation board to identify, cultivate, and solicit prospects for private gifts.

7. The Foundation shall establish and enforce policies to protect donor confidentiality and rights. The donor database, as well as other data, materials and information of the Foundation pertaining to past, current or prospective donors, are proprietary to the Foundation and constitute its confidential information and trade secrets. The University shall not access information except in compliance with the Foundation's donor confidentiality policies. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of the server and software relevant to the database.

8. The Foundation's Board of Directors shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The parties understand that the Foundation is not a public agency or a governing body as defined in the Idaho Code and the Idaho Open Meeting Law and Access to public records statutes. Nothing in this MOU shall be construed as a waiver of the Foundation's right to assert exemption from these statutes.

9. The Foundation shall maintain and enforce a conflict of interest policy.

#### B. Asset Management

1. The Foundation shall establish asset-allocation, disbursement, and spending policies in accordance with applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Management of Institutional Funds Act (UMIFA).

2. The Foundation shall receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

3. The Foundation shall engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records.
4. As part of the Foundation's fund management, all other University foundations shall utilize an accounting and database management system that is compatible with the Foundation. The Foundation shall have access to such information for purposes of fund and data management and the continued enhancement of the University.

#### C. Foundation Flexibility

1. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining approval of the State Board of Education. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board of Education at the earliest possible date of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification to the State Board of Education required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho law.
2. The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the University shall be approved by the State Board of Education before acceptance by the University and the Foundation. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property
3. The Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities to further University purposes. Provided, however, that the University must receive the required approval of the State Board of Education in advance of any such action or commitment.
4. The Foundation may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue. The terms of any agreements related to these purposes shall clearly delineate the Foundation's independence from the University. Provided, however, that the University must receive approval of the State Board of Education in

advance of any action or commitment by the University that requires such Board approval.

5. When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donors or by law on the gift. The University will abide by such restrictions and provide appropriate documentation of such compliance to the Foundation.

#### D. Transfer of Funds

1. The Foundation is the primary depository of private gifts and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and gift agreements.

2. Foundation funds shall be kept separate from institution funds.

3. No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board of Education except when:

a) A donor inadvertently directs a contribution to the University that is intended for the Foundation; or

b) The University has gift funds that were transferred from and originated in the Foundation and the University wishes to return a portion of funds to the Foundation for reinvestment consistent with the original intent of the gift; or

c) The University has raised dedicated scholarship funds through an University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship nature of the funds; or

d) Transfers of a *de minimis* amount not to exceed \$10,000 from the University to the Foundation provided such funds are for investment by the Foundation for scholarship or other general University support purposes. This exception shall not be interpreted to allow the transfer of any appropriated funds nor apply to payments by the University to the foundation for approved obligations of the University to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

4. The Foundation's disbursements on behalf of the University shall be reasonable business expenses that support the University, are consistent with donor intent, and do not conflict with the law.

## VII. Foundation Funding and Administration

A. The Foundation shall be responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.

B. The Foundation shall have the right to use a reasonable percentage of the annual unrestricted funds, assess fees for services, or impose gift taxes, to support its operations.

C. The University may provide to the Foundation office space, equipment, computer and telephone systems, utilities, and office supplies that may be necessary or required to fulfill its responsibilities and obligations pursuant to the terms of a written agreement described in Section IX below.

D. The Foundation shall maintain an annual operating budget and will provide a copy of the budget to the University President for informational purposes. Oversight of Foundation expenditures rests with the Foundation Audit Committee under review no less than once a quarter.

E. The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The University shall, at any time, have access to the financial records of the Foundation. The scope of this right of the University shall be construed as broadly as needed to conduct a complete audit of the Foundation as such an audit would be conducted under generally accepted accounting procedures if the University should so require. The University need not conduct an actual audit to be afforded such access and shall be given such access at any time.

1. The University's access shall not include donor specific data such that would provide individually identifiable information about donors or their donations made to the Foundation.

F. The Foundation shall maintain a provision in its corporate documents for dissolution consistent with the State Board of Education Policy and applicable law.

## VIII. University Responsibilities

A. The University will work with the Foundation to ensure that the University and its affiliated organizations comply with all of the terms of MOU.

B. The University will develop and report fundraising goals to the Foundation regarding the development activities of University employees.

C. The University may provide administrative and other support for development activities of the Foundation so long as such services are provided in accordance with Section IX below.

D. University leadership will participate as spokespersons for the University and in donor solicitation as appropriate in support of the Foundation. The University shall educate its spokespersons regarding the independence of the Foundation from the University and instruct its spokespersons to communicate the Foundation's independence from the University.

#### IX. Services, Facilities, and Resources Provided by the Foundation and the University to One Another

A. The Foundation and University agree that in consideration for services, office space, equipment, computer and telephone systems, utilities, and offices supplies provided to one another, each party shall provide the other with fair and reasonable consideration to be negotiated annually by June 1 of the preceding fiscal year pursuant to a written agreement that specifies the nature of such services, facilities, and resources and the compensation that will be paid for such services by each of the parties. The rate assessed for the use of either party's services, facilities, and resources shall be at fair market value.

1. It is the intent of the parties that the University provide as little such support as reasonably necessary to support the Foundation's operation pursuant to this Section IX.A. The parties agree that the long term goal is that the Foundation become self sufficient.

B. The Foundation and the University shall enter into a written agreement establishing that certain identified employees of the University are subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to such employees, including the following:

a. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law, such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.

b. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall result in a termination of the Loaned Employees' employment with the University, or non-renewal of the Loaned Employee's contract with the University, if any.

c. Loaned Employees shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or her/his designee.

d. The Loaned Employees shall be entitled to the fringe benefits of employment offered by the University. The Foundation shall be responsible for the cost of all compensation and benefit costs of the Loaned Employees working for the Foundation.

C. The Foundation agrees to provide a safe and proper working environment for the loaned employees. Since the Foundation has the right to control the employees, the Foundation (in addition to other indemnifications herein granted) hereby agrees to defend and indemnify the University from and against all claims that arise within the course and scope of the employment of such loaned employees and to act as the employer for all purposes under *respondeat superior*. The Foundation shall ensure that its employees do not represent themselves as agents or employees of the University. All employees covered by the Loaned Employee Agreement shall, for all practical purposes, be Foundation employees and shall not be considered employees of the University.

#### X. Meetings and Continued Communications Regarding MOU

To ensure effective achievement of the items of this MOU, the University and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

#### XI. Miscellaneous

A. Indemnification. The University and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this MOU. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this MOU shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

B. Term and Termination.



1. The term of this MOU shall terminate upon the mutual written agreement of both parties.

2. As a prerequisite to any other termination of this MOU by either party, the parties agree to first follow and complete the mandatory process, in sequence, set forth in Section XI.C. (Dispute Resolution). If and only if all the mandatory steps in section XI.C. are followed in sequence, then, either party may, upon 90 days prior written notice to the other, terminate this MOU, and either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting part specifying the nature of the default. Should the University choose to terminate this MOU by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the University to pay (subject to the approval of the State Board of Education), within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this MOU by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt the University holds on behalf of the Foundation in like manner. The parties agree that in the event this MOU shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. If a new agreement is not reached in such time and Section XI.C. (Dispute Resolution) has been followed, the parties shall refer the matter to the State Board of Education for resolution as provided for in Section XI.E. (Dissolution of the Foundation).

3. Termination of this MOU shall not constitute or cause dissolution of the Foundation except as provided for in the final sentence of Section XI.B.2.

C. Dispute Resolution. The parties agree that in the event of any dispute arising from this MOU, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, then the dispute will be referred to the Chair of the Foundation and the University President. If the Foundation and University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by

an impartial third party or professional mediator mutually acceptable to the parties.

D. Litigation. As a prerequisite to any litigation filed between the Foundation and the University on any matter whatsoever, the parties agree to first follow the process set forth in Section XI.C. (Dispute Resolution). If and only if all the mandatory steps in section XI.C. are followed in sequence and a dispute remains unresolved, then, in such case, either party shall have the right to initiate litigation arising from this MOU. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

E. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code §501(c) (3) organization, the Foundation shall transfer its assets and property to the State Board of Education to be held for the use of the University, to the University, to a reincorporated successor Foundation in accordance with the law and donor intent.

F. Headings. Headings are for reference only and do not affect the interpretation of this MOU.

G. Governing Law. This MOU shall be governed by the laws of the state of Idaho.

H. Legal Representation. The parties acknowledge that they have retained separate legal counsel to draft and review this MOU on behalf of each party.

I. No Third Party Beneficiaries. This MOU shall not be construed to create any rights, remedies, or benefits upon any third party.

I. Separate Entities. At all times and for all purposes of this Memorandum of Understanding, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other party. The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees

J. Non-Assignability. This Agreement is not assignable by either party, in whole or in part.

K. Severability. If any provision, term, or part of this MOU, except for the provisions of this MOU requiring prior appropriation, is held to be invalid, illegal, unenforceable, or in conflict with any law of the State of Idaho, the validity,

legality, and enforceability of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular part, term or provision held to be invalid.

L. List of Attachments.

a.	Loaned Employee Agreement	Page 17
b.	Support Agreement	Page 21
c.	Investment Policy	Page 23
d.	Amended Articles of Incorporation	Page 36
e.	Bylaws	Page 45
f.	Conflict of Interest Policy	Page 55

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers as of the date first above written.

**UNIVERSITY:**

**FOUNDATION:**

\_\_\_\_\_  
President,  
Boise State University

\_\_\_\_\_  
Chair  
Boise State University Foundation

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

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

\_\_\_\_\_  
Secretary  
Boise State University Foundation

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

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## EXHIBIT "A"

**AGREEMENT FOR LOANED EMPLOYEE BETWEEN  
BOISE STATE UNIVERSITY AND THE BOISE STATE UNIVERSITY FOUNDATION,  
INC.**

THIS AGREEMENT is entered into by and between BOISE STATE UNIVERSITY, a state educational institution, and a body politic and corporate organized and existing under the laws of the state of Idaho ("University"), and BOISE STATE UNIVERSITY FOUNDATION, a private nonprofit corporation ("BSUF").

**BACKGROUND**

A. The BSUF is incorporated as a 501(c)(3) organization and raises and manages private funds for the benefit of the University, and

B. University has agreed to loan its employee, \*\*\*\*\*("Loaned Employee"), to BSUF to act in the capacity of \*\*\*\*\* for BSUF.

**AGREEMENT**

The parties agree as follows:

**1. Relationship between Loaned Employee and University.**

a. Loaned Employee may be an exempt, fiscal year employee of the University subject to all applicable policies and procedures of the State Board of Education ("SBOE") and the University, or a classified employee subject to the applicable State of Idaho, SBOE and/or University rules and procedures.

b. Loaned Employee will be paid at a fiscal year salary rate of \$\*\*\*\*, payable on the regular bi-weekly paydays of the University. Loaned Employee will be entitled to University benefits to the same extent and on the same terms as other full-time University employees of her/his classification.

c. University shall be responsible for the payment of all salary and benefits to Loaned Employee. University shall be responsible for all payroll-related taxes, benefits costs, and other related payroll costs arising out of the Loaned Employee's employment with University.

**2. Relationship between BSUF and Loaned Employee.**

a. Loaned Employee will work full time and shall be under the exclusive supervision, direction and control of the BSUF Board of Directors during the performance of her/his duties under this Agreement. Loaned Employee will report directly to BSUF President or her/his designee, who shall determine her/his duties. Loaned Employee will be considered a loaned employee under the workers'

compensation law of the State of Idaho.

**b.** BSUF is solely responsible for payment of income, social security, and other employment taxes, if any, due to the proper taxing authorities arising from its payment of reimbursements to Loaned Employee. BSUF agrees to indemnify, defend, and hold the University harmless from any and all liabilities, losses, claims or judgments relating to the payment of these taxes.

**c.** No later than ninety (90) days prior to the end of the term of this Agreement, and each subsequent term, if any, BSUF will evaluate the performance of Loaned Employee. In the case where the Loaned Employee is a classified employee, such evaluation shall occur in accordance with rules and procedures applicable to such employees. BSUF will provide a copy of the evaluation document to the University no later than fourteen (14) days after the evaluation is completed.

**d.** BSUF may terminate or non-renew Loaned Employee's employment contract, or discipline Loaned Employee in accordance with BSUF's procedures and applicable law, any such termination or non-renewal shall constitute grounds for termination, non-renewal or discipline of Loaned Employee by the University. Provided however, particularly when the Loaned Employee is a classified employee, any contemplated termination shall be subject to applicable legal and procedural requirements of the State of Idaho and the University.

### **3. Relationship between BSUF and University.**

**a.** BSUF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits including payroll-related taxes, benefits, and other related payroll costs and the costs associated with travel approved by BSUF. Such costs will be billed quarterly and paid to the University.

**b.** University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, BSUF shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of one year following the completion of this Agreement.

**c.** The furnishing of Loaned Employee shall not be considered a professional service of the University. At no time during the performance of this Agreement shall the Loaned Employee receive or act under instructions from the University regarding the work performed on behalf of BSUF.

**d.** University shall have no liability to BSUF for loss or damage growing out of or resulting from the activities of the Loaned Employee. BSUF therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, and the Loaned Employee from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, including but not limited to injuries (including death) to persons and for damages to

property (including damage to property of BSUF or others) arising out of or in connection with the activities of the Loaned Employee under this Agreement. The limitation on liability and any agreement to defend, indemnify, or hold harmless expressed in the Agreement shall apply even in the event of the fault or negligence of the Loaned Employee.

#### **4. General Terms**

**a. Term, Termination.** This Agreement will terminate on the same day as Loaned Employee's contract as an exempt employee of the University terminates, or in the case of classified employees, after applicable rules and procedures have been followed, or upon Employee's resignation or other separation from employment, whichever is earlier. By mutual written consent, in conjunction with any renewal of the Loaned Employee's contract as an exempt employee of the University, the parties may extend the term of this Agreement for a term equal to the term of the exempt Loaned Employee's renewed contract with the University, or in the case of a classified employee, continued into the next ensuing fiscal year, such that the term of this Agreement shall always be equal to the term of Loaned Employee's status as an exempt or classified employee of the University. The Loaned Employee remains subject to all applicable SBOE and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline for adequate cause, and where applicable, rules and procedures pertaining to classified employees.

**b. Governing Law.** This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Ada County.

**c. Notice.** 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:

#### **To BSUF:**

Boise State University Foundation  
President  
1910 University Drive  
Boise, ID 83725-1030

#### **To the University:**

Boise State University  
Vice President for Finance and Administration  
1910 University Drive  
Pocatello, ID 83725-1200

**To the Loaned Employee:**

\*\*\*\*

Last address on file with University's Human Resources

Notice shall be deemed given on its date of mailing, faxing, or upon written acknowledgment of its receipt by personal delivery, whichever shall be earlier.

**d. Waiver.** Waiver by either party 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 any subsequent breach of the same or any other term, covenant or condition herein contained.

**e. Attorney's Fees.** In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

BOISE STATE UNIVERSITY

BOISE STATE UNIVERSITY  
FOUNDATION, INC.

\_\_\_\_\_  
Stacy Pearson, Vice President  
Finance and Administration

\_\_\_\_\_  
\_\_\_\_\_, President

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

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

\_\_\_\_\_  
Howard Smith, Vice President  
University Advancement

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

LOANED EMPLOYEE concurrence and commitment:

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



**SUPPORT AGREEMENT**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2008 between Boise State University ("University") and Boise State University Foundation, Inc., an Idaho nonprofit corporation ("Foundation").

In consideration of the mutual commitments contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The University agrees to provide necessary employee staff support to the Foundation. All matters relating to personnel, including staffing level, compensation, benefits, and performance evaluation will be decided by the University, except that the Foundation Chair may annually provide performance evaluations of any or all of its staff support to the President of the University who may consider it as deemed appropriate. The Foundation retains the right to contract directly with persons or entities, as it deems necessary to carry out its functions, including fund-raising consultants, accountants, attorneys, and investment managers.
2. The University grants to the Foundation permission to use office space; office furnishings; equipment; and computer and telephone systems on the campus of the University essential for the Foundation to fulfill its mission as agreed to by the parties, in accordance with University and Foundation policies.
3. The University will provide utilities; information technology support and online access to such University files as are relevant to the business and purpose of the Foundation; building and grounds maintenance and repairs; property insurance; and access to the University's auxiliary services including graphics, mail service, and related activities.
4. In consideration for the support specified in Sections 1, 2, and 3 hereof, the Foundation will provide the University with fair and reasonable compensation. The amount of the compensation will be agreed upon annually by the Board of Directors of the Foundation and the President of the University or his/her designee. Prior to June 1 of each year, the University and the Foundation will disclose to each other their budgets to support the Foundation.
5. In the event that either party provides services, equipment or personnel ("Support") not specified in this Agreement to the other party, the parties will agree to the specification of the Support and the fair and reasonable consideration in an Addendum to this Agreement signed by both parties.
6. The term of this agreement shall begin on the date hereof and shall continue thereafter with the following exceptions:
  - (a) either party shall serve notice to the other in writing of its decision to terminate the provisions of this Agreement, in which event this Agreement shall terminate at the conclusion of the fiscal quarter in which such notice is given.
  - (b) the Memorandum of Understanding dated \_\_\_\_\_, 2008 between the Parties terminates, in which event, this Agreement will terminate on the same date as the Memorandum of Understanding.

**DRAFT** Support Agreement

Page 2

Upon termination of the provisions of this Agreement, all rights and obligations hereunder shall forthwith terminate, except for rights and obligations accrued prior to termination in respect of payment for Support and reimbursement pursuant to Section 4.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

**UNIVERSITY:****FOUNDATION:**

\_\_\_\_\_  
President,  
Boise State University

\_\_\_\_\_  
Chair,  
Boise State University Foundation, Inc.

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

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

\_\_\_\_\_  
Secretary,  
Boise State University Foundation, Inc.

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

# **Boise State University Foundation**

## **STATEMENT OF INVESTMENT POLICY**

**JUNE 2007**

## Statement of Investment Policy for The Boise State University Foundation

### INTRODUCTION AND PURPOSE

The intent of this Statement is to articulate an investment strategy with specific parameters that reflect the philosophy of the Board of Directors (the “Board”), thereby providing the Investment Committee (the “Committee”) with clearly defined policies and objectives. Although these policies and objectives are intended to govern investment activity, they are intended to be sufficiently flexible in order to be practical.

### INVESTMENT PHILOSOPHY STATEMENT

The following statements represent the investment principles and philosophy governing the investment of funds held by the Boise State University Foundation (the “Foundation”). These statements describe the core values and beliefs that form the basis for investment decision making.

These commonly held fundamental investment beliefs are:

1. That the single most important decision that the Committee makes is the long-term asset allocation decision. As a result, nearly all of the absolute levels of investment returns are attributable to the Committee’s decisions regarding asset allocation, not manager implementation.
2. That the capital markets are mean-reverting by nature. The Committee will therefore use long-term strategic asset class allocations and rebalance to those allocations within suitable ranges.
3. That the achievement of long-term investment goals is derived directly from sound investment strategy decisions and efficient and consistent implementation of the strategy. *Ad-hoc* asset allocation or manager allocation changes (usually in reaction to recent market performance) are likely to result in poor outcomes that will impair the long-term performance of the funds. As a result, the Committee will delegate all tactical implementation decisions to its investment managers and will avoid *ad-hoc* re-allocations to any manager or asset class in reaction to recent market conditions.
4. That the achievement of the Foundation’s long-term investment goals necessitates that the investment strategy be based on using a combination of asset classes (and sub-asset classes) that has a reasonable probability of achieving the Foundation’s goals. As a

result, the Committee will periodically conduct asset allocation studies to assess the probability of achieving its long-term goals.

5. That market timing is ineffective as a market strategy for institutional funds. As a result, the Committee will remain fully invested in all long-term mandates and avoid interest rate anticipation as the primary means of adding value in fixed income mandates.
6. That some asset classes are inefficient and active managers can clearly add value. Other asset classes, most notably the domestic large-cap equity market, are more efficient. As a result, the Committee will allocate assets between active and passive (index) allocations based on its ability to identify active managers that can add value net of fees and expenses.
7. That it is necessary to use long time frames and appropriate benchmarks to fairly evaluate active manager performance. Active managers are, by definition, different than a passive index. Differences in manager styles (growth, value) and market capitalization will have multi-year cycles. Additionally, active managers may be hired specifically to have different risk characteristics than popular indices. As a result, even the best performing managers will have periods of both under- and out-performance relative to popular indices. In establishing individual manager investment objectives and in evaluating manager performance:
  - a. The Committee will use long time frames (rolling 3- and 5-year periods),
  - b. The Committee will set appropriate investment objectives using relevant style and capitalization benchmarks,
  - c. The Committee will evaluate managers on a risk-adjusted basis.
8. Investment implementation should be cost and resource effective. When evaluating new and current asset classes, managers and implementation strategies, the Committee will evaluate both the implementation and monitoring costs and requirements, as well as the incremental benefits in terms of both risk and reward to the funds. The Committee will utilize only those investment strategies that are expected to provide meaningful benefits to the funds, net of implementation and monitoring costs and risks.

## **DELEGATION OF RESPONSIBILITIES**

### **Relationship between Board and the Investment Committee**

The Board is responsible for the overall stewardship of the Foundation. The Board has delegated to the Committee the responsibility to oversee the Foundation's investment activities on the Board's behalf.

The Committee has the responsibility to ensure that the assets of the Foundation are managed in a manner that is consistent with the policies and objectives ratified by the Board. In so doing, the Committee will comply with all applicable laws.

The Committee members are required to discharge their duties solely in the interest of the Foundation and for the exclusive purpose of meeting the financial needs of the Foundation. The Committee is authorized to engage the services of Investment Managers who possess the necessary specialized research capabilities and skill to meet the investment objectives and guidelines of the Foundation. The Committee will require the Investment Managers to adhere to any policies adopted by the Board.

The Committee's responsibilities include:

1. Developing and recommending to the Board investment objectives that are consistent with the financial needs of the Foundation, and the policy asset allocation consistent with meeting those objectives;
2. Selecting investment managers;
3. Reviewing and evaluating investment results in the context of predetermined performance standards, and implementing corrective action as needed; and
4. Recommending Spending Rate guidelines to the Board.

### **Consultant**

The Committee may elect to engage an independent investment-consulting firm to assist the Committee's activities. The Consultant is expected to be proactive in recommending changes in investment strategy, asset allocation, and investment managers if the situation warrants change. The Consultant's responsibilities include:

1. Assisting in the development of investment policies, objectives, and guidelines;
2. Preparing asset allocation analyses as necessary and recommending asset allocation strategies with respect to the Foundation's objectives;
3. Recommending Investment Managers (including search and selection);
4. Preparing and presenting performance evaluation reports in accordance with CFA Institute promulgated standards;
5. Attending Committee meetings to present evaluation reports no less than semi-annually and at other meetings as requested;
6. Reviewing contracts and fees for both current and proposed Investment Managers and Custodians;

7. Providing research on specific issues and opportunities, and assisting the Committee in special tasks;
8. Assisting in rebalancing;
9. Communicating investment policies and objectives to the Investment Managers, and monitoring their adherence to such policies and reporting all violations to the Committee and the Director of Finance;
10. Notifying the Committee and Director of Finance of any significant changes in personnel or ownership of the consulting firm;
11. Notifying the Committee and Director of Finance of any significant changes in portfolio managers, personnel or ownership of any investment management firm hired by the Foundation;
12. Notifying the Committee and Director of Finance of any litigation or commencement of a regulatory administrative proceeding or enforcement action in which any Investment Manager is involved; and
13. Overall, being proactive with the Administration of the Foundation and the Committee in the management of the Foundation investments.

### **Investment Managers**

Investment Managers are expected to pursue their own investment strategies within the guidelines created for the manager in accordance with the Foundation's asset allocation strategy and manager selection criteria. Coordination of the guidelines for the individual managers assures the combined efforts of the managers will be consistent with the overall investment objectives of the Foundation.

The Investment Managers' responsibilities include:

1. Investing assets under their management in accordance with agreed upon guidelines and restrictions;
2. Exercising discretionary authority over the assets entrusted to them, subject to these guidelines and restrictions;
3. Providing written documentation of portfolio activity, portfolio valuations, performance data, and portfolio characteristics on a monthly basis in addition to other information as requested by the Committee, Executive Director, Director of Finance or Consultant;
4. Voting proxies for the assets under management (companies held within the portfolio) in the best interest of the Foundation; and

5. Annually providing to the Foundation either a copy of the investment advisor's form ADV Part II (SEC required disclosure document), a copy of the investment company's annual report, and/or a copy of the fund's updated prospectus (SEC requirement at the end of the fiscal year).
6. Notifying the Consultant, Committee, and Director of Finance of any significant changes in portfolio management style, personnel or ownership of the investment management firm;
7. Notifying the Consultant, Committee, and Director of Finance of any litigation or commencement of a regulatory administrative proceeding or enforcement action in which any Investment Manager is involved;

**The Foundation Custodian's responsibilities include:**

1. Providing timely reports detailing investment holdings and Foundation transactions monthly to the Director of Finance and Consultant.
2. Providing an annual summary report to the Director of Finance and the Consultant within 30 days following each fiscal year end. The report will include the following:
  - a. Statement of all property on hand;
  - b. Statement of all property received representing contributions to the Foundation;
  - c. Statement of all sales, redemptions, and principal payments;
  - d. Statement of all distribution from and contributions to the Foundation;
  - e. Statement of all expenses paid;
  - f. Statement of all purchases; and
  - g. Statement of all income.
3. Providing all normal custodial functions including security safekeeping, collection of income, settlement of trades, collection of proceeds of maturing securities, daily investment of cash, etc.
4. Preparing additional Foundation reports as requested by the Board, Committee, Consultant, or Director of Finance.



## INVESTMENT POLICIES AND OBJECTIVES

### Objectives and Guidelines

**Objective:** The Investment objective is to provide a rate of return over inflation sufficient to support in perpetuity the mission of the Foundation. It is particularly important to preserve the value of the assets in real terms to enable the Foundation to maintain the purchasing power of the spending on programs and administration without eroding the real value of the principal corpus of the Foundation.

### General Investment Considerations and Constraints:

- **Risk:** The Committee will seek to limit the overall level of risk commensurate with the chosen Policy Asset Allocation.
- **Liquidity:** At times, cash may be required to satisfy the needs of the Foundation. The Foundation should have sufficient liquid assets to meet such foreseeable requirements.
- **Time Horizon:** The Foundation has an infinite life. An investment Time Horizon of twenty years is appropriate.
- **Taxes:** The Foundation is tax-exempt.

### Return Need

The long-term net compound return need shall be established as the goal rate of return for the Foundation over the Time Horizon. The Return Goal shall consist of a spending rate, an assumed rate of inflation and investment management fees. These items and their function in the overall return need are established below:

Components of Return Need

	Return Need	Goal Return
Spending Rate	4.00%	4.00%
Administrative Fee	1.50%	1.50%
Inflation Rate	2.50%	2.50%
Desired Growth	-	1.00% *
<b>Long-Term Return Need (<i>Net of Fees</i>)</b>	<b>8.00%</b>	<b>9.00%</b>

\*Desired growth target includes fundraising activities in addition to capital appreciation.

The following goals are designed to support achievement of the Foundation's Investment Objective and are net of (after) investment expenses.

1. Total Foundation assets should achieve an annualized rate of return equal to or greater than that of the Return Need over trailing five-year time periods.
2. Total Foundation assets should return, over trailing three year periods, a nominal rate of return greater than or equal to a hypothetical index portfolio consisting of 35% Russell 3000, 26% MSCI-EAFE, 9% MSCI-EMF, 15% Lehman Aggregate Bond, 10% Citigroup Inflation Linked Bond and 5% Wilshire REIT Index.

### **Spending Rate Policy**

#### *Spending Rate*

The Spending Rate of the Foundation will be reviewed at least annually in light of evolving trends with respect to investment performance and the needs of the Foundation, and will be adjusted as necessary.

Unless otherwise directed by the donor for a specific endowed gift, the annual Distribution rate shall not exceed 4% of the trailing 3-year average market value of the Foundation, as determined each December 31st.

#### *Total Return Policy*

The Board has adopted a "total return" approach to calculating investment returns.

In recognition of these facts, the Committee will consider the Foundation's total return from both income and net realized and unrealized capital gains when recommending the Spending Rate Policy. When distributions are made, they will be withdrawn from the Foundation regardless of the portion of the total return that is from capital gains or from income, subject to applicable gift agreement restrictions.

### **Asset Allocation**

The single most important decision made by the Committee is the Policy Asset Allocation decision. Investment research has determined that a significant portion of a portfolio's investment behavior can be attributed to: (1) the asset classes/styles which are employed by the Foundation; and (2) the weighting of each asset class/style.

It is the responsibility of the Committee to identify the Policy Asset Allocation that offers the highest probability of achieving the Foundation's Investment Objectives. The Committee, with guidance and recommendations from their Consultant, shall review the asset mix on an ongoing basis and recommend revisions as necessary.

The Policy Asset Allocation shall be determined based on a comprehensive asset allocation study completed by the Consultant and reviewed from time to time by the Committee. The Policy

Asset Allocation of the Foundation, as presented in **Appendix A**, is designed to give balance to the overall structure of the Foundation's investment program over the Time Horizon. However, many factors over time may necessitate an asset allocation review and possible rebalancing. These factors include an ongoing assessment by the Consultant and the Committee of the comparative long-term outlook for all available types of asset classes and styles.

### Permissible Investments

The Policy Asset Allocation of the Foundation is expected to include a wide range of asset classes. These asset classes and their relative comparative indices are displayed below.

#### COMPARATIVE INDICES FOR INVESTMENT MANAGERS

ASSET CLASS	COMPARATIVE INDEX
<b>Equity</b>	
<i>Domestic Equity</i>	
U.S. All-Cap Stocks	Wilshire 5000
U.S. Large Stocks	S&P 500
U.S. Large Value Stocks	Russell 1000 Value
U.S. Large Growth Stocks	Russell 1000 Growth
U.S. Large Quality Stocks	S&P 500
U.S. Mid Stocks	S&P MidCap 400
U.S. Small Stocks	Russell 2000
U.S. Small Value Stocks	Russell 2000 Value
U.S. Small Growth Stocks	Russell 2000 Growth
U.S. Real Estate Investment Trusts	Wilshire REIT Index
<i>International Equity</i>	
Int'l Large/Mid Stocks	EAFE (\$US)
Int'l Small Stocks	Citigroup EMI EPAC
Emerging Mkt Stocks	MSCI Emg. Markets Free Index
<b>Fixed Income</b>	
Domestic Fixed Income	Lehman Aggregate
Global Fixed Income	Citigroup World Gov't Bond
U.S. Inflation Protected Fixed	Citigroup Inflation Linked Bond
U.S. High Yield	Citigroup High Yield
Emerging Mkt Bonds	JPM Emerging Mkt Bond
Cash Equivalents	U.S. Treasury Bills
<b>Alternatives</b>	
Private Equity	Venture Economics
Absolute Return (Hedge Funds)	HFR Fund of Funds
Real Assets	N/A

**Portfolio Rebalancing**

Since asset allocation is the most critical component of the Foundation's returns, it is desirable to rebalance the portfolio periodically to minimize deviations from the Policy Asset Allocation mix.

The Committee may elect to rebalance the portfolio to reach the Policy Asset Allocation at any time. However, the portfolio shall be rebalanced in the event any individual marketable asset class differs from policy ranges (minimum or maximum) by more than 20% of the target weight, but with a minimum deviation threshold of 2% of the total portfolio value.

The Consultant will inform the Director of Finance after the close of any month in which rebalancing is advisable. The Consultant, together with the Director of Finance, will complete the rebalancing process. The Consultant will assist the Director of Finance as needed in implementing such rebalancing.

**Other Non-Endowment Assets**

The Board may, from time to time, establish investment portfolios other than the Endowment Fund. Asset allocation and investment guidelines for these portfolios will be developed as needed and, when appropriate, in consultation with the donor.

The Foundation is the trustee for several charitable remainder trusts and is the beneficiary for other trusts. The Investment Committee shall monitor the activity, investment policy and investment performance of the trusts.

The Foundation owns several parcels of real estate as the result of individual gifts and purchases made in the interest of the University. The Investment Committee has appointed a real estate subcommittee to monitor these properties, review potential gifts and make recommendations regarding disposition to the Board.

The trust assets and parcels of real estate are not included in the Foundation's investment asset allocation, nor are they included in the Consultant's purview.

**Investment Policies for Investment Managers**

The following are performance goals and constraint guidelines placed on individual managers within specific asset classes:

*All Traditional Managers*

1. Index (passive) managers shall be terminated if performance or volatility significantly differs from that of the benchmark.
2. Active managers may be terminated due to philosophical changes, management turnover, poor long-term investment performance, or other material changes.

*Alternative Investments*

1. Alternative investment managers typically must have significant latitude in the strategies and investments they make and the leverage they introduce into a portfolio. As a result, it is generally not feasible to impose guidelines and restrictions on such managers. Instead, the Committee may choose to terminate a manager, subject to the manager's liquidation policy, if they are dissatisfied with the manager and/or his strategy.

*Other*

1. *Securities Lending:* Investment Managers (via a written contract with the Foundation), may engage in securities lending, or the "loan" of the Foundation's securities in return for interest, to broker dealers as a means of enhancing income.
2. *Related Party Transaction:* The Foundation will not loan funds to related parties, defined as an officer, Board member, Committee member, employee, or donor, either current or prospective.

**Procedure for Revising the Statement of Investment Policy**

This Statement of Investment Policy will be reviewed at least annually by the Committee. The Board must approve material changes to the Statement. Any deviation from the Policy Asset Allocation of the combined asset sectors (i.e., total equities, total fixed income, or total alternative investments) would represent a material change and shall be approved by the Board.

**Conflicts of Interest**

All persons responsible for investment decisions or who are involved in the management of the Foundation or who are consulting to, or providing any advice whatsoever to the Committee, shall disclose in writing at the beginning of any discussion or consideration by the Committee, any relationships, material beneficial ownership, or other material interest(s) which the person has or may reasonably be expected to have, with respect to any investment issue under consideration. The Committee may require such persons to remove themselves from the decision-making process.

Any members of the Committee responsible for investment decisions or who are involved in the management of the Foundation shall refuse any remuneration, commission, gift, favor, service or benefit that might reasonably tend to influence them in the discharge of their duties, except as disclosed in writing to and agreed upon in writing by the Committee. The intent of this provision is to eliminate conflicts of interest between committee membership and the Foundation. Failure to disclose any material benefit shall be grounds for immediate removal from the committee. This provision shall not preclude the payment of ordinary fees and expenses to the Foundation's custodian(s), Investment Managers, or Consultant in the course of their services on behalf of the Foundation.

REVISION DATE: JUNE 2007

\* \* \* \* \*

The foregoing Statement of Investment Policy was approved at a meeting of the Board of Directors on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Signatures:

\_\_\_\_\_  
Chair, Board of Directors

\_\_\_\_\_  
Chair, Investment Committee

## APPENDIX A

## Part I

## POLICY ASSET ALLOCATION

		HA Research Portfolio
		0
<b>Growth Assets</b>		
US All-Cap Stocks		13%
US Large Stocks		
US Large Growth Stocks		7%
US Large Quality Stocks		7%
US Large Value Stocks		
US Mid Stocks		
US Small Stocks		
US Small Value Stocks		
	<i>US Equity</i>	<i>27%</i>
Intl Large Stocks		16%
Intl Small Stocks		4%
Intl Emerging Market Stocks		7%
	<i>Intl Equity</i>	<i>27%</i>
Private Equity / Special Situations		6%
<b>Total Growth Assets</b>		<b>60%</b>
<b>Risk Reduction Assets</b>		
Cash		
US / Global Fixed Income		10%
Hedge Funds		10%
<b>Total Risk Reduction Assets</b>		<b>20%</b>
<b>Inflation Protection Assets</b>		
US Inflation Protected Fixed		10%
Real Assets		10%
<b>Total Inflation Protection Assets</b>		<b>20%</b>
<b>Total</b>		<b>100%</b>

SPACE FOR SECRETARY OF STATE

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**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
BOISE STATE UNIVERSITY FOUNDATION, INC.**

The Articles of Incorporation of Boise State University Foundation, Inc. are amended and restated in their entirety pursuant to these Amended and Restated Articles of Incorporation in accordance with Idaho Code §§ 30-3-90 and 30-3-94.

**ARTICLE I.**

**NAME**

The name of the corporation is Boise State University Foundation, Inc.

**ARTICLE II.**

**PERIOD OF DURATION**

The period of its duration shall be perpetual.

**ARTICLE III.**

**PURPOSE**

The corporation is organized and shall be operated exclusively for charitable, scientific, literary or educational purposes within the meaning of and pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (or under the corresponding provision of any future United States Internal Revenue law). Specifically, the corporation shall only engage in activities designed to support and benefit Boise State University (the "University"), including,



but not limited to the following: (1) receiving contributions from individuals, businesses, governmental units and other institutions who wish to support the educational mission and activities of the University; (2) holding, protecting, managing, and investing such funds (including maintaining and operating permanent endowment funds) for the benefit of the University; (3) maintaining and operating permanent endowment funds for the benefit of the University; and (4) distributing funds from time to time in order to provide support to the University, including distributions for educational scholarships for students attending the University, as well as specific capital, educational or other projects as may be identified by the University. References in these Amended and Restated Articles of Incorporation to the “Code” shall be to the Internal Revenue Code of 1986, as amended from time to time.

#### **ARTICLE IV.**

##### **POWERS**

The corporation shall have all powers provided for nonprofit corporations under the Idaho Nonprofit Corporation Act.

#### **ARTICLE V.**

##### **LIMITATIONS**

A. No part of the income or net earnings of the corporation shall inure to the benefit of, or be distributable to, any director or officer of the corporation or any other private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and reimbursement may be made for any expenses incurred for the corporation by any officer, director, agent or employee, or any other

person or corporation, pursuant to and upon authorization of the Board of Directors); and provided further that no director or officer of the corporation, or any other private individual shall be entitled to share in any distribution of any of the corporate assets on dissolution of the corporation or otherwise. No substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, except as otherwise provided in section 501(h) of the Code. The corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office.

B. No part of the assets of the corporation shall inure to the benefit of or be distributable to any organization whose income or net earnings or any part thereof inure to the benefit of any private shareholder or other individual or any substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation.

C. Upon dissolution of the corporation, all of its assets shall be paid over to the Idaho State Board of Education to be held and used for the continued support and benefit of the University or its successor entity. If the University or a successor entity is not then in existence (or is not then an organization described in Section 501(c)(3) of the Code), the assets of the corporation upon dissolution shall be distributed to such qualified organization or organizations as the Board of Directors shall designate. An organization shall be deemed to be a “qualified organization” for purposes of this Article V only if at the time of the distribution of assets it is an organization described in Section 501(c)(3) of the Code, contributions to which are deductible under Section 170(c)(2) of the Code.

D. Notwithstanding any other provision hereof, this corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization which is tax-exempt under the provisions of section 501(c)(3) of the Code.

E. Notwithstanding any other provision of these Amended and Restated Articles of Incorporation during any period that the corporation is a “private foundation” within the meaning of section 509 of the Code, the corporation shall be required to distribute its income for each taxable year of the corporation at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code; and the corporation shall be prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the Code, from retaining any excess business holdings in violation of the provisions of section 4943(c) of the Code, from making any investments in such manner as to subject the corporation to tax under section 4944 of the Code, and from making any taxable expenditures as defined in section 4945(d) of the Code.

## **ARTICLE VI.**

### **NO MEMBERS**

The corporation shall not have any members.

## **ARTICLE VII.**

### **BOARD OF DIRECTORS**

The affairs of the corporation shall be managed by its Board of Directors. The number of Directors serving on the Board of Directors shall be fixed in accordance with the corporation’s Bylaws, which number shall be no less than three. The Directors shall be elected

by the existing Directors of the corporation in the manner and for the term provided in the Bylaws of the corporation.

## ARTICLE VIII.

### CURRENT BOARD OF DIRECTORS AND ADDRESSES

The names and addresses of the persons constituting the current Board of

Directors are:

<u>Name</u>	<u>Address</u>
Candi Allphin	101 S. Capitol Blvd., Suite 203 Boise, ID 83702
Larry Arguinchona	1150 E. Brightwater Lane Boise, ID 83706
AJ Balukoff	4621 Hillcrest View Drive Boise, ID 83705-3686
Loren D. Blickenstaff	4215 Country Club Drive Boise, ID 83705-3215
Greg Brown	19215 Highway 30 Buhl, ID 83316-5018
Allen D. Dykman	2323 Federal Way Boise, ID 83705-4462
Rich Fedrizzi	3026 S. Whitepost Way Eagle, ID 83616-6461
Dennis B. Fitzpatrick	225 N. 9th Street, #810 Boise, ID 83702-5710
Ray Flachbart	P.O. Box 7408 Boise, ID 83707
William Glynn	P.O. Box 7608

	Boise, ID 83707
Kathy Harris	2232 Crosscreek Boise, ID 83706
Joel S. Hickman	702 W. Idaho, 12th Floor Boise, ID 83702
Ernest A. Hoidal	960 Broadway Avenue Boise, ID 83706-3667
William K. Ilett	P.O. Box 6541 Boise, ID 83707
George Iliff	755 W. Front Street, Suite 300 Boise, ID 83702-5802
John Jackson	3450 E. Commercial Court Meridian, ID 83642-8915
Joy Kealey	7766 W. Lemhi Street Boise, ID 83709
Brian King	877 W. Main Street, Suite 1100 Boise, ID 83702-6069
Jim Kissler	1125 W. Amity Road Boise, ID 83705
Dean Klein	8000 S. Federal Way, MS #407 Boise, ID 83707
Mark Llitas	877 W. Main Street, 3rd Floor MAC U1852 032 Boise, ID 83702
Robert M. Maynard	607 N. 8th Street Boise, ID 83720-0001
Richard J. Navarro	P.O. Box 20 Boise, ID 83726

Harvey L. Neef	P.O. Box 8042 Boise, ID 83707
Jan B. Packwood	900 W. Bogus View Drive Boise, ID 83616-5877
Debra K. Riedel	101 S. Capitol Blvd., Suite 401 Boise, ID 83702-7715
Jeffrey D. Russell	348 W. Parkcenter Blvd. Boise, ID 83706
Cathy Silak	P.O. Box 8143 Boise, ID 83707
Duane H. Stueckle	200 Parkway Drive Boise, ID 83706-4012
Jesse T. Tam	925 – 4th Avenue, Suite 100 Seattle, WA 98104
Ronald Van Auker	3084 E. Lanark Meridian, ID 83642
Charles H. Wilson	P.O. Box 2793 Boise, ID 83701
Linda Yanke	P.O. Box 5405 Boise, ID 83705
Edward E. Zimmer	833 W. Diamond Street Boise, ID 83705

**ARTICLE IX.**

**REGISTERED OFFICE**

The address of the registered office of the corporation is 2225 University Drive,  
Boise, Idaho 83706 and the name of the initial registered agent at such address is Howard L.  
Smith.

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF BOISE STATE UNIVERSITY  
FOUNDATION, INC. - 7

**ARTICLE X.**

**PRINCIPAL OFFICE**

The address of the principal office of the corporation is 2225 University Drive,  
Boise, Idaho 83706

**ARTICLE XI.**

**MAILING ADDRESS**

The current mailing address of the corporation is 2225 University Drive, Boise,  
Idaho 83706.

**ARTICLE XII.**

**AMENDMENT**

These Amended and Restated of Incorporation may only be amended by vote of  
at least a majority of the corporation's Directors.

**ARTICLE XIII.**

**TAXABLE YEAR**

The taxable year of the corporation shall be determined by the corporation's  
Directors.

**ARTICLE XIV.**

**BYLAWS**

Provisions for the regulation of the internal affairs of the corporation shall be set  
forth in the corporation's Bylaws.

**ARTICLE XV.**  
**CERTIFICATION**

The undersigned hereby certify as follows:

The corporation has no members. These Amended and Restated Articles of Incorporation were duly adopted by the Board of Directors on \_\_\_\_\_, \_\_\_\_, 2008. The number of Directors entitled to vote was \_\_\_\_\_. The number of Directors that voted to approve these Amended and Restated Articles of Incorporation was \_\_\_\_\_. The number of Directors that voted against approving these Amended and Restated Articles of Incorporation was \_\_\_\_\_. No other approvals of these Amended and Restated Articles of Incorporation were required.

Dated: April \_\_\_\_\_, 2008

\_\_\_\_\_  
William Ilett, Chair of the Board of Directors

\_\_\_\_\_  
Linda Yanke, Secretary

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AMENDED AND RESTATED ARTICLES OF INCORPORATION OF BOISE STATE UNIVERSITY  
FOUNDATION, INC. - 9



**AMENDED AND RESTATED  
BYLAWS  
OF  
BOISE STATE UNIVERSITY FOUNDATION, INC.**

**ARTICLE I**

**Purpose**

The purpose of the Boise State University Foundation, Inc. ("Foundation") is stated in its Articles of Incorporation.

**ARTICLE II**

**Office**

Section 1. Principal Office. The principal office of the Foundation shall be located at 2225 University Drive in Boise, Ada County, Idaho. The Foundation may have such other offices as the Board of Directors may determine or as the affairs of the Foundation may require.

Section 2. Registered Office. The registered office of the Foundation required by the Idaho Nonprofit Corporation Act to be maintained in the State of Idaho may be, but need not be, identical with the principal office in the State of Idaho, and the address of the registered office may be changed from time to time by the Board of Directors.

**ARTICLE III**

**No Members**

The Foundation shall have no members.

**ARTICLE IV**

**Board of Directors**

Section 1. General Powers. The affairs of the Foundation shall be managed by its Board of Directors. The Board shall set all policies and regulations that it deems necessary or proper for the governing of the Foundation and for the orderly conduct of its affairs consistent with its Articles of Incorporation, these Bylaws, State Board of Education Policy, and the laws of the State of Idaho.

Section 2. Qualifications. Any person subscribing to the purposes and objectives of the Foundation shall be eligible for membership on the Board of Directors.

Section 3. General Duties. A Director shall perform his or her duties in good faith and in a manner such Director reasonably believes to be in the best interests of the Foundation, and with

such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such Director's duties, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) one or more Officers or employees of the Foundation whom the Director reasonably believes to be reliable and competent in the matters presented;
- (b) counsel, public accountants, or other person as to matters that the Director reasonably believes to be within such person's professional or expert competence; or
- (c) a committee of the Board upon which such Director does not serve, duly designated in accordance with a provision of these Bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence;

but such Director shall not be considered to be acting in good faith if such Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who performs such duties shall have no liability by reason of being or having been a Director of the Foundation.

Section 4. Transfer of Board Membership. Membership on the Foundation Board is not transferable.

Section 5. Resignation. A Director may resign by giving written notice to any Officer of the Foundation.

Section 6. Removal. A Director may be removed by a vote of a majority of the Directors then in office.

Section 7. Number. The number of Directors of the Foundation shall be fixed and amended from time to time pursuant to resolutions adopted by the Board of Directors; provided however, the number of Directors of the Foundation shall not be less than three (3) nor more than sixty (60), excluding any Directors Emeritus, Honorary Directors, or any other non-voting Board members.

Section 8. Election and Term. The positions for which Directors are elected shall be divided into three (3) classes, each class to be as nearly equal in number as possible, and Directors shall be elected accordingly by the existing Directors for a three (3) year term. The terms of each class shall be staggered so that approximately one-third (1/3) of the terms expire each year at the annual meeting of the Board of Directors. Nominations for members of the Board of Directors shall be made by the Governance Committee as described in Article VII, Section 3(a) below. At each annual meeting of the Board of Directors, the number of Directors equal to the number in the class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting of the Board of Directors. Directors may not serve more than three (3) consecutive terms without a one (1) year lapse before re-election as a Director. Election to a subsequent term is not automatic and is subject to the nomination

process outlined in these Bylaws. Each Director shall hold office until such Director's successor shall have been elected and qualified.

Section 9. Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of such Director's predecessor in office. Any directorship to be filled by reason of an increase in the number of the Directors may be filled by the Board of Directors for a term of office continuing only until the next regular election of the Directors or as otherwise specified by the Board of Directors at the time of such election.

Section 10. Honorary Directors and Directors Emeritus. The Board may designate any past Director a Director Emeritus, and such Directors may attend meetings of the Board, but shall not have a vote. The Board may also designate not more than ten (10) Honorary Directors. The immediate past President of the Bronco Athletic Association and the immediate past President of the Boise State University Alumni Association shall automatically be appointed to serve as Honorary Directors. Directors Emeritus and Honorary Directors shall hold their terms until the earlier of (i) one year; or (ii) until he or she resigns or is removed by a majority vote of the Board. The term "Directors" in these Bylaws does not include Honorary Directors or Directors Emeriti.

Section 11. Voting Rights. Subject to the Foundation's conflict of interest policy, each Director shall be entitled to one vote on each matter submitted to a vote, provided, however, that the following Directors shall not be allowed to vote and shall serve in an advisory capacity only: any Director who is also an employee of Boise State University (excluding, however, members of the Board whose only employment by Boise State University is in the capacity of an adjunct faculty member), any Honorary Director, or any Director Emeritus.

Section 12. Annual Meetings. An annual meeting of the Board of Directors shall be held after the close of the fiscal year but prior to October 31 of each year.

Section 13. Regular Meetings. The Board may provide by resolution the time and place for holding regular meetings without other notice than such resolution. The Board shall hold regular business meetings at least four times during its fiscal year at such place as may be designated in such resolution or any meeting notice.

Section 14. Special Meetings. Special meetings may be called by the Chair, or by a petition signed by no less than one-third (1/3) of the Board of Directors and delivered to the Chair. Any call for a meeting shall state the purpose, time and place of the meeting, and a meeting notice shall be issued in writing at least ten (10) days in advance to all individuals requested to attend.

Section 15. Telephonic Meetings. Members of the Board of Directors and members of any Committee of the Board may participate in meetings by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and the participation by such means shall constitute presence in person at a meeting.

Section 16. Notice of Meetings. Except as otherwise provided herein, notice fixing the place, date and hour of any meeting may be given in any manner which provides a Director with fair and reasonable notice of the meetings in compliance with the laws of the State of Idaho. Notice of meetings shall be in writing, and may be transmitted electronically. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of business because notice of the meeting was inadequate. The business to be transacted at a meeting need not be specified in the notice, except as otherwise provided herein.

Section 17. Written Waiver of Notice. Whenever any notice is required to be given under the provisions of the laws of the State of Idaho, or under the provisions of the Foundation's Articles of Incorporation or Bylaws, a waiver thereof in writing, signed by the person entitled to such notice, whether before or after the time such notice was to be given, shall be deemed equivalent to the giving of such notice.

Section 18. Quorum. One-third (1/3) of the elected Directors shall constitute a quorum at any meeting. If a quorum is not present at any meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 19. Manner of Acting. Provided a quorum is present, the act of a majority of the Directors present at a meeting shall be the act of the Board unless the act of a greater number is required by law or by these Bylaws.

Section 20. Action by Written Consent. Any action which may be taken at a meeting of the Board or by any Committee may be taken without a meeting if consent in writing to the action taken is signed by all of the Directors or by all Committee members and included in the minutes filed with the corporate records of the Foundation reflecting the action taken.

Section 21. Proxies. Proxies shall not be valid for any purpose.

Section 22. Presumption of Assent. A Director of the Foundation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless such Director's dissent shall be entered in the minutes of the meeting or unless such Director shall file such Director's written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Foundation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

## ARTICLE V

### Officers

Section 1. Officers. The regular Officers of the Foundation shall be a Chair, a Vice Chair, a Secretary, and a Treasurer. The office of Secretary and Treasurer may be combined. The Board

may create other offices and appoint Officers to fill the same, including but not limited to Assistant Secretaries or Assistant Treasurers, as it shall deem desirable. Such Officers shall have the authority to perform the duties prescribed by the Board. All Officers shall be then-serving Directors of the Foundation.

Section 2. Election. The Officers of the Foundation shall be elected annually by the Board at the annual meeting. Honorary Directors and Directors Emeritus shall also be designated annually by the Board at its annual meeting. If the elections and designations do not occur at such meeting, such election shall be held as soon thereafter as conveniently possible. Each Officer shall hold office at the pleasure of the Board. While the offices of Chair and Vice Chair are elected annually, it is anticipated that the Director elected to these positions will serve in that capacity for two (2) years.

Section 3. Removal. Any Officer elected by the Board may be removed by the Board whenever in its judgment the best interests of the Foundation would be served thereby.

Section 4. Vacancies. A vacancy in any office may be filled by the Board for the unexpired portion of the term.

Section 5. Nomination of Officers. The Governance Committee shall make all nominations for Officers and submit them for the consideration by the Executive Committee and approval of the Board of Directors.

Section 6. Duties.

(a) Chair. The Chair shall preside at all Board meetings. The Chair may sign, with the Secretary or any other Officer of the Foundation authorized by the Board, any deed, mortgage, bond, contract or other instrument, which the Board has authorized to be executed, except in such cases where the execution of any document may have been otherwise expressly designated by the Board, these Bylaws, State Board of Education Policy, or by a statute of the State of Idaho to some other Officer, agent or committee of the Foundation, and in general, the Chair shall perform all of the duties incident to such office, together with such other duties as may be prescribed by the Board.

(b) Vice Chair. In the absence of the Chair, or in event of the Chair's inability or refusal to act, the Vice Chair shall perform the duties of the Chair, and when so acting, shall have all the powers of, and be subject to all of the restrictions imposed upon the Chair. Any Vice Chair shall perform such other duties as from time to time may be assigned by the Chair or by the Board.

(c) Secretary. The Secretary shall have responsibility to see that the minutes of the meetings of the Board are properly kept; all notices are given in accordance with the provisions of these Bylaws and as required by law, and that corporate records, the seal of the Foundation, and a register of the post office address of each Director are kept; and shall perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned by the Chair or by the Board.

(d) Treasurer. The Treasurer shall perform all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned by the Chair or by the Board.

(e) Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers shall perform such duties as shall be assigned to them by the Chair, the Board, the Treasurer or the Secretary, as applicable.

## ARTICLE VI

### Staff

Section 1. Employment. The Board of Directors shall have the authority to employ an Executive Director and such other staff as the Foundation may reasonably require from time to time.

Section 2. Executive Director.

(a) Duties. The Executive Director shall be the chief executive officer of the Foundation and shall supervise and control all of the business affairs of the Foundation pursuant to applicable laws, State Board of Education policy, and policies and procedures approved by the Board of Directors of the Foundation. The Executive Director shall keep the Chair, the Executive Committee and the Board of Directors informed regarding the property or business of the Foundation and developments related to its Directors in a timely manner.

(b) Foundation Office. The Foundation office and its employees shall be managed by the Executive Director.

(c) Executive Director Review. The Executive Committee shall annually evaluate the performance of the Executive Director.

Section 3. Terms of Employment. All compensation paid to a staff person shall be approved by the Board of Directors. The terms and conditions of employment of the staff may be set forth in a written contract approved by the Board of Directors and signed by the Foundation and the staff person. No Foundation employee shall receive any direct payments, compensation, or other benefits from Boise State University.

Section 4. Staff Conflicts of Interest. The Board shall provide all staff with a conflict of interest policy.

## ARTICLE VII

### Committees

Section 1. Membership. The Board of Directors shall have such committees as shall be approved by the Board of Directors, including without limitation standing committees of the

Governance, Audit, and Executive Committees set forth in this Article, and any ad hoc Committees that may be formed by the Board from time to time for any purpose defined by the Board. Committees shall report their activities to the Executive Committee and to the Board.

Section 2. Authority. The Board shall define the authority and responsibilities of each Committee by resolution, by these Bylaws, and/or by any Committee Charter approved by the Board. Committees shall have and exercise the authority of the Board of Directors in the management of the Foundation to the extent such authority is delegated to them by the Board; provided, however, that no Director committee shall have the authority of the Board of Directors to (i) authorize distributions, (ii) approve dissolution, merger or the sale, pledge or transfer of all or substantially all of the Foundation's assets, (iii) elect, appoint, or remove Directors or fill vacancies on the Board of Directors on any of its committees, or (iv) adopt, amend, or repeal the Articles of these Bylaws. The designation and appointment of any such Director committee and the delegation of authority to a Director committee shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon the Board of Directors, or any individual Director.

### Section 3. Standing Committees

(a) Governance Committee. The Board shall appoint a Governance Committee of at least five (5) Directors. The Governance Committee shall be responsible for providing nominations for members of the (i) Board of Directors, (ii) the Executive Committee, and (iii) Foundation Officers. The Governance Committee shall also carry out such other responsibilities as defined in the Governance Committee Charter which shall be reviewed and approved by the Board of Directors at least annually.

(b) Executive Committee. Based upon the nominations of the Governance Committee, the Board shall appoint an Executive Committee of at least six (6) Directors. The Board will endeavor to have representation from each of the other committees on the Executive Committee. The Executive Committee shall exercise all powers of the Board between the meetings of said Board, except the Executive Committee may not take any of the actions prohibited by Section 2 of this Article. A majority shall constitute a quorum, but the affirmative vote of a majority of the entire then-serving Committee shall be necessary for any official act. The Executive Committee shall keep regular minutes of its proceedings and report the same to the Board.

#### c. Audit Committee.

(i) Qualifications. The Board shall appoint an Audit Committee comprised of at least four (4) Directors. Members of the Audit Committee will have the financial competency to understand financial statements, to evaluate accounting firm bids to undertake auditing and to make sound financial decisions as part of their fiduciary responsibilities.

(ii) Term. The Board Chair will appoint a member of the Audit Committee as Committee Chair who may serve in such position for no more than one (1) term of three (3) years.

(iii) Duties. The responsibilities of the Audit Committee shall be defined in the Audit Committee Charter which shall be reviewed and approved by the Board of Directors at least annually.

Section 4. Term of Office. Each member of a committee shall serve until a successor is appointed or the committee is terminated. Any member of a committee may be removed whenever, in the judgment of the Board, the best interests of the Foundation shall be served by such removal.

Section 5. Chair. One member of each committee shall be appointed as Chair by the Board Chair subject to the approval of the Board.

Section 6. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7. Quorum. One-third (1/3) of the committee members shall constitute a quorum at any meeting. If a quorum is present, the action of a majority of the members present shall be the act of the committee unless otherwise provided herein or in the resolution of the Board designating a committee.

Section 8. Rules. Each committee may adopt rules for committee procedure consistent with these Bylaws or with rules adopted by the Board.

Section 9. Advisors to Committees. Any committee may associate with individuals who are not Board members to serve in an advisory capacity to the committee. Such individuals shall have no voting rights on the committee, but shall attend and participate in committee meetings. The Board shall appoint such individuals to the Executive Committee and Audit Committee. The Board and/or the Chair of any other committee shall appoint such individuals to all other committees.

## ARTICLE VIII

### Contracts, Checks, Deposits and Funds

Section 1. Contracts. No contracts shall be signed on behalf of the Foundation by any Director or Officer without the resolution of the Board, except that the Chair shall be authorized to execute any agreement relating to the business of the Foundation so long as such agreement, instrument, or document does not create any obligation on behalf of the Foundation exceeding \$10,000.00. All other contracts into which the Foundation enters shall be signed by a Foundation Officer or agent and in such manner as shall be determined by resolution of the Board or by the Executive Committee.

Section 2. Checks, Drafts, Etc. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness, issued in the name of the Foundation, shall be signed by such Officer or agent and in such manner as shall be determined by resolution of the Board. In the



absence of such determination by the Board, such instruments may be signed by the Chair so long as such agreement, instrument, or document does not create any obligation on behalf of the Foundation exceeding \$10,000.00.

Section 3. Deposits. All funds of the Foundation shall be promptly deposited to the credit of the Foundation in such depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purpose or for any special purposes of the Foundation.

## **ARTICLE IX**

### **Compensation, Conflicts of Interest and Indemnification**

Section 1. No Compensation for Directors. No Director of the Foundation shall receive, directly or indirectly, any salary, commission or compensation from the Foundation for his/her services as a Director. A Director or Officer may receive reimbursement of authorized travel and other out-of-pocket expenses necessary for or incident to the performance of his/her duties, provided that the reimbursement of such expenses is authorized by a written policy adopted by resolution of the Board of Directors.

Section 2. Conflicts of Interest. The activities of the Directors shall be consistent with the Conflict of Interest Policy adopted by the Board of Directors.

Section 3. Indemnification. The Foundation may indemnify Directors, Officers, employees and agents of the Foundation to the extent permitted by, and in accordance with, the Idaho Nonprofit Corporation Act.

Section 4. Directors and Officers Insurance. The Executive Director shall annually secure Directors and Officers Insurance and provide a copy of said policy to each Director of the Foundation Board of Directors.

## **ARTICLE X**

### **Books and Records**

The Foundation shall keep correct and complete books and records of account, minutes of the proceedings of the Board, the Executive Committee and any other committee, and a record of the names and addresses of all Directors. Any Director may inspect all books and records of the Foundation for any proper purpose at any reasonable time. At least annually, the Foundation shall obtain an independent audit of the financial records.

**ARTICLE XI****Fiscal Year**

The Foundation shall operate on a fiscal year, beginning July 1 and ending June 30 of each year.

**ARTICLE XII****Seal**

The Seal of the Foundation may be affixed to certificates and other documents, contracts and papers as the Board of Directors or its designees may direct, but the affixing of such seal shall not be necessary to the validity of such documents.

**ARTICLE XIII****Amendments**

These Bylaws may be altered or amended or new Bylaws adopted at any regular meeting of the Board at which a quorum is present, by an affirmative vote of two-thirds (2/3) of the Directors present.

The foregoing Bylaws were duly adopted at the regularly scheduled meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

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## **Boise State University Foundation, Inc. Conflict of Interest Policy**

### **I. Purpose:**

The Boise State University Foundation, Inc. ("Foundation") is a nonprofit, tax-exempt organization. Maintenance of its tax-exempt status is important both for its continued financial stability and for public support. Therefore, the IRS as well as state regulatory and tax officials view the operations of the Foundation as a public trust which is subject to scrutiny by and accountable to such governmental authorities as well as to members of the public.

Consequently, there exists between the Foundation and Responsible Persons (defined below) and the public a fiduciary duty which carries with it a broad and unbending duty of loyalty and fidelity. Responsible Persons have the responsibility of administering the affairs of the Foundation honestly and prudently, and of exercising their best care, skill, and judgment for the sole benefit of the Foundation. Those persons will exercise the utmost good faith in all transactions involved in their duties, and they will not use their positions with the Foundation or knowledge gained therefrom for their personal benefit. The interests of the organization must be the first priority in all decisions and actions.

### **II. Responsible Persons:**

This statement is directed to Directors, Officers, all employees and others who can influence the actions of the Foundation ("Responsible Persons"). For example, this would include all who make purchasing decisions, all persons who might be described as "management personnel," and anyone who has proprietary information concerning the Foundation.

### **III. Areas in Which Conflict May Arise:**

Conflicts of interest may arise in the relations of Responsible Persons with any of the following third parties:

1. Persons and firms supplying goods and services to the Foundation.
2. Persons and firms from whom the Foundation leases property and equipment.
3. Persons and firms with whom the Foundation is dealing or planning to deal in connection with the gift, purchase or sale of real estate, securities or other property.
4. Competing or affinity organizations.
5. Donors and others supporting the Foundation.
6. Agencies, organizations and associations which affect the operations of the Foundation.
7. Family members, friends, and other Responsible Persons.

### **IV. Nature of Conflicting Interest:**

A conflicting interest may be defined as an interest, direct or indirect, with any persons or firms mentioned in Section III. Such an interest might arise through:

1. Owning stock or holding debt or other proprietary interests in any third party dealing with the Foundation.
2. Holding office, serving on the Board, participating in management, or being otherwise employed (or formerly employed) with any third party dealing with the Foundation.

3. Receiving remuneration for services with respect to individual transactions involving the Foundation.
4. Using the Foundation's time, personnel, equipment, supplies, or goodwill for other than Foundation-approved activities, programs and purposes.
5. Receiving personal gifts or loans from third parties dealing or competing with the Foundation. Receipt of any gift is disapproved except gifts of a value less than \$50 which could not be refused without discourtesy. No personal gift of money should ever be accepted.

#### **V. Interpretation of this Policy:**

The areas of conflicting interest listed in Section III, and the relations in those areas which may give rise to conflict, as listed in Section IV, are not exhaustive. Conflicts might arise in other areas or through other relations. It is assumed that Responsible Persons will recognize such areas and relation by analogy.

The fact that one of the interests described in Section IV exists does not necessarily mean that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance, or if material, that upon full disclosure of all relevant facts and circumstances it is necessarily adverse to the interests of the Foundation.

However, it is the policy of the Board that the existence of any of the interests described in Section IV will be disclosed before any transaction is consummated. It will be the continuing responsibility of Responsible Persons to scrutinize their transactions and outside business interests and relationships for potential conflicts and to immediately make such disclosures.

#### **VI. Disclosure Policy and Procedure:**

Transactions with parties with whom a conflicting interest exists may be undertaken only if all of the following are observed:

1. The conflicting interest must be fully disclosed.
2. The conflicting interest must be considered by the Board, or, if appropriate a Committee of the Board.
3. The person with the conflict of interest will not participate in or be permitted to hear the Board's or Committee's discussion of the matter except to disclose materials facts and to respond to questions. Such person will not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.
4. The person with the conflict of interest with respect to the contract or transaction that will be voted on at a meeting will not be counted in determining the presence of a quorum for purposes of the vote. The person who has the conflict of interest may not vote on the contract or transaction and will not be present in the meeting room when the vote is taken, unless the vote is by secret ballot.
5. The Board or Committee will consider whether a competitive bid or comparable valuation exists.
6. The Board or Executive Committee must determine that the transaction is in the best interest of the Foundation.

Responsible Persons who are not members of the Board of Directors or who have a conflict of interest with respect to a contract or transaction that is not the subject of Board or Committee

Boise State University Foundation, Inc.  
Policy  
Board of Directors

Approved 4/9/2008  
Effective 4/9/2008  
Revised

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action, will disclose to their supervisor, the Executive Director, or the Board chair any conflict of interest that such person has with respect to any contract or transaction. Such disclosure will be made as soon as the conflict of interest is known to the Responsible Person. The Responsible Person will refrain from any action that may affect the Foundation's participation in such contract or transaction. A supervisor will inform the Executive Director of any such conflict of interest. The Executive Director will bring the matter to the attention of the Board or Executive Committee.

Disclosure involving Directors will be made to the Board chair (or if she or he is the one with the conflict, then to the Board vice-chair) who will bring these matters to the Board or the Executive Committee.

Information acquired in connection with disclosures of conflicts of interest or potential conflicts will be treated as confidential and will generally be made available only as necessary for the implementation of this Policy.

The Board or Executive Committee will determine whether a conflict exists and in the case of an existing conflict, whether the contemplated transaction may be authorized as just, fair, and reasonable to the Foundation. The decision of the Board or Executive Committee on these matters will rest in their sole discretion, and their concern must be the welfare of the Foundation and the advancement of its purpose.

Each Responsible Person will be provided with and asked to review a copy of this Policy and to acknowledge in writing that he or she has done so. Any changes to the Policy will be communicated to all Responsible Persons.

Annually, each Responsible Person will complete a disclosure form identifying any relationships, positions or circumstances in which s/he is involved that he or she believes could contribute to a conflict of interest.

**Conflict of Interest Disclosure Statement**

In order to be more comprehensive, this statement of disclosure/questionnaire also requires you to provide information with respect to certain parties that are related to you. These persons are termed "affiliated persons" and include the following:

1. Your spouse, domestic partner, child, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, or brother-in-law;
2. Any corporation or organization of which you are a Board member, an officer, a partner, participate in management or are employed by, or are, directly or indirectly, a debt holder or the beneficial owner of any class of equity securities; and
3. Any trust or other estate in which you have a substantial beneficial interest or as to which you serve as trustee or in a similar capacity.

1. Name of Responsible Person:

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2. Capacity of Responsible Person:

☐ Board of Directors  
☐ Executive Committee  
☐ officer  
☐ Committee member  
☐ staff (position): \_\_\_\_\_

3. Except as provided in Question 2, have you or any of your affiliated persons provided services or property to the Foundation in the past year?

☐ Yes ☐ No

If yes, please describe the nature of the services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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4. Have you or any of your affiliated persons purchased services or property from the Foundation in the past year?

☐ Yes ☐ No

If yes, please describe the nature of the services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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Boise State University Foundation, Inc.  
Policy  
Board of Directors

Approved 4/9/2008  
Effective 4/9/2008  
Revised

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5. Please indicate whether you or any of your affiliated persons had any direct or indirect interest in any business transaction(s) in the past year to which the Foundation was or is a party?

☐ Yes ☐ No

If yes, please describe the transactions) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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6. Were you or any of your affiliated persons indebted to pay money to the Foundation at any time in the past year (other than travel advances or the like)?

☐ Yes ☐ No

If yes, please describe the indebtedness and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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7. In the past year, did you or any of your affiliated persons receive, or become entitled to receive, directly or indirectly, any personal benefits from the Foundation or as a result of your relationship with the Foundation that in the aggregate could be valued in excess of \$1,000 that were not or will not be compensation directly related to your duties to the Foundation?

☐ Yes ☐ No

If yes, please describe the benefits and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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Revised

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8. Are you or any of your affiliated persons a party to or have an interest in any pending legal proceedings involving the Foundation?

\_\_\_\_ Yes                      \_\_\_\_ No

If yes, please describe the proceedings and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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9. Are you aware of any other events, transactions, arrangements or other situations that have occurred or may occur in the future that you believe should be examined by the Foundation's Board or Executive Committee in accordance with the terms and intent of the Foundation's conflict of interest policy?

\_\_\_\_ Yes                      \_\_\_\_ No

If yes, please describe the situation and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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I hereby confirm that I have read and understand the Foundation's conflict of interest policy and that my responses to the above questions are complete and correct to the best of my information and belief. I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with this policy, I will immediately notify the person designated in the conflict of interest policy.

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

3843561\_2.DOC



**OPERATING AGREEMENT  
BETWEEN  
IDAHO STATE UNIVERSITY FOUNDATION, INC.  
AND  
IDAHO STATE UNIVERSITY**

THIS AGREEMENT, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, is between Idaho State University, herein known as "University" and the Idaho State University Foundation, Inc., herein known as "Foundation".

WHEREAS, the Foundation was organized and incorporated in 1967 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University.

WHEREAS, the Foundation exists to raise and manage private resources supporting the mission and priorities of the University, and provide opportunities for students and a degree of institutional excellence unavailable with state funding levels.

WHEREAS, the Foundation is dedicated to assisting the University in the building of the endowment to address, through financial support, the long-term academic and other priorities of the University.

WHEREAS, as stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

WHEREAS, furthermore, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Agreement,

personnel experienced in planning for and managing private contributions and works with the University to assist and advise in such activities.

WHEREAS, the parties hereby acknowledge that they will at all times conform to and abide by, the Idaho State Board of Education's Governing Policies and Procedures, Gifts and Affiliated Foundations policy, § V.E., and that they will submit this Agreement for initial prior State Board of Education ("State Board") approval, and thereafter every two (2) years, or as otherwise requested by the State Board, for review and re-approval.

NOW THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

#### **ARTICLE I Foundation's Purposes**

The Foundation is the primary affiliated foundation responsible for securing, managing and distributing private support for the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and Bylaws, and the State Board's Policies and Procedures, the Foundation shall: (1) solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the University from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the University; and (3) support and assist the University in fundraising and donor relations.

In carrying out its purposes the Foundation shall not engage in activities that conflict with (1) federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) applicable policies of the State Board; or (3) the role and mission of the University.

#### **ARTICLE II Foundation's Organizational Documents**

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the University and the State Board. All amendments of such documents shall also be provided to the University and the State Board. Furthermore, the Foundation

shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

### ARTICLE III University Resources and Services

#### 1. University Employees.

a. *University/Foundation Liaison:* The University's Vice President for University Advancement shall serve as the University's Liaison to the Foundation.

- i. The University's Vice President for University Advancement shall be responsible for coordinating the University's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the University to the Foundation.
- ii. The Vice President for University Advancement or her/his designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the University to the the Foundation's Board of Directors regarding the University's coordination with the Foundation's fundraising efforts.

b. *Finance Director:* The *Finance Director* of the Foundation is an employee of the University loaned to the Foundation. All of the *Finance Director's* services shall be provided directly to the Foundation as follows:

- i. The *Finance Director* shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the *Finance Director* may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in iii below. The *Finance Director* shall be subject to the control and direction of the Foundation.
- ii. The *Finance Director* shall be an employee of the University and entitled to University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the *Finance Director*. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the *Finance Director* including such expenses as salary, payroll taxes, and benefits.

- iii. The Foundation and the University shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the *Finance Director* is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the *Finance Director*, including the following:
  - 1. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law, such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.
  - 2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall also result in termination of any obligation of the University to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University.
  - 3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or her/his designee. Further, the Foundation shall have the primary role in hiring a Loaned Employee, subject to applicable State or University requirements.

c. *Other Loaned Employees.* Other loaned employees providing services pursuant to this Agreement shall also serve pursuant to a Loaned Employee Agreement, Exhibit "A", which shall set forth their particular responsibilities and duties.

d. *Limited Authority of University Employees.* Notwithstanding the foregoing provisions, no University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.

2. Support Staff Services. The University shall provide administrative, financial, accounting, and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). All University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless it is agreed that the

direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.

3. University Facilities and Equipment. The University shall provide the use of the University's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the University and the Foundation. The terms of use (including amount of rent) of the University's office space, equipment and associated services shall be as set forth in the Service Agreement, Exhibit "B" hereto.

4. No Foundation Payments to University Employees. Notwithstanding any contrary provision of this Agreement to the contrary, the Foundation shall not make any payments directly to a University employee in connection with any resources or services provided to the Foundation pursuant to this Article of this Operating Agreement.

#### **ARTICLE IV**

##### **Management and Operation of Foundation**

#### 1. Gift Solicitation.

a. *Authority of Vice President for University Advancement.* All Foundation gift solicitations shall be subject to the direction and control of the Vice President for University Advancement.

b. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

c. *Foundation is Primary Donee.* Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the University.

#### 2. Acceptance of Gifts.

a. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University, and where required by State Board policy, approval of the State Board. Similarly, the Foundation shall also obtain the prior written

approval of the University of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University.

b. *Acceptance of Gifts of Real Property.* The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the University shall be approved by the State Board before acceptance by the University and the Foundation. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property.

c. *Processing of Accepted Gifts.* All gifts received by the University or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated gift administration office (a unit of the Foundation) in accordance with the Service Agreement.

3. Fund Transfers. The Foundation agrees to transfer funds, both current gifts and income from endowments, to the University on a regular basis as agreed to by the Parties. The Foundation's Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors.

a. *Restricted and Unrestricted Gift Transfers.* The Foundation may make restricted donations to the University. Such donated funds will only be expended by the University pursuant to the terms of such restrictions. The Foundation may also make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with state law and University policies. All expenditures notes in this section must comply with the I.R.S. 501(c)(3) code and be consistent with the Foundation's sole mission to support the University.

4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions. The Foundation may supplement or change this designation with written notice to the University; provided, however, in no event may the person with Foundation signature authority for financial transactions be a University employee nor a "Loaned Employee" as that term is used in this Agreement.

b. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

5. University Report on Distributed Funds. On a regular basis, which shall not be less than annually, the University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the University. This report shall specify the restrictions on any restricted funds and the uses of such funds.

6. Transfer of University Assets to the Foundation. No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:

- a. A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such funds shall be deposited in an institutional account, and State Board approval will be required prior to the University's transfer of such funds to the Foundation.
- b. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
- c. The institution has raised scholarship funds through an institution activity and the institution wishes to deposit the funds with the foundation for investment and distribution consistent with the scholarship nature of the funds.
- d. Transfers of a *de minimis* amount not to exceed \$10,000 from the institution to the Foundation provided such funds are for investment by the Foundation for scholarship or other general university support purposes. This exception shall not apply to payments by the institution to the Foundation for obligations of the institution to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate, password protected accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis. Further, the Foundation shall make data available to external auditors as necessary to complete audit responsibilities.

8. Insurance. To the extent that the Foundation is not covered by the State of Idaho Retained Risk program, the Foundation shall maintain insurance to cover the

operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

9. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is attached hereto as Exhibit "C"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the University any updates to such investment policy which updates shall also be attached hereto as Exhibit "C".

10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation which are attached hereto as Exhibit "D" and the Foundation's Amended and Restated Bylaws which are attached as Exhibit "E." The Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to both the University and the State Board.

11. Conflicts of Interest and Ethical Conduct. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is set forth as Exhibit "E", and the Foundations Code of Ethical Conduct is set forth as Exhibit "F".

## **ARTICLE V**

### **Foundation Relationships with the University**

1. Access to Records. The Foundation shall establish and enforce policies to protect donor confidentiality and rights. The donor database, as well as other data, materials and information of the Foundation pertaining to past, current or prospective donors, are proprietary to the Foundation and constitute its confidential information and trade secrets. The University shall not access information except in compliance with the Foundation's donor confidentiality policies. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of the server and software relevant to the database.

The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The University shall, at any time, have access to the financial records of the Foundation. The scope of this right of the University shall be construed as broadly as needed to conduct a complete audit of the Foundation as such an audit would be conducted under generally accepted accounting procedures if the University should so require. Provided, however, that the University need not conduct an audit to be provided such access, but shall be provided such access at any time.



The University's access shall not include donor specific data such that would provide individually identifiable information about donors or their donations made to the Foundation.

2. Record Management.

a. The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the University shall be limited to the University's President and any designee of the University's President.

b. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.

c. Except to the extent that records are confidential (including confidential donor information), the Foundation agrees to be open to public inquiries for information that would normally be open in the conduct of University affairs and to provide such information in a manner consistent with the Idaho Public Records Law, set forth in Idaho Code Sections 9-337 – 9-350, except where otherwise required by state and federal law.

3. Name and Marks. Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name of the other, specifically: "Idaho State University" and "The Idaho State University Foundation" in all activities conducted in association with or for the benefit of the other. Use of the other Party's name must be in manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. This license does not extend to any identifying marks of either Party other than the specified corporate name. Use of other marks must receive prior written approval.

4. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.

5. Establishing the Foundation's Annual Budget. The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be

communicated in writing to the Foundation's Treasurer and Assistant Treasurer by March 1 of each year.

6. Attendance of University's President at Foundation's Board of Director Meetings. The University's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.

7. Supplemental Compensation of University Employees. No supplemental compensation of University employees may be made by the Foundation. Provided the Foundation may reimburse the University for those benefits which are necessary for its normal course of operations, including, but not limited to, travel and continuing professional education. This is not intended to proscribe reimbursement by the Foundation of the University's expenses associated with "Loaned Employees" as set forth elsewhere in this Agreement, nor the payment of funds by the Foundation to the University in support of endowed chairs or similar faculty positions.

## **ARTICLE V**

### **Audits and Reporting Requirements**

1. Fiscal Year. The Foundation and the University shall have the same fiscal year.

2. Annual Audit. On an annual basis, the Foundation shall have an audit conducted by a qualified, independent certified public accountant who is not a director or officer of the Foundation. The annual audit will be provided on a timely basis to the University's President and the Board, in accordance with the Board's schedule for receipt of said annual audit. The Foundation's Annual Statements may be presented in accordance with standards promulgated by the Financial Accounting Standards Board (FASB). The Foundation is a component unit of the University as defined by the Government Accounting Standards Board (GASB). Accordingly, the University is required to include the Foundation in its Financial Statements which follow a GASB format. Therefore, if the Foundation presents its audited Financial Statement under FASB, Schedules reconciling the FASB Statements to GASB standards must be provided in the detail required by GASB Standards. The annual audited Financial Statements and Schedules shall be submitted to the University's Office of Finance and Administration in sufficient time to incorporate the same into the University's statements.

3. Separate Audit Rights. The University agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the University and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's books and accounting records.

4. Annual Reports to University President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the University President and the State Board setting forth the following items:

- a. the annual financial audit report;
- b. an annual report of Foundation transfers made to the University, summarized by University department;
- c. an annual report of unrestricted funds received by the Foundation;
- d. an annual report of unrestricted funds available for use during the current fiscal year;
- e. a list of all of the Foundation's officers, directors, and employees;
- f. a list of University employees for whom the Foundation made payments to the University for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
- g. a list of all state and federal contracts and grants managed by the Foundation;
- h. an annual report of the Foundation's major activities;
- i. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the University; and
- j. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.

## ARTICLE VI

### Conflict of Interest and Code of Ethics and Conduct

1. Conflicts of Interest and Code of Ethics and Conduct Policy Statement. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is set as Exhibit "F", and its Code of Ethics and Conduct is set forth as Exhibit "G".

2. Dual Representation. Under no circumstances may a University employee represent both the University and the Foundation in any negotiation, sign for

both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the University and the Foundation. This shall not prohibit University employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.

3. Contractual Obligation of University. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University and, if applicable under law or policy, the State Board of Education. University approval of any such contract shall comply with policies of the State Board of Education with respect to approval of University contracts.

4. Acquisition or Development or Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board and where appropriate, the Idaho Legislature, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

## ARTICLE VII General Terms

1. Effective Date. This Agreement shall be effective on the date set forth above.

2. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both parties. In addition, either party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either party may terminate this Operating Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like

manner. The parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event the parties are unable to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.

3. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved to the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every two (2) years or more frequently if otherwise requested by the State Board.

4. Modification. Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.

5. Providing Document to and Obtaining Approval from the University. Unless otherwise indicated herein, any time documents are to be provided to the University or any time the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's President or an individual to whom such authority has been properly delegated by the University's President.

6. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.

7. Notices. Any notices required under this agreement may be mailed or delivered as follows:

To the University:

President  
Idaho State University  
921 South 8<sup>th</sup> Ave. Stop 8310  
Pocatello, ID 83209-8410

To the Foundation:

Vice President for Advancement  
Idaho State University  
Foundation  
921 South 8<sup>th</sup> Ave., Stop 8024  
Pocatello, ID 83209-8024

Finance Director  
Idaho State University  
921 South 8<sup>th</sup> Ave. , Stop 8050  
Pocatello, ID 83209-8050

8. No Joint Venture. At all times and for all purposes of this Memorandum of Understanding, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other party.

9. Liability. The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees.

10. Indemnification. The University and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

11. Dispute Resolution. The parties agree that in the event of any dispute arising from this MOU, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, the dispute will be referred to the Chair of the Foundation and the University President. If the Foundation and University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unsolved, then, in such case, either party shall have the right to initiate litigation arising from this MOU. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

12. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and/or Articles of Incorporation, should the Foundation cease to exist or cease to qualify as an Internal Revenue Code §501(c)(3) organization, the Foundation will transfer its assets and property to the University, to a reincorporated

successor Foundation organized to benefit the University, or to the State of Idaho for public purposes, in accordance with Idaho law.

13. Assignment. This Agreement is not assignable by either party, in whole or in part.

14. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

15. Severability. If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

16. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

17. List of Attachments

a.	Loaned Employee Agreement	Page 16
b.	Services Agreement	Page 21
c.	Investment Policy	Page 23
d.	Amended Articles of Incorporation	Page 27
e.	Amended Bylaws	Page 41
f.	Conflict of Interest Policy	Page 65
g.	Code of Ethical Conduct	Page 70

IN WITNESS WHEREOF, the University and the Foundation have executed this agreement on the above specified date.

Idaho State University

By: \_\_\_\_\_  
Its: President

Idaho State University Foundation, Inc.

By: \_\_\_\_\_  
Its: President

## EXHIBIT "A"

**AGREEMENT FOR LOANED EMPLOYEE  
IDAHO STATE UNIVERSITY/IDAHO STATE UNIVERSITY FOUNDATION**

THIS AGREEMENT is entered into by and between IDAHO STATE UNIVERSITY, a state educational institution, and a body politic and corporate organized and existing under the laws of the state of Idaho ("University"), and IDAHO STATE UNIVERSITY FOUNDATION, a private nonprofit corporation ("ISUF").

**BACKGROUND**

A. The ISUF, incorporated as a 501(c)(3) organization in 1967, raises and manages private funds for the benefit of the University, and

B. University has agreed to loan its employee, \*\*\*\*("Loaned Employee"), to ISUF to act in the capacity of \*\*\*\* for ISUF.

**AGREEMENT**

The parties agree as follows:

**1. Relationship between Loaned Employee and University.**

a. Loaned Employee may be an exempt, fiscal year employee of the University subject to all applicable policies and procedures of the Board and the University, or a classified employee subject to the applicable State of Idaho, State Board and/or University rules and procedures.

b. Loaned Employee will be paid at a fiscal year salary rate of \$\*\*\*\*, payable on the regular bi-weekly paydays of the University. Loaned Employee will be entitled to University benefits to the same extent and on the same terms as other full-time University employees of her/his classification.

c. University shall be responsible for the payment of all salary and benefits to Loaned Employee. University shall be responsible for all payroll-related taxes, benefits costs, and other related payroll costs arising out of the Loaned Employee's employment with University.

**2. Relationship between ISUF and Loaned Employee.**

a. Loaned Employee will work full time and shall be under the exclusive supervision, direction and control of the ISUF Board of Directors during the performance of her/his duties under this Agreement. Loaned Employee will report directly to ISUF



President or her/his designee, who shall determine her/his duties. Loaned Employee will be considered a loaned employee under the workers' compensation law of the State of Idaho.

**b.** ISUF is solely responsible for payment of income, social security, and other employment taxes, if any, due to the proper taxing authorities arising from its payment of reimbursements to Loaned Employee. ISUF agrees to indemnify, defend, and hold the University harmless from any and all liabilities, losses, claims or judgments relating to the payment of these taxes.

**c.** No later than ninety (90) days prior to the end of the term of this Agreement, and each subsequent term, if any, ISUF will evaluate the performance of Loaned Employee. In the case where the Loaned Employee is a classified employee, such evaluation shall occur in accordance with rules and procedures applicable to such employees. ISUF will provide a copy of the evaluation document to the University no later than fourteen (14) days after the evaluation is completed.

**d.** ISUF may terminate or non-renew Loaned Employee's employment contract, or discipline Loaned Employee in accordance with ISUF's procedures and applicable law, any such termination or non-renewal shall constitute grounds for termination, non-renewal or discipline of Loaned Employee by the University. Provided however, particularly when the Loaned Employee is a classified employee, any contemplated termination shall be subject to applicable legal and procedural requirements of the State of Idaho and the University.

### **3. Relationship between ISUF and University.**

**a.** ISUF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits including payroll-related taxes, benefits, and other related payroll costs and the costs associated with travel approved by ISUF. Such costs will be billed quarterly and paid to the University.

**b.** University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, ISUF shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of one year following the completion of this Agreement.

**c.** The furnishing of Loaned Employee shall not be considered a professional service of the University. At no time during the performance of this Agreement shall the Loaned Employee receive or act under instructions from the University regarding the work performed on behalf of ISUF.

**d.** University shall have no liability to ISUF for loss or damage growing out of or resulting from the activities of the Loaned Employee. ISUF therefore agrees to

release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, and the Loaned Employee from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, including but not limited to injuries (including death) to persons and for damages to property (including damage to property of ISUF or others) arising out of or in connection with the activities of the Loaned Employee under this Agreement. The limitation on liability and any agreement to defend, indemnify, or hold harmless expressed in the Agreement shall apply even in the event of the fault or negligence of the Loaned Employee.

#### 4. General Terms

**a. Term, Termination.** This Agreement will terminate on the same day as Loaned Employee's contract as an exempt employee of the University terminates, or in the case of classified employees, after applicable rules and procedures have been followed, or upon Employee's resignation or other separation from employment, whichever is earlier. By mutual written consent, in conjunction with any renewal of the Loaned Employee's contract as an exempt employee of the University, the parties may extend the term of this Agreement for a term equal to the term of the exempt Loaned Employee's renewed contract with the University, or in the case of a classified employee, continued into the next ensuing fiscal year, such that the term of this Agreement shall always be equal to the term of Loaned Employee's status as an exempt or classified employee of the University. The Loaned Employee remains subject to all applicable Board and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline for adequate cause, and where applicable, rules and procedures pertaining to classified employees.

**b. Governing Law.** This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Bannock County.

**c. Notice.** 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:

#### To ISUF:

Idaho State University Foundation  
President  
921 South 8<sup>th</sup> Ave. Stop 8050  
Pocatello, ID 83209-8050

Phone: (208) 282-3470  
Fax: (208) 282-4994

**To the University:**

Idaho State University  
 Vice President for Advancement  
 821 South 8<sup>th</sup> Ave, Stop 8024  
 Pocatello, ID 83209-8024

Phone: (208) 282-3198  
 Fax: (208) 282-4487

**To the Loaned Employee:**

\*\*\*\*

Last address on file with University's Human Resources

Notice shall be deemed given on its date of mailing, faxing, or upon written acknowledgment of its receipt by personal delivery, whichever shall be earlier.

**d. Waiver.** Waiver by either party 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 any subsequent breach of the same or any other term, covenant or condition herein contained.

**e. Attorney's Fees.** In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

IDAHO STATE UNIVERSITY

IDAHO STATE UNIVERSITY  
 FOUNDATION

\_\_\_\_\_  
 James A. Fletcher, Vice President

\_\_\_\_\_  
 Michael J. Byrne, President

Finance and Administration

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

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

\_\_\_\_\_  
 Kent Tingey, Vice President  
 University Advancement

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

ISU/ISUF Loaned Employee Agreement

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**LOANED EMPLOYEE concurrence and commitment:**

\_\_\_\_\_

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

**EXHIBIT "B"**

**SERVICES AGREEMENT**  
**IDAHO STATE UNIVERSITY– IDAHO STATE UNIVERSITY FOUNDATION**

THIS SERVICES AGREEMENT is entered into by and between Idaho State University, a state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("University"), and IDAHO STATE UNIVERSITY FOUNDATION, a private nonprofit corporation ("ISUF").

- A. The University agrees to provide to the ISUF the following administrative, financial, accounting, and investment support services.
  - 1. Administrative support for reconciliation between appropriate ISUF and ISU accounts such as scholarship and spendable accounts and appropriate revenue reports between ISUF and ISU, assist with transfer of gift funds to ISU, assist with monitoring gift fund use to ensure compliance with wishes of donor, ISUF policies and applicable laws..
  - 2. Administrative support for ISUF gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to ISUF, assist with receipt of distributions from estates and trusts to ISUF.
- B. All University employees who provide support services to the ISUF shall remain University employees under the direction and control of the University.
- C. The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the ISUF, the nature and location of which shall be in the University's discretion. In addition, the University shall furnish office space and office equipment for use by the "loaned employees", the nature and location of which shall be subject to agreement of the parties.
- D. The ISUF will pay directly to the University a reasonable consideration for the services, facilities, equipment, software and operating supplies provided to the ISUF pursuant to the Service Agreement based upon agreed upon budgets for the services and operations described herein. In conjunction with the University's annual budget process, the University will prepare and present to the ISUF for consideration and acceptance an operating budget for the services and operations to be provided under this Agreement upon which the consideration shall be based.

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the University's fiscal year until terminated by either party. This Services Agreement may be terminated by either party

upon written notice of termination, such termination to be effective 30 days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Operating Agreement between the University and the ISUF dated \_\_\_\_\_. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement which accrued prior to the date of termination.

IDAHO STATE UNIVERSITY

IDAHO STATE UNIVERSITY FOUNDATION

\_\_\_\_\_  
James A. Fletcher, Vice President  
Finance and Administration

\_\_\_\_\_  
Michael J. Byrne, President

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

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

**EXHIBIT “C”****Idaho State University Foundation****Policy V D Investments****INVESTMENT POLICIES OF THE IDAHO STATE UNIVERSITY FOUNDATION****Preamble**

It is the policy of the Board to treat all assets of the Idaho State University Foundation, including funds that are legally unrestricted, as if held by the Idaho State University Foundation in a fiduciary capacity for the sake of accomplishing its mission and purposes. The following investment objectives and directions are to be judged and understood in light of that overall sense of stewardship. In that regard, the basic investment standards shall be those of a prudent investor as articulated in applicable state laws.

**Investment Assets**

For purposes of these policies, investment assets are those assets of the Idaho State University Foundation that are available for investment in the public securities markets as stocks, bonds, cash, or cash equivalents, either directly or through intermediate structures. Illiquid assets are described in the Idaho State University Foundation's gift acceptance policies, and are governed by those rules and not by these investment policies.

**Supervision and Delegation**

The Board of the Idaho State University Foundation has adopted these policies and has formed an Investment Committee, described below, to whom it has delegated authority to supervise the Idaho State University Foundation investments. The committee and its counselors will act in accord with this investment policy (hereinafter “policy”), and all applicable laws and state and federal regulations that apply to nonprofit agencies including, but not limited to, the Uniform Prudent Investors Act and the Uniform Management of Institutional Funds Act. The Board reserves to itself the exclusive right to amend or revise these policies.

**Investment Committee**

It shall be the responsibility of the Investment Committee to:

1. Supervise the overall implementation of the Idaho State University Foundation's investment policies by the Idaho State University Foundation's executive staff and outside advisors;
2. Monitor and evaluate the investment performance of the Idaho State University Foundation's funds;
3. Report at each regularly scheduled meeting of the Board on Foundation investment matters including financial performance:

4. Develop and annually update an investment policy, asset allocation strategies, risk-based fund objectives, and appropriate investment management structures and provide the same to the Board;
5. Execute such other duties as may be delegated by the Board.

Whenever these policies assign specific tasks to the committee, the policies assume that the actual work will (or may) be performed by the Idaho State University Foundation's Finance Director or other designated staff members, subject only to the committee's overall supervision.

### **Investment Consultant, Advisors, and Agents**

The committee is specifically authorized to retain one or more investment advisors (advisors) as well as any administrators, custodians, or other investment service providers required for the proper management of the Idaho State University Foundation's funds. The committee may utilize an advisor as an investment consultant (consultant) to advise and assist the committee in the discharge of its duties and responsibilities. In that regard, a consultant may help the committee to

1. Develop and maintain investment policy, asset allocation strategies, risk-based fund objectives, and appropriate investment management structures;
2. Select, monitor, and evaluate investment advisors and/or investment entities;
3. Provide and/or review quarterly performance measurement reports and assist the committee in interpreting the results;
4. Review portfolios and recommend actions, as needed, to maintain proper asset allocations and investment strategies for the objectives of each fund; and,
5. Execute such other duties as may be mutually agreed.

In discharging this authority, the committee can act in the place and stead of the board and may receive reports from, pay compensation to, enter into agreements with, and delegate discretionary investment authority to such advisors. When delegating discretionary investment authority to one or more advisors, the committee will establish and follow appropriate procedures for selecting such advisors and for conveying to each the scope of their authority, the organization's expectations, and the requirement of full compliance with these policies.

### **Objectives**

The Idaho State University Foundation's primary investment objective is to preserve and protect its assets by earning a total return for each category of assets (a "fund"), which is appropriate for each fund's time horizon, distribution requirements, and risk tolerance.

### ***Tax-Based Restrictions***

The Idaho State University Foundation is a charitable organization under § 501(c)(3) of the Internal Revenue Code. Consequently, its income is generally exempt from federal and state income tax with the exception of income that constitutes unrelated business taxable income (UBTI). The committee is to determine if a particular strategy or investment will generate UBTI, for which it may rely on advice of counsel. Since UBTI can be generated by leveraged investments (resulting in "debt-financed income"), the



Idaho State University Foundation will not utilize margin, short selling, or other leveraged investment strategies unless the Investment Committee grants a specific exception. When granting exceptions, the committee must determine that the potential rewards outweigh the incremental risks and costs of UBTI. All such exceptions shall be made in writing and shall be communicated to the Board as part of the next regular Investment Committee report.

### Reporting Requirements

1. *Monthly* — The committee will obtain written monthly custodial statements. Such statements should contain all pertinent transaction details for each account that holds all or a portion of any the Idaho State University Foundation investment funds. Each monthly statement should include
  - The name and quantity of each security purchased or sold, with the price and transaction date; and,
  - A description of each security holding as of month-end, including its percentage of the total portfolio, purchase date, quantity, average cost basis, current market value, unrealized gain or loss, and indicated annual income (yield) at market.

In addition, if not included in the custodial reports, the consultant and/or the investment advisor(s) should provide a report for each fund or portfolio showing the month-end allocation of assets between equities, fixed-income securities, and cash. The monthly review of custodial statements may be delegated to the Idaho State University Foundation accounting staff.

2. *Quarterly* — The committee should obtain from its investment consultant and/or investment advisors, a detailed review of the Idaho State University Foundation's investment performance for the preceding quarter and for longer trailing periods as appropriate. Such reports should be provided as to each fund and as to the Idaho State University Foundation investment assets in the aggregate. As to each fund, the committee should establish with its investment consultant and/or investment advisors the specific criteria for monitoring each fund's performance including the index or blend of indices that are appropriate for the objectives of each fund and for the investment style or asset class of each portfolio within a fund. The committee shall meet with the consultant to conduct such reviews to the extent it deems necessary.
3. *Periodically* — The committee should meet with its investment consultant at least annually to review all aspects of the Idaho State University Foundation's investment assets. Such a review should include 1) strategic asset allocation, 2) manager and investment entity performance, 3) anticipated additions to or withdrawals from funds, 4) future investment strategies, and 5) any other matters of interest to the committee.

Policy VD Investments

Page 4

Date of Board Approval:

Person responsible for the periodic review of policy and if necessary submits proposed revisions to Board for approval: Chair Investment Committee Chair

Date of Last Review

ARTICLES OF INCORPORATION  
OF  
IDAHO STATE UNIVERSITY FOUNDATION, INC.

BE IT KNOWN That We, the undersigned, being natural persons of full age and citizens of the United States, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the general corporation laws of the State of Idaho, and in particular Chapter 11 of Title 30, and the Acts amendatory thereof and supplemental thereto, do hereby associate ourselves, together with such other persons as may associate themselves and their successors, for the purpose in incorporation and do hereby certify as follows:

ARTICLE I.

NAME

The name of this corporation is "Idaho State University Foundation, Inc.

ARTICLE II.

PERIOD OF DURATION

This corporation shall have perpetual existence.

ARTICLE III.

PURPOSES

The purposes for which this corporation was formed and now exists are:

1. To solicit and receive contributions, gifts, grants, devises or bequests of real or personal property or both from individuals, foundations, partnerships, associations, governmental bodies or public or private corporations and to maintain, use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, scientific, literary or educational purposes either directly or by contribution to the Idaho State University or other organizations duly authorized to carry on charitable, scientific, literary or educational activities in order to aid and benefit the Idaho State University, provided, however, that no part of such income or principal shall be contributed to any organization whose net earnings or any part thereof enure to the benefit of any private shareholder or individual or any substantial part of the activities of which involve carrying on propaganda or otherwise attempting to influence legislation, or

participating in or intervening in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

2. No part of the net earnings of the corporation shall enure to the benefit of any member, trustee, officer of the corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation in connection with one or more of its purposes) and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporation's assets on dissolution of the corporation.
3. No part of the activities of the corporation shall involve carrying on propaganda or otherwise attempting to influence legislation or participating in or intervening (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.
4. Upon dissolution of the corporation or the winding up of its affairs except by merger with corporation of similar purposes, the assets of the corporation shall be distributed exclusively to the Idaho State University.

#### ARTICLE IV.

##### POWERS

Subject to the express limitation that the corporation shall not have or possess any power at any time, the effect of which prevents the corporation from qualifying as an exempt organization under paragraph 501 of the Internal Revenue Code of 1954 as it now exists or as it may be amended hereafter or which prevents any gifts, grant, devise or bequest from qualifying as a charitable contribution for Federal Estate Tax purposes or for Federal Income Tax purposes, the corporation shall have and possess the following powers, any or all of which must be exercised exclusively in the furtherance of the purposes for which the corporation exists:

- (a) To have perpetual succession by its corporate name.
- (b) To sue and be sued, complain and defend, in its corporate name.
- (c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (d) To purchase, take, receive, lease, take by gifts, devise, or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any interest therein wherever situated.

- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (f) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality, or of any instrumentality thereof.
- (g) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- (h) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (i) To conduct its affairs, carry on its operations and have offices and exercise the powers granted by the provisions of Chapter 11, Title 30, Idaho Corporation Code, as that act presently exists or as it may be amended in the future, in any state, territory, district or possession of the United States or in any foreign country.
- (j) To elect or appoint any committees and any officers or agents of the corporation as the Board of Directors may determine and to define their duties and fix the compensation to be paid to any officer or agent.
- (k) To make and alter By-Laws not inconsistent with these Articles of Incorporation or with the Laws of the State of Idaho for the administration and regulation of the affairs of the corporation.
- (l) To make donations for the general welfare of the Idaho State University and for charitable, scientific, literary, and educational purposes incident to the operation of the Idaho State University.
- (m) To indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation whether for profit or not for profit against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be otherwise entitled.
- (n) To cease its corporate activities and surrender its corporate franchise, or to merge with similar non-profit corporations.

- (o) To have and exercise all powers necessary or convenient to effect any and all of the purposes for which the corporation is organized and exists.
- (p) To execute trust agreements and accept and administer trust funds relating to the purposes for which the corporation has been organized and exists and not in conflict with the exempt status of the corporation under the Internal Revenue Code.
- (q) To pay the reasonable and necessary expenses for the operation of the corporation out of the principal or income from gifts, grants, devises or bequests made expressly for that purpose or unrestricted as to their use by the donors or unless expressly provided to the contrary by the agreement controlling the use of such funds, from income received from other gifts, grants, devises or bequests during the period said funds are held by the foundation and are not required for the purposes specified by the donor, grantor or testator.
- (r) Unless otherwise specifically restricted by the donor, grantor, or testator, the corporation shall have and possess the following powers with reference to its investments:
  - (1) To receive and accept in kind and to hold and administer as an investment as long as it shall seem to it best, any and all property which may come to it without liability for depreciation or loss through errors of judgment or otherwise.
  - (2) To mingle funds of different gifts for the purpose of investment and reinvestment.
  - (3) To acquire, invest, reinvest, exchange, retain, sell or otherwise dispose of stocks, bonds, or other securities in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence generally exercise in the management of their own affairs, not in regard to speculation but in making investments of their own funds with a view to probable increase of principal as well as safety of their capital and current income. Within the limitations of this standard, the corporation is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment including specifically, but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, stocks, preferred or common, and real estate mortgages and to retain any property properly acquired without limitation as to time and without regard to its suitability for original purchase. The corporation shall not be limited or restricted to authorized investments for trustees under the laws of Idaho or any other law as now existing or as hereafter enacted.
  - (4) To determine whether money or other property received is principal or income, or partly one and partly the other; and to charge and apportion expenses and losses to principal and income as it may deem just and equitable; to make good any "wasting investment," losses of principal or premiums paid for securities, out of income over such periods of time as it may deem advisable.

- (5) To invest and reinvest expendable principal received by the Foundation for specific purposes but not presently required for the purposes specified by the donor, grantor or testator in such investments as the Board of Directors shall determine after taking into account the time when said principal funds will be required and the necessity to preserve said funds without loss of principal and to use or accumulate the net income received therefrom for reasonable expenses or operations of the Foundation, as the Board of Directors shall determine; provided, such expendable principal funds shall be available when required for use for the purposes specified by the donor, grantor or testator.

## V.

## REGISTERED OFFICE AND AGENT

The official registered office of the corporation shall be in the Administration Building on the Idaho State University Campus, Pocatello, Idaho. The Resident agent of the corporation until otherwise designated by the Board of Directors is Herman J. McDevitt, address: First Security Bank Building, Pocatello, Idaho. The Board of Directors from time to time by appropriate resolution shall have the power and authority to change the location of the registered office of the corporation and to change the designation of the resident agent of the corporation.

## VI.

## THE BOARD OF DIRECTORS

(1) The affairs of the corporation shall be conducted by a Board of Directors of at least three members. The exact number of Directors shall be fixed from time to time by the By-Laws of the corporation. Until otherwise provided by the By-Laws, and until their successors are elected and qualified the Board of Directors shall consist of the following members: Dee Bogert, Member, State Board of Education; Dr. William E. Davis, President Idaho State University; Dr. Donald F. Kline; Frank D. Seelye; William J. Ryan, Jr., Executive Secretary of Alumni Association; Herman J. McDevitt, Attorney; and . Charles H. Kegel. In addition, the President of the Foundation and the Treasurer are ex-officio members of the Board.

(2) The qualifications of members of the Board, their manner of selection and the voting rights of ex-officio members shall be determined by the By-Laws.

(3) The real estate and personal property of the corporation shall be under the complete control of the Board of Directors which is charged with the responsibility of administering and expending said property in accordance with the purposes for which the corporation has been organized and exists and in accordance with the terms and conditions of the gift, grant, devise or bequest under which the corporation has received the property in question. The Board of Directors may appoint an Investment Committee and may also appoint a fiscal agent or agents to handle its investments and financial affairs in such manner as may be determined advisable by the Board.

## VII.

## ORIGINAL INCORPORATORS

The names and Post Office addresses of the incorporators, who shall serve as Trustees until their successors are elected and qualified are:

Name	Address
Charles H. Hazel	161 16th Place
Frank D. Dooley	Pocatello, Idaho
William J. Ryan	724 So 19th Pocatello Idaho
E. A. Bogert Jr.	300 myer st.
Yonace H. H. H.	Pocatello, Idaho
William E. Davis	28 Willowood
Thomas J. Miller	Pocatello, Idaho
	42 Calgate
	Pocatello, Idaho
	341 S 7th
	Pocatello, Idaho



## VIII.

## BOARD OF TRUSTEES

The corporation shall have a Board of Trustees which shall be unlimited in number. Members of the Board shall serve without compensation of any kind. The qualifications and method of selection of trustees shall be determined by the By-Laws. The Board of Trustees shall have the power to adopt amendments to these Articles of Incorporation and shall elect the Directors of the corporation in such manner as shall be provided by the By-Laws.

In addition the holders of the following offices are trustees by virtue of their office: President of the Idaho State University, the Secretary of the Idaho State University Alumni Association, a member of the Board of Trustees of the Idaho State University to be designated by the Board of Trustees and the President of the Idaho State University Alumni Association.

## ARTICLE IX.

## AMENDMENTS

These Articles of Incorporation may be amended at any time in the manner and form provided by the Idaho Code as existing at the time of the adoption of these Articles of Incorporation or as provided by any other applicable law but no amendment may be adopted which changes or affects in any way the exempt status of the corporation as an organization existing exclusively for charitable, educational, literary or scientific purposes.

## CERTIFICATE

IN WITNESS WHEREOF, the undersigned President and Secretary of the corporation hereby certify and state that these Articles of Incorporation were adopted by the incorporators of the Idaho State University Foundation, Inc. at a special meeting of said incorporators held at the Conference Room; Administration Building, on February 9, 1967, that a quorum was present at such meeting and that these Articles received unanimous approval of the incorporators, and members present at said meeting.

That due notice of said meeting and purposes thereof was given by publication in the Idaho State Journal, a legal newspaper as provided by law. That the Directors & Trustees herein named were elected at such meeting pursuant to such notice.

William E. Davis  
President

Donald F. Kline  
Secretary

STATE OF IDAHO            )  
                                  : ss  
County of Bannock        )

On this 13 day of March, 1967, before me the undersigned, a Notary Public in and for Bannock County, Idaho, personally appeared Wm. E. Davis and Donald F. Kline, to me known to be the President and Secretary, respectively, of the Idaho State University Foundation, Inc., and upon being first duly sworn upon oath, deposed and stated that the facts set forth in the foregoing instrument and certificate were in all respects true and correct.

Hermon J. McDevitt  
Notary Public for Idaho  
Residing at Pocatello, Idaho

## IDAHO STATE UNIVERSITY

Office of the Director  
Development and Institutional Research  
POCATELLO, IDAHO  
83201

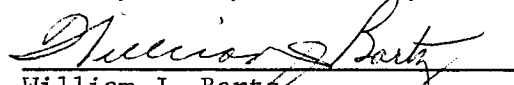
March 13, 1967

UNIVERSITY FOUNDATION

It was moved by Mr. Smith, seconded by Mr. Hampton, and carried, that the State Board of Education, acting as Trustees for Idaho State University, approve the use of the name "Idaho State University" for the proposed corporation to be known as the Idaho State University Foundation, Inc. In accordance with Section 2, A, of the By-Laws of the Idaho State University Foundation, Inc., the State Board of Education names ~~Dec Bogert~~ to serve on the Board of Directors of the Foundation. Edmund A. Bogert, Jr.

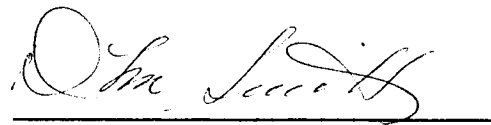
Copies of the Articles of Incorporation and the By-Laws are attached for the information of the Board. (Appendix B.)

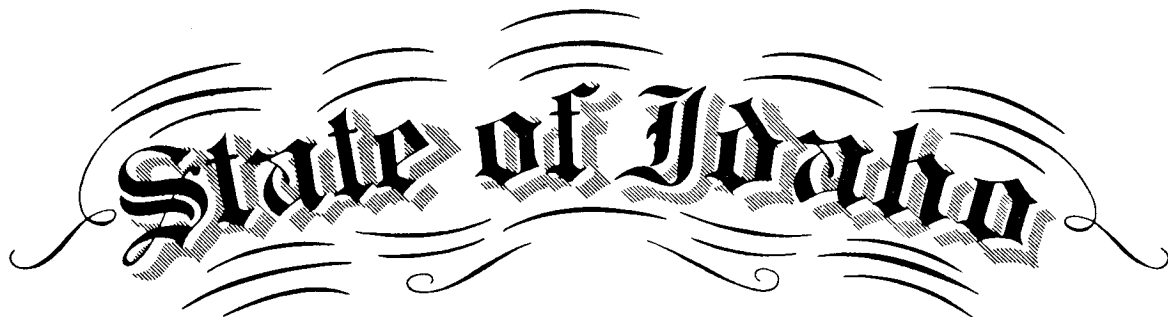
This is to certify that the foregoing is an exact and true excerpt taken from the minutes of the State Board of Education acting as trustees for Idaho State University in a duly called meeting in Moscow, Idaho, March 2-3, 1967.

  
William J. Bartz  
Financial Vice President

STATE OF IDAHO     )  
                              :    ss  
County of Bannock    )

On this 13th day of March, 1967, before me the undersigned, a Notary Public in and for Bannock County, Idaho, personally appeared Mr. William J. Bartz to me known to be the Financial Vice President of Idaho State University and upon being first duly sworn upon oath, deposed and stated that the facts set forth in the foregoing instrument were in all respects true and correct.

  
Notary Public for Idaho  
Residing at Pocatello, Idaho.



**CERTIFICATE OF AMENDMENT  
OF**

**IDAHO STATE UNIVERSITY FOUNDATION, INC.**

**IDAHO STATE UNIVERSITY FOUNDATION, INC.**

duly signed and certified pursuant to the provisions of the Idaho Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Amendment to the Articles of Incorporation and attach hereto a duplicate original of the Articles of Amendment.

Dated May 13 19 83



*Pete H. Chesser*

SECRETARY OF STATE

Corporation Clerk

MAY 13 8 35 AM '83  
SECRETARY OF STATE

MAY 5 8 52 AM '83  
SECRETARY OF STATE

AMENDMENT OF ARTICLES OF INCORPORATION OF  
IDAHO STATE UNIVERSITY FOUNDATION, INC.

Harry F. Magnuson, President, and Dennis Holter,  
Executive Vice President/<sup>Secretary</sup> of the above-named corporation,  
respectfully show that:

The above-named corporation was organized under the laws of the State of Idaho and was issued a charter by the Secretary of State dated February 9, 1967, with its principal place of business in Pocatello, Bannock County, Idaho.

The undersigned, the duly elected and qualified President and Executive Vice President/<sup>Secretary</sup> of the said corporation, hereby certify that statutory notice was given to each Director of the said corporation of a special meeting of Directors to be held on April 22, 1983, and notice stated the time and place of meeting and the purposes thereof.

And, further, that the meeting was duly held pursuant to notice, and a resolution was offered and unanimously adopted by vote of said Directors/<sup>members</sup> to amend Articles V and VIII of the Articles of Incorporation of said corporation to read as follows:

"V.

REGISTERED OFFICE AND AGENT

The official registered office of the corporation shall be in the Administration Building on the Idaho State University Campus, Pocatello, Idaho. The resident agent of the corporation until otherwise designated by the Board of Directors is

Dennis A. Holter, address: Campus Box 8050, Idaho State University, Pocatello, Idaho. The Board of Directors from time to time by appropriate resolution shall have

## "VIII.

## BOARD OF TRUSTEES

The corporation may have a Board of Trustees which shall be unlimited in number. Members of the Board of Trustees shall serve without compensation and without requirements for duties or responsibilities. The qualifications and method of selection of Trustees shall be determined by the By-Laws."

And, further, your petitioners certify that they have complied in all respects with the laws of the State of Idaho and amendments thereto to amend the Articles of Incorporation of the Idaho State University Foundation, Inc.

WHEREFORE, we pray that the said Articles of Incorporation of the Idaho State University Foundation, Inc. be so amended.

DATED and signed this 22<sup>nd</sup> day of April, 1983.

IDAHO STATE UNIVERSITY  
FOUNDATION, INC.

By: *W. Magnuson*  
President

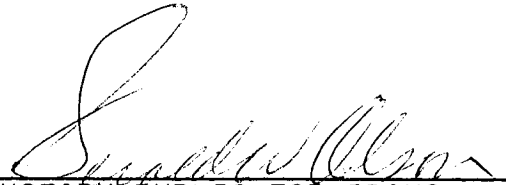
ATTEST:

*Dennis A. Holter*  
Executive Vice President & Secretary

STATE OF IDAHO       )  
                              :    ss  
County of Bannock    )

I, Gerald W. Olson, a Notary Public, do hereby certify that on this 22<sup>nd</sup> day of April, 1983, personally appeared before Harry F. Magnuson, who, being by me first duly sworn

President of the corporation, and that the statements therein contained are true.

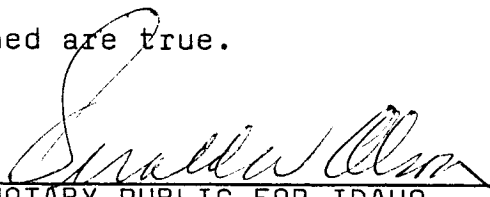
  
 NOTARY PUBLIC FOR IDAHO  
 Residing at Pocatello, Idaho

(SEAL)

My Commission Expires: Lifetime

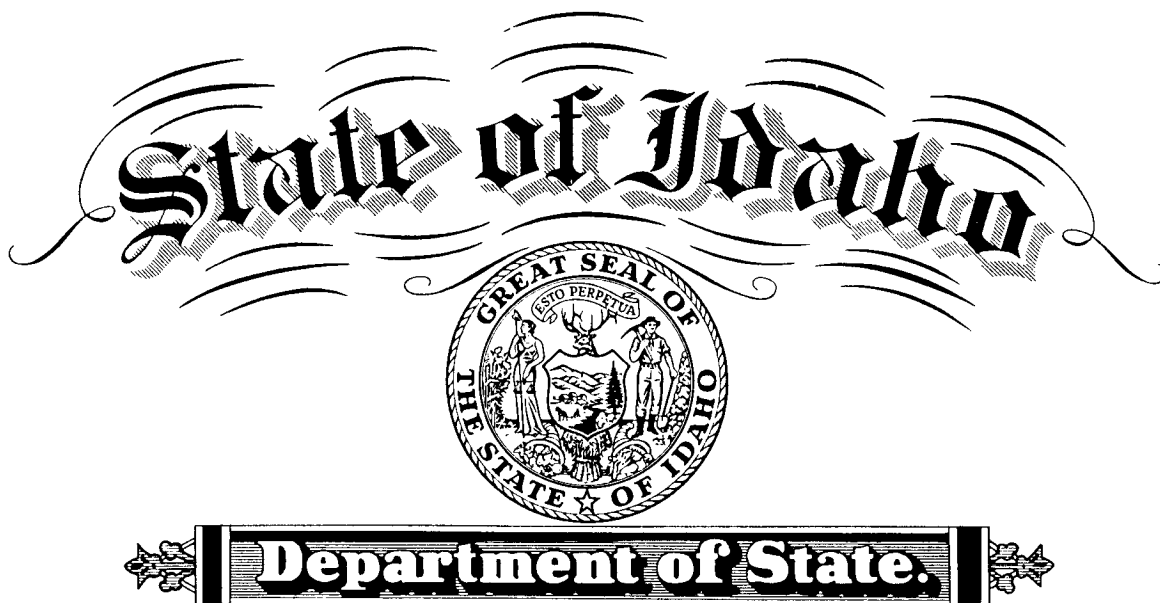
STATE OF IDAHO       )  
                               : ss  
 County of Bannock    )

I, Gerald W. Olson, a Notary Public, do hereby certify that on this 22<sup>nd</sup> day of April, 1983, personally appeared Dennis Holter, who, being by me first duly sworn, declared that he is the Executive Vice President of the Idaho State University Foundation, Inc., that he signed the foregoing document as Executive Vice President of the corporation, and that the statements therein contained are true.

  
 NOTARY PUBLIC FOR IDAHO  
 Residing at Pocatello, Idaho

(SEAL)

My Commission Expires: Lifetime



## CERTIFICATE OF INCORPORATION

EDSON H. BEAL  
~~XXXXXXXXXXXXXXXXXXXX~~ Secretary of State of the State of Idaho, and legal custodian of the corporation records of the State of Idaho, do hereby certify that the original of the articles of incorporation of

### IDAHO STATE UNIVERSITY FOUNDATION, INC.

was filed in the office of the Secretary of State on the Seventeenth day of March A. D. One Thousand Nine Hundred Sixty-seven and will be microfilm ~~XXXXXX~~ duly recorded on ~~XXXXXX~~ of Record of Domestic Corporations of the State of Idaho, and that the said articles contain the statement of facts required by Sections 30-103, 30-1101 and 30-1102, Idaho Code.

AND I FURTHER CERTIFY That the persons executing the articles and their associates and successors are hereby constituted a corporation, by the name stated in the articles, and for perpetual existence from the date hereof, with its registered office in this State located at Pocatello in the County of Bannock and as such are subject to the rights, privileges and limitations granted to Religious, Ex-Service Men, Benevolent, Charitable and Fraternal Corporations, as provided in Chapter 11, Title 30, Idaho Code.

IN TESTIMONY WHEREOF, I have hereunto

set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho.



Amended and Restated Bylaws  
of  
Idaho State University Foundation, Inc.

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## **Article I Purpose and Duration of the Foundation**

The Idaho State University Foundation, Inc., an Idaho nonprofit corporation (the "Foundation") exists for the purpose of soliciting, securing and managing various sources of funding to promote the growth and operations of Idaho State University in the furtherance of the University's goals to provide a meaningful and valued educational experience for its students. The Foundation shall have no termination date and shall exist in perpetuity.

## **Article II Offices**

Section 2.01 Principal Office. The principal office of the Foundation shall be located at the administrative building on the Idaho State University Campus. The Foundation may have such other offices as the Board of Directors (the "Board") may designate or as the business of the Foundation may require from time to time.

Section 2.02 Registered Office. The registered office of the Foundation to be maintained in the state of Idaho shall be located at the principal office of the Foundation, and may be changed from time to time by the Board.

## **Article III Board of Directors**

Section 3.01 General Powers and Standard of Care. All corporate powers shall be exercised by or under authority of, and the business and affairs of the Foundation shall be managed under the direction of, the Board except as may be otherwise provided in the Idaho Nonprofit Corporation Act (the "Act") or the Articles of Incorporation (the "Articles"). If any such provision is made in the Articles, the powers and duties conferred or imposed upon the Board by the Act shall be exercised or performed to such extent and by such person or persons as shall be provided in the Articles.

A Director shall perform such Director's duties as a Director, including such Director's duties as a member of any committee of the Board upon which such Director may serve, in good faith, in a manner such Director reasonably believes to be in the best interests of the Foundation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such Director's duties, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One (1) or more officers or employees of the Foundation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or

(c) A committee of the Board upon which such director does not serve, duly designated in accordance with a provision of these Bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but such director shall not be considered to be acting in good faith if such director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs such duties shall have no liability by reason of being or having been a director of the Foundation.

**Section 3.02 Composition and Term.** There shall be a Board of Directors of the Foundation consisting of no more than twenty-five (25) voting directors. Directors shall be elected by the Board for a term of three (3) years and shall not serve more than three (3) consecutive terms, unless elected President or Vice President ("VP") of the Foundation. The President shall also serve as Chairperson of the Board ("CoB"). The term of the director elected CoB/President shall be extended an additional one year after the completion of service as CoB/President, unless the maximum of three terms has not been reached, in which case he or she will serve the remainder of his or her three terms. After the maximum of three (3) terms on the Board, an outgoing director shall automatically move into Associate status and may be re-elected to the Board after a term of absence from the Board of at least one (1) year.

**Section 3.03 Method of Selection.** Nomination to the Board may be made by any member of the Board, any ex officio members of the Board or any Board Associate. Nominations should be submitted in writing to a member of the Nominating Committee of the Board. The Nominating Committee will review the nominees and present a slate of potential nominees to the Board for election when vacancies occur on the Board.

**Section 3.04 Qualifications.** Any person of good moral character having a genuine interest in the objects of the Foundation may be qualified as a member of the Board without regard to his or her place of residence, whether he or she has attended Idaho State University or any other similar factor.

**Section 3.05 Ex Officio Membership.** The following shall be ex officio members of the Board of this Foundation:

- (a) The President of Idaho State University;
- (b) The Vice President for University Advancement at Idaho State University ("EVP");
- (c) The Secretary of the Foundation;
- (d) The Treasurer of the Foundation;
- (e) The President of the Idaho State University Alumni Association;

(f) **Counsel for the Foundation; and**

(g) **An ISU Faculty Member periodically appointed or elected by the ISU Faculty Senate to perform an active role in fund-raising for the University.**

Unless they are also current voting directors, ex officio members of the Board shall not vote on matters being considered by the Board.

**Section 3.06 Meetings of the Board of Directors.**

(a) The Board shall meet semi-annually and at such other times as meetings may be called. The CoB, VP, or the EVP shall have the right to call any meeting of the Board at any time and place by giving no less than five (5) days notice to the Board of the time and place of such meeting.

(b) Any Board action to remove a director, shall require no less than seven (7) days written notice to each director that the matter will be voted on at a Board meeting. Such notice shall also include the time and place of such meeting.

(c) A director may, at any time before, during or after a Board meeting, waive any notice required by law, the Articles, or these Bylaws. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Foundation records.

A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with law, the Articles, or these Bylaws objects to lack of notice and does not thereafter vote for or assent to the objected action.

(d) No less than half of the voting membership of the Board plus one shall constitute a quorum at any meeting and, unless otherwise provided by law or by the Articles, action of the Board shall be controlled by majority action of the voting directors present at any meeting.

(e) The Board shall keep a record of its proceedings and shall make a detailed report available to the directors, the officers, including ex officio officers of the Foundation, and Board Associates.

**Section 3.07 Committees of the Board of Directors.**

(a) **Executive Committee.** The Executive Committee shall be responsible for personnel matters, and recommendations for Board action. The Executive Committee shall be a standing committee consisting of the CoB, EVP, and VP of the ISU Foundation and two (2) other directors. The other directors serving on the Committee shall be elected annually by the Board. The Secretary and the Treasurer of the Foundation shall serve as ex officio members of the Committee.

(b) **Investment Committee.** The Investment Committee shall be a standing committee of at least three (3) members of the Board and such other persons as may be determined by the Board. This committee shall be elected annually by the Board. The Investment Committee shall recommend investment policy and investment transactions. Said committee is authorized to buy and sell stocks, bonds and securities from any list of investments approved by the Board as qualified investments for the Foundation; subject, however, to any restrictions in any controlling instruments relating to the funds to be invested and subject to statements of investment policy of the Board then in effect. The Treasurer of the Foundation shall serve as an ex officio member of the Committee.

(c) **Nominating Committee.** The Nominating Committee shall be a standing committee consisting of at least three (3) members of the Board. This committee shall be elected annually by the Board. The Committee shall be responsible for submitting to the Board for election a list of potential nominees for the offices of VP, Secretary and Treasurer and for vacancies occurring on the Board. The Committee shall accept nominations for vacancies on the Board from members of the Board, from ex officio officers and from Board Associates. The Committee shall review the list of potential nominees, determine the nominees' willingness to serve and submit the list of nominees with recommendation to the Board prior to each election.

(d) **Audit Committee.** The Audit Committee shall provide oversight for Foundation financial statement integrity, financial practices, internal control systems, financial management, and financial standards of conduct. The Audit Committee shall be a standing committee of at least three (3) members of the Board and such other persons as may be determined by the Board. This committee shall be elected annually by the Board. Each member of this committee shall be free from any relationship that would interfere with the exercise of his or her independent judgment. At least one member of this committee shall have current accounting or related financial management expertise in the following areas:

1. an understanding of generally accepted accounting principles, experience in preparing, auditing, analyzing, or evaluating complex financial statements, and;
2. experience in preparing or auditing financial statements; and
3. an understanding of internal controls.

(e) **Other Committees.** The Board shall have the right to create any other

committee from time to time to assist in accomplishing the duties and the responsibilities of the Foundation. Membership on any committee need not be limited to members of the Board or Board Associates.

Section 3.08 Vacancies. Any vacancy occurring on the Board and any directorship to be filled by reason of any increase in the number of directors shall be filled by the Board based on nominations received from the Nominating Committee. The term of any directorship arising due to vacancy or increase in the number of directors shall be three (3) years and shall be subject to the term limits described in Section 3.02 above.

Section 3.09 Removal of Directors.

(a) Removal for Cause. Any director may be removed from office for cause by a two-thirds (2/3) majority vote of the total directors then in office.

(b) Removal for Unexcused Absences. A director may be removed from office after two (2) unexcused absences of any Board meeting within any twelve-month period, provided that a majority of the total directors then in office vote for such removal.

Section 3.10 Informal Action. Any action required to be taken at a meeting of the Board of directors may be taken without a meeting if a majority of the directors agree to such action either via electronic mail or in writing.

Section 3.11 Open Meetings. It is the intent of the Foundation to conduct its business in open sessions whenever possible. However, the meeting shall be closed in those circumstances where the Board is discussing or acting upon strategy with respect to litigation; discussing the purchase of real property not owned by a public agency; interviewing prospective Foundation employees; or considering the evaluation, dismissal or disciplining of, or hearing complaints or charges brought against, a Foundation employee or staff member.

On any other matter which the Board feels must be dealt with in a confidential manner, the Board may close its meeting to the non-Board members of the Foundation and the general public. An affirmative two-thirds (2/3) vote of the Board members present is necessary to close the meeting. The Board shall take no final action or make any final decision in closed meeting.

Section 3.12 Director Conflicts of Interest. All members of the Board shall comply with all provisions of the Conflict of Interest Policy as set forth in Article VI below.

Section 3.13 Loans to Directors. The Foundation shall not lend money to or guarantee the obligation of a director.

**Article IV Board Associates**

The Foundation shall have honorary Associates to provide advisory services to the  
**AMENDED AND RESTATED BYLAWS OF**  
**IDAHO STATE UNIVERSITY FOUNDATION, INC.**

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Foundation. The Associates are individuals who have previously served on the Board for the Foundation. Directors who have completed three (3) terms on the Board will automatically be eligible to serve as an Associate, unless they decline to do so. Associates shall be unlimited in number and shall serve until resignation or until removal by a majority vote of the Board. Associates shall be invited to all regular meetings of the Board, though they shall not be required to attend. Associates may not vote on matters being considered by the Board.

## **Article V      Officers**

Section 5.01 Designation and Method of Selection. Officers of the Foundation shall consist of the President (who also serves as Chairperson of the Board), Vice President ("VP"), Executive Vice President ("EVP"), Secretary and Treasurer. Except as otherwise provided herein, the officers shall be elected by the Board and, other than the CoB/President and VP, shall serve at the pleasure of the Board or until their respective successors are duly elected and qualified. The term of the CoB/President and VP shall be two years. Persons elected as either CoB/President or VP shall be current members of the Board at the time of their election and term of service. The VP will automatically assume the role of CoB/President at the end of the term of the previous CoB/President. Persons elected as Secretary or Treasurer shall be then current members of either the Board or Board Associates. Any vacancies in any office shall be filled by the Board at any regular or special meeting of the Board from nominees provided by the nominating committee. The terms of officers as described herein may be increased or decreased by majority vote of the Board members present at the meeting at which such increase or decrease is voted on, provided a quorum is present.

Should special circumstances exist, the Board may, by majority vote of the directors present at the meeting at which such matter shall be considered and the concurrence of the CoB/President, temporarily divide the office of the CoB/President into two separate roles of CoB and President with the CoB/President assuming one of the roles and the other role being filled by the former CoB/President or another qualified member of the Board. Such division of roles shall be for a period not to exceed one year. The directorship term limits provided in Section 3.02 above shall apply to situations described in this paragraph as follows: The directorship term of the former CoB/President, or other qualified Board member, serving in the temporary role described in this paragraph shall be extended an additional one year after the completion of such service, unless the maximum of three terms as described in Section 3.02 above has not been reached, in which case he or she will serve the remainder of his or her three terms.

## Section 5.02 Duties of the Officers.

(a) The CoB/President shall preside at all meetings of the Board. He or she shall have and possess all of the powers and duties ordinarily incident to the office or as may be assigned by the Board.

(b) The Vice President shall act in behalf of and carry out all of the duties of

**AMENDED AND RESTATED BYLAWS OF  
IDAHO STATE UNIVERSITY FOUNDATION, INC.**

the CoB/President in the absence or inability to act of the CoB/President. He or she shall have and possess all of the powers and duties ordinarily incident to the office or as may be assigned by the Board. The VP will automatically assume the role of CoB/President at the end of the term of the previous CoB/President.

(c) The Executive Vice President of the Foundation shall devote such time as directed by the Board to the affairs of the Foundation. The Vice President for University Advancement of Idaho State University shall concurrently serve by virtue of that office, as the Executive Vice President of the Idaho State University Foundation. He or she shall have and possess all of the duties and powers ordinarily incident to the office of Executive Vice President and such other duties and powers as may be assigned by the Board.

(d) The Secretary of the Foundation shall have and possess such duties as are ordinarily incident to the office or as may be assigned by the Board. The Secretary shall be responsible for advising the Board regarding compliance with the various bylaws and requirements of the Foundation.

(e) The Treasurer of the Foundation shall have and possess such duties as are ordinarily incident to the office or as may be assigned by the Board. The Treasurer shall work directly with the Investment Committee to develop and implement investment strategies for the Foundation.

It is not expected that any officer, other than the EVP, shall devote his or her full time to the affairs of the Foundation unless otherwise directed by the Board at the time of his or her election and with his or her consent.

Section 5.03 Removal. Any officer elected or appointed by the Board may be removed by an affirmative vote of two-thirds (2/3) of the total Board whenever, in its judgment, the best interest of the Foundation would be served thereby.

Section 5.04 Officer Conflict of Interest. All officers shall comply with all provisions of the Conflict of Interest Policy as set forth in Article VI below.

Section 5.05 Loans to Officers. The Foundation shall not lend money to or guarantee the obligation of an officer.

## **Article VI Conflict of Interest Policy**

Section 6.01 Purpose. The purpose of the conflict of interest policy is to protect the Foundation's interest when it is contemplating entering into a contract, transaction, or arrangement that might benefit the private interest of an officer or director of the Foundation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

**Section 6.02 Definitions.**

(a) **Interested Person.** Any director, officer, or member of a committee with Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

(b) **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business or investment, or a member of the person's family has:

- (i) A position as an officer, director, trustee, partner, employee, or agent of any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
- (ii) An ownership or investment interest in any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
- (iii) A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has or is considering a contract, transaction, or arrangement;
- (iv) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is considering or negotiating a contract, transaction, or arrangement; or
- (v) Any other direct or indirect dealings with any entity from which he or she knowingly benefitted (e.g., through receipt directly or indirectly of cash or other property in excess of \$500 a year exclusive of dividends or interest) and with which the Foundation has, is considering, or is negotiating a contract, transaction, or arrangement.

The term "a member of the person's family" means the person's spouse, parent, step-parent, guardian, brother, sister, step-brother, step-sister, mother-in-law, father-in-law, child, stepchild, grandmother, grandfather, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, first cousin, or grandchild.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 6.03 Paragraph (b), a person who has a financial interest may have a conflict of interest only if the appropriate Board or committee decides that a conflict of interest exists.

**Section 6.03 Procedures**

(a) **Duty to Disclose.** At the first knowledge of the possibility, creation, or

**AMENDED AND RESTATED BYLAWS OF  
IDAHO STATE UNIVERSITY FOUNDATION, INC.**

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existence of a financial interest as described above, the interested person must disclose to the Board the existence of the financial interest and any and all relevant and material facts known to the interested person about the proposed or existing contract, transaction, or arrangement that might reasonably be construed to be adverse to the Foundation's interest. The interested person must be given the opportunity to disclose all other material facts to the directors and members of committees with Board delegated powers considering the proposed contract, transaction, or arrangement.

(b) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

(c) Procedures for Addressing the Conflict of Interest.

1. An interested person may make a presentation at the Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the contract, transaction, or arrangement involving the possible conflict of interest.
2. The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed contract, transaction, or arrangement.
3. After exercising due diligence, the Board or committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous contract, transaction, or arrangement from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous contract, transaction, or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the contract, transaction, or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the contract, transaction, or arrangement.
5. Such contract, transaction, or arrangement shall only be authorized, approved, or ratified upon the affirmative vote of a majority of the directors of the Board then in office, or a majority of the committee members, who are not interested persons as described above.

**Section 6.04 Violations of the Conflicts of Interest Policy.**

(a) If the Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Section 6.05 Records of Proceedings.** The minutes of the Board and all committees with board delegated powers shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the contract, transaction, or arrangement, the content of the discussion, including any alternatives to the proposed contract, transaction, or arrangement, and a record of any votes taken in connection with the proceedings.

**Section 6.06 Compensation.**

(a) A voting member of the Board who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

(b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

(c) No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Section 6.07 Annual Statements.** Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

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- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy,
- (c) Has agreed to comply with the policy, and
- (d) Understands the Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**Section 6.08 Periodic Reviews.** To ensure the Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

**Section 6.09 Use of Outside Experts.** When conducting the periodic reviews as provided for in Section 6.08, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

**Section 6.10 Foundation Conflicts.** The Foundation acting through its officers and directors will make a good faith attempt to avoid conflicts of interest between the Foundation and Idaho State University and its Board, and will not, without approval of the Board of the Foundation, borrow funds from, or otherwise obligate Idaho State University.

## **Article VII Audits and Reports**

The Board shall cause an annual audit or review of the accounts of the Foundation to be made by a competent public accountant to be selected by the Board. The accountant shall make an annual report on the audit to the Board. The Board shall have the right, at any reasonable time, to cause an additional audit or request information be provided by the accountant regarding such accounts.

## **Article VIII      Miscellaneous**

**Section 8.01 Indemnification.** The Foundation shall indemnify any director, officer or former director or officer of the Foundation against expenses actually and reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he or she is made a party by reason of being or having been a director or officer, except in relation to matters as to which he or she is adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty to the Foundation.

**Section 8.02 Investment.** Any funds of the Foundation which are not needed currently for the activities of the Foundation may, at the discretion of the Board, be invested in such investments as are permitted by law.

**Section 8.03 Depositories.** All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, savings and loan associations, trust companies, or other depositories as the Board may elect.

**Section 8.04 Contracts.** The Board may authorize any officer(s) or agent(s) of the Foundation, in addition to the officers authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances.

**Section 8.05 Checks, Drafts, Etc.** All checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Foundation shall be signed by such persons and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instrument shall be signed by the Treasurer

**Section 8.06 Fiscal Year.** The fiscal year of the Foundation shall end on the last day of June of each year.

**Section 8.07 Books and Records.** The Foundation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board, and committees having any of the authority of the Board, and shall keep a record giving the name and address of the members entitled to vote. All books and records of the Foundation may be inspected by any member or his agent or attorney or the general public for any proper purpose at any reasonable time.

**Section 8.08 Nondiscrimination.** This Foundation is an equal opportunity employer and shall make available its services without regard to race, creed, age, sex, color, ancestry, or national origin.

**Section 8.09 Political Activity.** The Foundation shall not, in any way, use corporate funds in the furtherance of, nor engage in, any political activity for or against any candidate for public office. However, this Bylaw shall not be construed to limit the right

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of any official or member of this Foundation to appear before any legislative committee, to testify as to matters involving the Foundation.

Section 8.10 Gifts. The Board may accept, on behalf of the Foundation, any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the Foundation.

Section 8.11 Parliamentary Procedure. All meetings of the Board and membership shall be governed by *Roberts' Rules of Order* (Current Edition), unless contrary procedure is established by the Articles or these Bylaws, or by resolution of the Board.

## **Article IX     Amendments**

These Bylaws may be amended by the Board at any special meeting of such Board called for that purpose by an affirmative vote of a majority of the voting directors at such meeting. Notice of any proposed amendment shall be mailed by United States mail or by electronic mail to each director and to each person entitled to notice of Board meetings at his or her last known address not less than ten (10) days preceding the meeting at which such amendment will be submitted to a vote. This meeting may be conducted in person, by telephone, or by electronic mail. A quorum of the Board must participate.

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**EXHIBIT “E”**

**Foundation Conflict of Interest Policy**

(Also included in Foundation’s Amended & Restated Bylaws, pp. 7-11).

the CoB/President in the absence or inability to act of the CoB/President. He or she shall have and possess all of the powers and duties ordinarily incident to the office or as may be assigned by the Board. The VP will automatically assume the role of CoB/President at the end of the term of the previous CoB/President.

(c) The Executive Vice President of the Foundation shall devote such time as directed by the Board to the affairs of the Foundation. The Vice President for University Advancement of Idaho State University shall concurrently serve by virtue of that office, as the Executive Vice President of the Idaho State University Foundation. He or she shall have and possess all of the duties and powers ordinarily incident to the office of Executive Vice President and such other duties and powers as may be assigned by the Board.

(d) The Secretary of the Foundation shall have and possess such duties as are ordinarily incident to the office or as may be assigned by the Board. The Secretary shall be responsible for advising the Board regarding compliance with the various bylaws and requirements of the Foundation.

(e) The Treasurer of the Foundation shall have and possess such duties as are ordinarily incident to the office or as may be assigned by the Board. The Treasurer shall work directly with the Investment Committee to develop and implement investment strategies for the Foundation.

It is not expected that any officer, other than the EVP, shall devote his or her full time to the affairs of the Foundation unless otherwise directed by the Board at the time of his or her election and with his or her consent.

Section 5.03 Removal. Any officer elected or appointed by the Board may be removed by an affirmative vote of two-thirds (2/3) of the total Board whenever, in its judgment, the best interest of the Foundation would be served thereby.

Section 5.04 Officer Conflict of Interest. All officers shall comply with all provisions of the Conflict of Interest Policy as set forth in Article VI below.

Section 5.05 Loans to Officers. The Foundation shall not lend money to or guarantee the obligation of an officer.

## **Article VI     Conflict of Interest Policy**

Section 6.01 Purpose. The purpose of the conflict of interest policy is to protect the Foundation's interest when it is contemplating entering into a contract, transaction, or arrangement that might benefit the private interest of an officer or director of the Foundation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

**Section 6.02 Definitions.**

(a) **Interested Person.** Any director, officer, or member of a committee with Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

(b) **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business or investment, or a member of the person's family has:

- (i) A position as an officer, director, trustee, partner, employee, or agent of any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
- (ii) An ownership or investment interest in any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
- (iii) A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has or is considering a contract, transaction, or arrangement;
- (iv) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is considering or negotiating a contract, transaction, or arrangement; or
- (v) Any other direct or indirect dealings with any entity from which he or she knowingly benefitted (e.g., through receipt directly or indirectly of cash or other property in excess of \$500 a year exclusive of dividends or interest) and with which the Foundation has, is considering, or is negotiating a contract, transaction, or arrangement.

The term "a member of the person's family" means the person's spouse, parent, step-parent, guardian, brother, sister, step-brother, step-sister, mother-in-law, father-in-law, child, stepchild, grandmother, grandfather, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, first cousin, or grandchild.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 6.03 Paragraph (b), a person who has a financial interest may have a conflict of interest only if the appropriate Board or committee decides that a conflict of interest exists.

**Section 6.03 Procedures**

(a) **Duty to Disclose.** At the first knowledge of the possibility, creation, or

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existence of a financial interest as described above, the interested person must disclose to the Board the existence of the financial interest and any and all relevant and material facts known to the interested person about the proposed or existing contract, transaction, or arrangement that might reasonably be construed to be adverse to the Foundation's interest. The interested person must be given the opportunity to disclose all other material facts to the directors and members of committees with Board delegated powers considering the proposed contract, transaction, or arrangement.

(b) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

(c) Procedures for Addressing the Conflict of Interest.

1. An interested person may make a presentation at the Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the contract, transaction, or arrangement involving the possible conflict of interest.
2. The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed contract, transaction, or arrangement.
3. After exercising due diligence, the Board or committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous contract, transaction, or arrangement from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous contract, transaction, or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the contract, transaction, or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the contract, transaction, or arrangement.
5. Such contract, transaction, or arrangement shall only be authorized, approved, or ratified upon the affirmative vote of a majority of the directors of the Board then in office, or a majority of the committee members, who are not interested persons as described above.

**Section 6.04 Violations of the Conflicts of Interest Policy.**

(a) If the Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Section 6.05 Records of Proceedings.** The minutes of the Board and all committees with board delegated powers shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the contract, transaction, or arrangement, the content of the discussion, including any alternatives to the proposed contract, transaction, or arrangement, and a record of any votes taken in connection with the proceedings.

**Section 6.06 Compensation.**

(a) A voting member of the Board who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

(b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

(c) No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Section 6.07 Annual Statements.** Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

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- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy,
- (c) Has agreed to comply with the policy, and
- (d) Understands the Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**Section 6.08 Periodic Reviews.** To ensure the Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

**Section 6.09 Use of Outside Experts.** When conducting the periodic reviews as provided for in Section 6.08, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

**Section 6.10 Foundation Conflicts.** The Foundation acting through its officers and directors will make a good faith attempt to avoid conflicts of interest between the Foundation and Idaho State University and its Board, and will not, without approval of the Board of the Foundation, borrow funds from, or otherwise obligate Idaho State University.

## **Article VII Audits and Reports**

The Board shall cause an annual audit or review of the accounts of the Foundation to be made by a competent public accountant to be selected by the Board. The accountant shall make an annual report on the audit to the Board. The Board shall have the right, at any reasonable time, to cause an additional audit or request information be provided by the accountant regarding such accounts.

## Article VIII      Miscellaneous

Section 8.01 Indemnification. The Foundation shall indemnify any director, officer or former director or officer of the Foundation against expenses actually and reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he or she is made a party by reason of being or having been a director or officer, except in relation to matters as to which he or she is adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty to the Foundation.

Section 8.02 Investment. Any funds of the Foundation which are not needed currently for the activities of the Foundation may, at the discretion of the Board, be invested in such investments as are permitted by law.

Section 8.03 Depositories. All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, savings and loan associations, trust companies, or other depositories as the Board may elect.

Section 8.04 Contracts. The Board may authorize any officer(s) or agent(s) of the Foundation, in addition to the officers authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances.

Section 8.05 Checks, Drafts, Etc. All checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Foundation shall be signed by such persons and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instrument shall be signed by the Treasurer.

Section 8.06 Fiscal Year. The fiscal year of the Foundation shall end on the last day of June of each year.

Section 8.07 Books and Records. The Foundation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board, and committees having any of the authority of the Board, and shall keep a record giving the name and address of the members entitled to vote. All books and records of the Foundation may be inspected by any member or his agent or attorney or the general public for any proper purpose at any reasonable time.

Section 8.08 Nondiscrimination. This Foundation is an equal opportunity employer and shall make available its services without regard to race, creed, age, sex, color, ancestry, or national origin.

Section 8.09 Political Activity. The Foundation shall not, in any way, use corporate funds in the furtherance of, nor engage in, any political activity for or against any candidate for public office. However, this Bylaw shall not be construed to limit the right

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of any official or member of this Foundation to appear before any legislative committee, to testify as to matters involving the Foundation.

Section 8.10 Gifts. The Board may accept, on behalf of the Foundation, any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the Foundation.

Section 8.11 Parliamentary Procedure. All meetings of the Board and membership shall be governed by *Roberts' Rules of Order* (Current Edition), unless contrary procedure is established by the Articles or these Bylaws, or by resolution of the Board.

## **Article IX Amendments**

These Bylaws may be amended by the Board at any special meeting of such Board called for that purpose by an affirmative vote of a majority of the voting directors at such meeting. Notice of any proposed amendment shall be mailed by United States mail or by electronic mail to each director and to each person entitled to notice of Board meetings at his or her last known address not less than ten (10) days preceding the meeting at which such amendment will be submitted to a vote. This meeting may be conducted in person, by telephone, or by electronic mail. A quorum of the Board must participate.

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**EXHIBIT “F”****Idaho State University Foundation****Policy II D Conflict of Interest Policy****I. Purpose**

The purpose of the conflict of interest policy is to protect the Foundation's interest when it is contemplating entering into a contract, transaction, or arrangement that might benefit the private interest of an officer or director of the Foundation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

**II. Definitions**

(a) Interested Person. Any director, officer, or member of a committee with Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

(b) Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business or investment, or a member of the person's family has:

- (i) A position as an officer, director, trustee, partner, employee, or agent of any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
- (ii) An ownership or investment interest in any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
- (iii) A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has or is considering a contract, transaction, or arrangement;
- (iv) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is considering or negotiating a contract, transaction, or arrangement; or
- (v) Any other direct or indirect dealings with any entity from which he or she knowingly benefitted (e.g., through receipt directly or indirectly of cash or other property in excess of \$500 a year exclusive of dividends or interest) and with which the Foundation has, is considering, or is negotiating a contract, transaction, or arrangement.

The term “a member of the person’s family” means the person’s spouse, parent, step-parent, guardian, brother, sister, step-brother, step-sister, mother-in-law, father-in-law, child, stepchild, grandmother, grandfather, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, first cousin, or grandchild.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 6.03 Paragraph (b), a person who has a financial interest may have a conflict of interest only if the appropriate Board or committee decides that a conflict of interest exists.

### **III. Procedures**

(a) Duty to Disclose. At the first knowledge of the possibility, creation, or existence of a financial interest as described above, the interested person must disclose to the Board the existence of the financial interest and any and all relevant and material facts known to the interested person about the proposed or existing contract, transaction, or arrangement that might reasonably be construed to be adverse to the Foundation’s interest. The interested person must be given the opportunity to disclose all other material facts to the directors and members of committees with Board delegated powers considering the proposed contract, transaction, or arrangement.

(b) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

(c) Procedures for Addressing the Conflict of Interest.

1. An interested person may make a presentation at the Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the contract, transaction, or arrangement involving the possible conflict of interest.
2. The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed contract, transaction, or arrangement.
3. After exercising due diligence, the Board or committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous contract, transaction, or arrangement from a person or entity that would not give rise to a conflict of interest.

4. If a more advantageous contract, transaction, or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the contract, transaction, or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the contract, transaction, or arrangement.
5. Such contract, transaction, or arrangement shall only be authorized, approved, or ratified upon the affirmative vote of a majority of the directors of the Board then in office, or a majority of the committee members, who are not interested persons as described above.

#### **IV. Violations of the Conflicts of Interest Policy**

(a) If the Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **V. Records of Proceedings**

The minutes of the Board and all committees with board delegated powers shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the contract, transaction, or arrangement, the content of the discussion, including any alternatives to the proposed contract, transaction, or arrangement, and a record of any votes taken in connection with the proceedings.

#### **VI. Compensation**

(a) A voting member of the Board who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

(b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

(c) No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

## **VII Annual Statements**

Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy,
- (c) Has agreed to comply with the policy, and
- (d) Understands the Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **VIII Periodic Reviews**

To ensure the Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

## **IX Use of Outside Experts**

When conducting the periodic reviews as provided for in Section 6.08, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

### **X      Foundation Conflicts**

The Foundation acting through its officers and directors will make a good faith attempt to avoid conflicts of interest between the Foundation and Idaho State University and its Board, and will not, without approval of the Board of the Foundation, borrow funds from, or otherwise obligate Idaho State University.

Date of Board Approval:

Person responsible for the periodic review of policy and if necessary submits proposed revisions to board for approval: Board Chair

Date of Last Review

**EXHIBIT “G”****Idaho State University Foundation****Policy II C Code of Ethical Conduct****I. Personal and Professional Integrity**

All staff (when used in this code, employees or staff members include staff either employed directly by the Foundation or on behalf of the Foundation by the University), board members, and volunteers of the Idaho State University Foundation act with honesty, integrity, and openness in all their dealings as representatives of the organization. The organization promotes a working environment that values respect, fairness, and integrity.

**II. Mission**

The Idaho State University Foundation has a clearly stated mission and purpose, approved by the board, in pursuit of the public good. All of its programs support that mission and all who work for or on behalf of the organization understand and are loyal to that mission and purpose.

**III. Governance**

The Idaho State University Foundation has an active governing body, the board, which is responsible for setting the mission and strategic direction of the organization and oversight of the finances, operations, and policies of the Idaho State University Foundation. The board

- Ensures that its members have the requisite skills and experience to carry out their duties and that all members understand and fulfill their governance duties acting for the benefit of the Idaho State University Foundation and its public purpose
- Has a conflict-of-interest policy that ensures that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal, or other means
- Has a statement of personal commitment that provides attestation to the commitment to the Idaho State University Foundation’s goals and values
- Ensures that the chief executive and appropriate staff provide the board with timely and comprehensive information so that the board can effectively carry out its duties
- Ensures that the Idaho State University Foundation conducts all transactions and dealings with integrity and honesty
- Ensures that the Idaho State University Foundation promotes working relationships with board members, staff, volunteers, and program beneficiaries that are based on mutual respect, fairness, and openness
- Ensures that the organization is fair and inclusive in its hiring and promotion policies and practices for all board, staff, and volunteer positions
- Ensures that policies of the Idaho State University Foundation are in writing, clearly articulated, and officially adopted

- Has an audit committee that is responsible for engaging independent auditors to perform an annual audit of the Idaho State University Foundation's financial statements. The audit committee also is responsible for overseeing the reliability of financial reporting, including the effectiveness of internal control over financial reporting, reviewing, and discussing the annual audited financial statements to determine whether they are complete and consistent with operational and other information known to the committee members, understanding significant risks and exposures and management's response to minimize the risks, and understanding the audit scope and approving audit and non-audit services
- Ensures that the resources of the Idaho State University Foundation are responsibly and prudently managed
- Ensures that the Idaho State University Foundation has the capacity to carry out its programs effectively

#### **IV. Responsible Stewardship**

The Idaho State University Foundation manages its funds responsibly and prudently. This should include the following considerations:

- Spends an adequate amount on administrative expenses to ensure effective accounting systems, internal controls, competent staff, and other expenditures critical to professional management
- Intends that all who are entitled to receive compensation for the organization are, reasonably, fairly and appropriately compensated
- Knows that solicitation of funds has reasonable fundraising costs, recognizing the variety of factors that affect fundraising costs
- Does not accumulate operating funds excessively
- Draws prudently from endowment funds consistent with donor intent and to support the public purpose of the Idaho State University Foundation
- Ensures that all spending practices and policies are fair, reasonable, and appropriate to fulfill the mission of the Idaho State University Foundation
- Ensures that all financial reports are factually accurate and complete in all material respects

#### **V. Openness and Disclosure**

The Idaho State University Foundation provides comprehensive and timely information to all stakeholders and is responsive in a timely manner to reasonable requests for information. All information about the Idaho State University Foundation will fully and honestly reflect the policies and practices of the organization. Basic informational data about the Idaho State University Foundation, such as the Form 990, will be posted online or otherwise made available to the public. All solicitation materials accurately represent the Idaho State University Foundation's policies and practices and will reflect the dignity of program beneficiaries. All financial, organizational, and program reports will be complete and accurate in all material respects.

**VI. Legal Compliance**

The Idaho State University Foundation will employ knowledgeable legal counsel that will help ensure that the organization is knowledgeable of, and complies with, laws and regulations.

**VII. Organizational Effectiveness**

The Idaho State University Foundation is committed to improving its organizational effectiveness and develops mechanisms to promote learning from its activities. The Idaho State University Foundation is responsive to changes in its field of soliciting funds from private sources and managing endowments and is responsive to the needs of its constituencies.

**VIII. Inclusiveness and Diversity**

The Idaho State University Foundation has a policy of promoting inclusiveness and its staff, board, and volunteers reflect diversity in order to enrich its programmatic effectiveness. The Idaho State University Foundation takes meaningful steps to promote inclusiveness in its hiring, retention, promotion, board recruitment, and constituencies served.

**IX. Fundraising**

When the Idaho State University Foundation solicits funds it uses material that is truthful about the organization. The Idaho State University Foundation respects the privacy concerns of individual donors and expends funds consistent with donor intent. The Idaho State University Foundation discloses important and relevant information to potential donors.

In raising funds from public and private sources, the Idaho State University Foundation will respect the rights of donors, as follows:

Donors will be informed of the mission of the Idaho State University Foundation, the way the resources will be used, and their capacity to use donations effectively for their intended purpose. Further, they will

- Be informed of the identity of those serving on the Idaho State University Foundation's governing board and to expect the board to exercise prudent judgment in its stewardship responsibilities
- Have access to the Idaho State University Foundation's most recent financial reports
- Be assured their gifts will be used for purposes for which they are given
- Receive appropriate acknowledgment and recognition
- Be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law
- Be approached in a professional manner
- Be informed whether those seeking donations are volunteers, employees of Idaho State University or of the Foundation, or hired solicitors
- Have the opportunity for their names to be deleted from mailing lists that the Idaho State University Foundation may intend to share



- Be encouraged to ask questions when making a donation and to receive prompt, truthful, and forthright answers.

**Reporting Responsibility**

It is the responsibility of all directors, officers, and employees to comply with the code of ethical conduct and to report violations or suspected violations to the Chair of the Audit Committee or the general counsel of the organization. The person receiving the report will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days, unless the submission of the violation is anonymous. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

Date of Board Approval:

Person responsible for the periodic review of policy and if necessary submits proposed revisions to board for approval: Board Chair

Date of Last Review

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**OPERATING AGREEMENT  
THE UNIVERSITY OF IDAHO AND  
THE UNIVERSITY OF IDAHO FOUNDATION, INC.**

This agreement ("Operating Agreement") is entered into effective the first day of July 2008 by and between the University of Idaho ("University") and the University of Idaho Foundation, Inc. ("Foundation"). The University and the Foundation are sometimes collectively referred to herein separately as a "Party" and collectively as the "Parties."

**WHEREAS**, the Foundation is a nonprofit corporation incorporated on September 23, 1970, pursuant to the Idaho Nonprofit Corporation Act;

**WHEREAS**, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

**WHEREAS**, the mission of the Foundation is to secure, manage and distribute private support to enhance the growth and development of the University;

**WHEREAS**, the Foundation and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

**WHEREAS**, the Idaho State Board of Education ("State Board") has promulgated Policies and Procedures to be effective as of July of 2008 ("State Board's Policies and Procedures") which are attached hereto as Exhibit "A";

**WHEREAS**, Section V.E.2.c. of the State Board's Policies and Procedures requires the Foundation to enter into a written operating agreement with the University that sets forth their operating relationship; and

**WHEREAS**, the Foundation and the University intend for this agreement to be the written operating agreement required by Section V.E.2.c. of the State Board's Policies and Procedures.

**NOW THEREFORE**, in consideration of the mutual covenants and undertakings herein, the University and the Foundation hereby agree as follows:

## **ARTICLE I**

### **Foundation's Purposes**

The Foundation is the primary affiliated foundation responsible for securing, managing and distributing private support for the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and By-Laws, and the State Board's Policies and Procedures, the Foundation shall: (1) solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the University from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the University; and (3) support and assist the University in fundraising and donor relations.

In carrying out its purposes the Foundation shall not engage in activities that conflict with (1) federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) applicable policies of the State Board; or (3) the role and mission of the University.

## **ARTICLE II**

### **Foundation's Organizational Documents**

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the University. All amendments of such documents shall also be provided to the University and the Regents of the University of Idaho ("Regents"). Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

## **ARTICLE III**

### **University Resources and Services**

#### 1. University Employees.

a. *Liaison:* The University's Vice President for University Advancement shall serve as the University's liaison to the Foundation.

i. The Liaison shall be responsible for coordinating the University's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the University to the Foundation.

ii. The Liaison or the Liaison's designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the

University to the the Foundation's Board of Directors regarding the University's and Foundation's joint fundraising efforts. The Liaison may also report other information to the Foundation's Board of Directors that is pertinent the common goals of the University and the Foundation.

b. *Executive Director*: The *Executive Director* of the Foundation is an employee of the University who is loaned to the Foundation. All of the *Executive Director's* services shall be provided directly to the Foundation as follows:

- i. The *Executive Director* shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the *Executive Director* may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in iii below. The *Executive Director* shall be subject to the control and direction of the Foundation.
- ii. The *Executive Director* shall be an employee of the University and entitled to University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the *Executive Director*. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the *Executive Director* including such expenses as salary, payroll taxes, and benefits.
- iii. The Foundation and the University shall enter into a written agreement, substantially in the form of Exhibit "B" hereto, establishing that the *Executive Director* is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the *Executive Director*, including the following:
  1. The Foundation shall have the right to participate in hiring and to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law. Hiring shall be done in accordance with University procedures but the hiring decision shall be by the Foundation. Termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.

2. Termination of the Loaned Employee in accordance with the Foundation procedures and applicable law shall constitute grounds for a termination proceeding by the University, or for non-renewal of Loaned Employee's contract with the University.
3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation's Chairman or such Chairman's designee.

c. *Limited Authority of University Employees.* Notwithstanding the foregoing provisions, no University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.

2. Support Staff Services. The University shall provide administrative support in financial, accounting, investment, and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "C" ("Service Agreement"). Except as specifically provided otherwise herein, all University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.

3. University Facilities and Equipment. The University shall provide the use of the University's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the University and the Foundation. The terms of use (including amount of rent) of the University's office space, equipment and associated services shall be as set forth in the Service Agreement, Exhibit "C" hereto.

4. No Foundation Payments to University Employees. Notwithstanding any contrary provision of this Agreement to the contrary, the Foundation shall not make any payments directly to a University employee in connection with any resources or services provided to the Foundation pursuant to this Article of this Operating Agreement.

## ARTICLE IV

### Management and Operation of Foundation

1. Gift Solicitation.

a. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

b. *Foundation is Primary Donee.* Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the University.

2. Acceptance of Gifts.

a. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University. Similarly, the Foundation shall also obtain the prior written approval of the University of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University. Prior to any approval by the University, it shall obtain approval of the Regents where State Board policy requires such approval.

b. *Acceptance of Gifts of Real Property.* The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the University shall be approved by the State Board before acceptance by the University and the Foundation. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property.

c. *Processing of Accepted Gifts.* All gifts received by the University or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated Gift Administration Office (a unit of the University's Trust and Investment office) in accordance with the Service Agreement.

3. Fund Transfers. The Foundation agrees to transfer funds, both current gifts and income from endowments, to the University on a regular basis as agreed to by the Parties. The Foundation's Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors. All transfers and expenditures noted in this section 3 (including subsections a. and b. below) must comply with the Internal Revenue Code §501 (c) (3) and be consistent with the Foundation's sole mission to support the University.

a. *Restricted Gift Transfers.* The Foundation may make restricted donations to the University. Such donated funds will only be expended by the University pursuant to the terms of such restrictions. The Foundation shall inform the University officials into whose program or department funds are transferred of any restrictions on the use of such funds and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted funds separate from other program and department funds in accordance with applicable University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted funds.

b. *Unrestricted Gift Transfers.* The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. The Foundation may make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with state law and University policies. If the Foundation elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as the Foundation's Board of Directors may determine in the Board's sole discretion.

#### 4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions. The Foundation may supplement or change this designation with written notice to the University; provided, however, in no event may the person with Foundation signature authority for financial transactions be a University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position).

b. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

5. University Report on Distributed Funds. On a regular basis, which shall not be less than annually, the University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the University. This report shall specify the restrictions on any restricted funds and the uses of such funds.

6. Transfer of University Assets to the Foundation. No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:



- a. A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such gift shall be deposited in University account, and, except for transfers described in sub-sections b and d of this section 6, State Board approval will be required prior to the University's transfer of such funds to the Foundation.
- b. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
- c. The University has raised scholarship funds through a University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship purposes for which the funds were raised.

Transfers of a *de minimis* amount not to exceed \$10,000 from the institution to the foundation provided such funds are for investment by the foundation for scholarship or other general university support purposes. This exception shall not apply to payments by the University to the Foundation for obligations of the institution to the foundation, operating expenses of the foundation or other costs of the foundation.

7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database that is protected by separate password-only access. For convenience purposes some Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis.

8. Insurance. To the extent that the Foundation is not covered by the State of Idaho Retained Risk program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

9. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is attached hereto as Exhibit "D"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted

gifts. The Foundation shall provide to the University any updates to such investment policy which updates shall also be attached hereto as Exhibit "D". Further, the Parties expressly acknowledge the Indenture, attached hereto as Exhibit "E", between the University and Foundation, dated May 20, 1975, transferring the assets of certain funds, trusts and endowments from the University to the Foundation and further acknowledge such shall be invested pursuant to the terms of this paragraph of this Operating Agreement.

10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation which are attached hereto as Exhibit "F" and the Foundation's By-Laws dated January 25, 2007, which are attached at Exhibit "G." The Foundation agrees to provide copies of such Articles and By-Laws as well as any subsequent amendments to such documents to both the University and the State Board. Any such amendments to the Articles and By-Laws shall be attached hereto as additions to Exhibit "F" and Exhibit "E", respectively.

11. Conflicts of Interest. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "H."

## **ARTICLE V**

### **Foundation Relationships with the University**

1. Access to Records. The University shall have reasonable access to the financial records of the Foundation in accordance with applicable laws, Foundation policies, and guidelines. The scope of this right of the University shall be construed as broadly as reasonably needed to conduct a complete audit of the Foundation as such an audit would be conducted under generally accepted accounting procedures if the University should so require. Provided, however, that the University need not conduct an audit to be provided such access but shall be provide such access at any time. Except as specifically authorized under this agreement, the University's access shall not include donor specific data of the Foundation such that would provide individually identifiable information about donors or their donations made to the Foundation.

2. Record Management.

a. The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the University shall be limited to the University's President and any designee of the University's President. Notwithstanding the foregoing, the University acknowledges that in most cases the University is primary recipient and depository of confidential donor information. The donor database and all other data, materials and information of the Foundation and the University

pertaining to past, current or prospective donors, are proprietary to the Foundation and the University respectively and constitute confidential information and trade secrets. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of computer servers and software relevant to the database.

b. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, By-Laws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.

c. Except to the extent that records are confidential (including confidential donor information), the Foundation agrees to be open to public inquiries for information that would normally be open in the conduct of University affairs and to provide such information in a manner consistent with the Idaho Public Records Law, set forth in Idaho Code Sections 9-337 – 9-350, except where otherwise required by state and federal law.

3. Name and Marks. Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name of the other, specifically: "The University of Idaho" and "The University of Idaho Foundation" in all activities conducted in association with or for the benefit of the other. Use of the other Party's name must be in manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. This license does not extend to any identifying marks of either Party other than the specified corporate name. Use of other marks must receive prior written approval.

4. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.

5. Establishing the Foundation's Annual Budget. The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing to the Foundation's Treasurer by April 1 of each year.

6. Attendance of University's President at Foundation's Board of Director Meetings. The University's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.

7. Supplemental Compensation of University Employees. No University employee shall receive direct payments, compensation, or other benefits from the Foundation, provided that

the Foundation may pay for those benefits which are necessary for its normal course of operation, including, but not limited to, travel and continuing professional education. Any such payment must be paid by the Foundation to the University, and the University shall then pay compensation to the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from the Foundation.

## **ARTICLE VI**

### **Audits and Reporting Requirements**

1. Fiscal Year. The Foundation and the University shall have the same fiscal year.
2. Annual Audit. The Foundation shall have an annual financial audit conducted in accordance with Government Accounting Standards Board or Financial Accounting Standards Board principles as appropriate. The audit shall be conducted by an independent certified public accountant who is not a director or officer of the Foundation. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to the Foundation's Board of Directors. Such audit reports shall contain the Foundation's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.
3. Separate Audit Rights. The University agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the University and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's financial books and accounting records.
4. Annual Reports to University President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the University President and the Audit Committee of the State Board setting forth the following items:
  - a. the annual financial audit report;
  - b. an annual report of Foundation transfers made to the University, summarized by University department;
  - c. an annual report of unrestricted funds received by the Foundation;
  - d. an annual report of unrestricted funds available for use during the current fiscal year;
  - e. a list of all of the Foundation's officers, directors, and employees;

- f. a list of University employees for whom the Foundation made payments to the University for approved purpose during the fiscal year, and the amount and nature of that payment;
- g. a list of all state and federal contracts and grants managed by the Foundation;
- h. an annual report of the Foundation's major activities;
- i. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the University; and
- j. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.

## ARTICLE VII

### Conflict of Interest and Code of Ethics and Conduct

1. Conflicts of Interest Policy Statement. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "H."

2. Dual Representation. Under no circumstances may a University employee represent both the University and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the University and the Foundation. This shall not prohibit University employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.

3. Contractual Obligation of University. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University. University approval of any such contract shall comply with policies of the State Board and the Regents with respect to the Regent's approval of University contracts.

4. Acquisition or Development of Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real

estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

## ARTICLE VIII General Terms

1. Effective Date. This Agreement shall be effective on the date set forth above.
  
2. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both parties. In addition, either party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either party may terminate this Operating Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event negotiations fail, the parties will initiate the Dispute Resolution mechanism described below (through reference to the Foundation Chair and the Regents) to further attempt to negotiate a new agreement. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.
  
3. Dispute Resolution. The Parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, then the dispute will be referred to the Foundation's Chairman and the University's President. If the Foundation's Chairman and University's President cannot resolve the dispute, then the dispute will be referred to the Foundation's Chairman and the Regents for resolution. If the dispute is not resolved by the aforementioned parties, the University and the Foundation shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing party

shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

4. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code §501(c) (3) organization, the Foundation shall transfer the balance of all property and assets of the Foundation for any source, after the payment of all debts and obligations of the Foundation, shall be vested, in trust, with the Regents for the use and benefit of the University. Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

5. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved to the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every two (2) years or more frequently if otherwise requested by the State Board.

6. Modification. Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.

7. Providing Document to and Obtaining Approval from the University. Unless otherwise indicated herein, any time documents are to be provided to the University or any time the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's President or an individual to whom such authority has been properly delegated by the University's President.

8. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.

9. Notices. Any notices required under this agreement may be mailed or delivered as follows:

To the University:

President of the University of Idaho  
University of Idaho  
P.O. Box 443151

Administration Building Room 105  
Moscow, Idaho 83844-3151

To the Foundation:

*Executive Director*  
University of Idaho Foundation, Inc.  
714 W. State Street, Suite 240  
Boise, Idaho 83702

10. No Joint Venture. At all times and for all purposes of this Memorandum of Understanding, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other party.

11. Liability. The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees.

12. Indemnification. The University and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

13. Assignment. This Agreement is not assignable by either party, in whole or in part.

14. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

15. Severability. If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

16. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.



Sub-committee Draft – 09/2508

- |     |  |         |
|-----|--|---------|
| 17. | <u>List of Attachments.</u>                      |         |
| a.  | State Board of Education Policies and Procedures | Page 16 |
| b.  | Agreement for Loaned Employee                    | Page 17 |
| c.  | Services Agreement                               | Page 25 |
| d.  | Statement of Investment Policy and Management    | Page 27 |
| e.  | Indenture  | Page 43 |
| f.  | Amended Articles of Incorporation                | Page 47 |
| g.  | Restated By-laws                                 | Page 52 |
| h.  | Conflicts of Interest Policy                     | Page 67 |

IN WITNESS WHEREOF, the University and the Foundation have executed this agreement on the above specified date.

University of Idaho

By: \_\_\_\_\_  
Its: President

University of Idaho Foundation, Inc.

By: \_\_\_\_\_  
Its: Chairman

UI Foundation OPERATING AGREEMENT-highlighted changes

**EXHIBIT "A"**

State Board's Policies and Procedures effective July of 2008

[COPY OF POLICIES AND PROCEDURES ARE NOT ATTACHED TO  
THIS EXEMPLAR BUT WILL BE ATTACHED TO THE EXECUTED FINAL]

## SUB-COMMITTEE DISCUSSION DRAFT

**AGREEMENT FOR LOANED EMPLOYEE  
UNIVERSITY OF IDAHO/UNIVERSITY OF IDAHO FOUNDATION, INC.**

THIS AGREEMENT is entered into by and between the UNIVERSITY OF IDAHO, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("University"), and THE UNIVERSITY OF IDAHO FOUNDATION, INC. a nonprofit corporation ("UIF") and is effective the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**BACKGROUND**

A. UIF has asked University to make certain staff members available to fulfill various staffing requirements for UIF's day-to-day operations.

B. University has agreed to loan its employee, \*\*\*\*\*("Loaned Employee"), to UIF to act in the capacity of \*\*\*\*\* for UIF pursuant to the terms of this Agreement.

**AGREEMENT**

The parties agree as follows:

**1. Relationship between Loaned Employee and University.**

a. Status. At all times under this Agreement, Loaned Employee shall be an exempt, fiscal year employee of the University subject to all applicable policies and procedures of the Regents and the University. UIF shall have control over all aspects of Loaned Employee's day to day work, and Loaned Employee shall devote 100% of his or her working time to performing services for UIF. Only University may terminate the employment of Loaned Employee. Notwithstanding the foregoing, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. The parties acknowledge that University and Loaned Employee have agreed and acknowledged that Loaned Employee's contract with the University is contingent upon continuation of this Agreement and in the event this agreement is terminated Loaned Employee's contract with the University will also terminate. Loaned Employee will be considered a loaned employee under the worker's compensation law of the State of Idaho.

## SUB-COMMITTEE DISCUSSION DRAFT

**b. Compensation.** University shall pay Loaned Employee a fiscal year salary rate of \$\*\*\*\*, payable on the regular bi-weekly paydays of the University, and subject to adjustment in accordance with the University's regular policies and procedures. Loaned Employee will be entitled to University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. UIF shall pay University for this cost as provided in Section 3 below.

**c. Travel Expenses.** University shall reimburse directly to Loaned Employee costs incurred for UIF travel that is approved in advance by the UIF or the University. UIF shall pay University for this cost as provided in Section 3 below.

**d. No Prohibition on Leasing Employee to UIF.** University represents and warrants to UIF that there is no agreement with Loaned Employee nor any University policy or procedure (including, without limitation, any agreement, policy, or rule of the Idaho State Board of Education, the Regents or the University) that prohibits the University from leasing Loaned Employee to UIF pursuant to the terms of this Agreement. University further represents and warrants that Loaned Employee is eligible for benefits as a full-time leased employee under the term of all applicable University benefit plans. University shall indemnify, defend, and hold UIF harmless from any breach of the foregoing representations.

## **2. Relationship between UIF and Loaned Employee.**

**a. Supervision.** Loaned Employee will work full time under the supervision and direction of the UIF Board of Directors. Loaned Employee will report directly to UIF President or her/his designee, who shall determine her/his duties to perform work for UIF.

**b. Performance Evaluations.** UIF will evaluate the performance of Loaned Employee on an annual basis at a time consistent with the annual reviews of exempt employees at the University. UIF will provide University with a copy of any written documentation regarding the evaluation within fourteen (14) days after the evaluation is complete.

## **3. Relationship between UIF and University.**

**a. Lease of Loaned Employee.** During the term of this Agreement, so long as Loaned Employee is employed by University, University shall make available to UIF the full time services of Loaned Employee, subject to University's continued employment of Loaned Employee. The furnishing of Loaned Employee shall not be considered a professional service of the University to UIF, nor shall University be considered a contractor of UIF.

**b. University to Provide Salary and Benefits.** As indicated above, University

## SUB-COMMITTEE DISCUSSION DRAFT

shall provide Loaned Employee with a fiscal year salary rate of \$\*\*\*\* and other University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including, without limitation, withholding and payment of payroll taxes, unemployment compensation, worker's compensation coverage, social security, and providing any fringe and welfare benefit programs for Loaned Employee. University shall indemnify, defend, and hold UIF harmless for the payment of all items set forth in this Section 3(b) and any claims or losses resulting from the administration of any employee benefits pursuant to any applicable law, including without limitation the Fair Labor Standards Act, the Employee Retirement Income Security Act, and the Internal Revenue Code.

c. Reimbursement of Salary and Benefits by UIF. UIF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits and any reimbursable costs such as travel expenses. Such costs will be billed annually and paid to the University in one annual installment. University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, UIF shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of five (5) years following the termination of this Agreement.

d. Review of Loaned Employee's Status/Discipline/Termination for Cause. Loaned Employee shall at all times remain an employee of University. Accordingly, University shall have the power to evaluate, discipline, and terminate Loaned Employee in its discretion and in accordance with any of its policies, procedures, or agreements between University and Employee. As provided above, UIF will conduct an annual review of Loaned Employee. UIF will provide a copy of any documents related to its evaluation to the University no later than fourteen (14) days after the evaluation is completed. Based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.

e. Indemnification by UIF for Acts of Loaned Employee. University shall have no liability to UIF for loss or damage directly resulting from the fault, negligence, misconduct, or other acts of the Loaned Employee while Loaned Employee is performing

## SUB-COMMITTEE DISCUSSION DRAFT

activities on behalf of or at the direction of UIF. UIF therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, for injuries (including death) to persons and for damages to property (including damage to property of UIF or others) arising out of or in connection with the activities of the Loaned Employee performed on behalf of or at the direction of UIF. Notwithstanding the foregoing, both parties may maintain any liability insurance coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

**f. Compliance With Employment Discrimination Laws.**

- 1) UIF agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee as if Loaned Employee were an employee of UIF. UIF shall notify University within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. UIF shall indemnify, defend, and hold University harmless from any claims or losses resulting from UIF's failure to comply with any applicable employment discrimination laws.
- 2) University agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee. University shall notify UIF within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. University shall indemnify, defend, and hold UIF harmless from any claims or losses resulting from University's failure to comply with any applicable employment discrimination laws.

**4. General Terms**

**a. Term, Termination.** The term that University shall lease Loaned Employee to UIF shall extend to \*\*\*\*\*, which is the term of employment specified in Loaned Employee's contract as an exempt employee of the University, unless it is terminated earlier upon the occurrence of any of the following:

## SUB-COMMITTEE DISCUSSION DRAFT

- 1) Notice to University Due to Loaned Employee Performance Problems. Pursuant to Section 3(d) above, UIF may discipline Loaned Employee by taking action up to and including termination of this Agreement for cause based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.
- 2) Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to UIF upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) day's notice of the default and an opportunity to cure such default within the notice period.
- 3) Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to UIF shall automatically terminate if Loaned Employee is no longer an employee of University for any reason.

The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee's renewed contract with the University. The UIF is under no obligation to extend the term of this Agreement for a new term, however, (in order to be consistent with University policies which call for at least 60 days notice if the University will not renew the Loaned Employee's employment agreement) in the event the UIF determines that it will not agree to an extension of the term of this Agreement the UIF will give University notice of its intention not to extend the term of this agreement at least 60 days prior to the expiration of the term of this Agreement. Failure to give the notice required hereunder shall NOT effect a renewal of the term of this agreement, rather it will only extend the term of this agreement long enough for 60 days notice to be given.

**b. No Third Party Beneficiaries.** The parties acknowledge that there are no intended third party beneficiaries of this Agreement. Without limiting the foregoing, this Agreement shall not be construed as a promise of continuing employment to Loaned Employee, who remains subject to all applicable Regents and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline.

## SUB-COMMITTEE DISCUSSION DRAFT

c. Governing Law. This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Latah County.

d. Notice. 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:

**To UIF:**

University of Idaho Foundation, Inc.	Phone: (208) 364-4065
Chairman	Fax: (208) 364-4037
714 W. State Street, Suite 240	
Boise, ID 83702	

**To the University:**

University of Idaho	Phone: (208) 885-6155
Vice President for Advancement	Fax: (208) 885-4999
1106 Blake Avenue	
Moscow, ID 83844-3150	

Notice shall be deemed given on its date of mailing, faxing, or upon written acknowledgment of its receipt by personal delivery, whichever shall be earlier.

e. Waiver. Waiver by either party 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 any subsequent breach of the same or any other term, covenant or condition herein contained.

f. Attorney's Fees. In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

g. Assignment. Neither party shall assign this Agreement without the prior written consent of the other.



SUB-COMMITTEE DISCUSSION DRAFT

**h.** Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by both of the parties.

**i.** Acknowledgment by Employee. This Agreement shall not be effective until it is executed by University and UIF and acknowledged by Loaned Employee pursuant to the signature blocks below.

Signature page follows.

## SUB-COMMITTEE DISCUSSION DRAFT

The parties have executed this Agreement effective as of the date set forth above.

UNIVERSITY OF IDAHO  
FOUNDATION,

UNIVERSITY OF IDAHO  
INC.

\_\_\_\_\_  
Lloyd Mues, Vice President  
Finance and Administration

\_\_\_\_\_, Chairman

\_\_\_\_\_  
Christopher Murray, Vice President  
University Advancement

\_\_\_\_\_, \_\_\_\_\_

**Acknowledgment by Loaned Employee:**

Loaned Employee, by his or her signature below, acknowledges the terms of this Agreement between University and UIF and agrees that he or she is an employee of the University that is loaned to UIF pursuant to the terms of this Agreement. Loaned Employee further acknowledges that he or she is a 'loaned employee' pursuant to all state workman's compensation laws. Accordingly, Loaned Employee acknowledges and agrees that in the event of any work-related injury that is covered by workman's compensation insurance held for the benefit of Loaned Employee by University, Loaned Employee will be precluded from recovering damages from UIF for such injury in accordance with applicable state workman's compensation laws.

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

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DISCUSSION DRAFT - SERVICES AGREEMENT  
UNIVERSITY OF IDAHO – UNIVERSITY OF IDAHO FOUNDATION

THIS SERVICES AGREEMENT is entered into by and between the REGENTS OF THE UNIVERSITY OF IDAHO, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho (“University”), and THE UNIVERSITY OF IDAHO FOUNDATION, a private nonprofit corporation (“UIF”).

The University agrees to provide to the UIF the following administrative, financial, accounting, and investment support services.

1. Administrative support for UIF investment management function including support for UIF relationship with investment managers, brokerage accounts, securities custodial firms, brokerage firms, other financial institutions, and investment advisors, preparation of reports on investment detail, monitoring activities of investment managers, and accounting for investment transactions.
2. Administrative support for UIF endowment/trust and gift management functions (including Consolidated Investment Trust – CIT) including analysis of endowment/trust and gift agreements to assist UIF in considering approval, maintenance of UIF endowment files, accounting and database management for UIF endowments/trusts, preparation of reports of UIF endowment/trust activities, earnings and status, preparation of endowment/trust earnings estimates for UIF report to UI Financial Aid, support for UIF investment committee, preparation of cash management earnings estimates for the UIF finance committee.
3. Administrative support for management of UIF charitable remainder trusts and gift annuities, including calculation of charitable gift amounts and payment schedules, support for federal tax reporting, calculations of payments to trust income beneficiaries, and preparation of reports for trust donors.
4. Administrative Support for UIF general accounting, including cash receipt and disbursement processing, preparation of financial statement and work papers for external audit, support for UIF Audit Committee and Finance Committee, support for UIF tax return filing (separate from tax reporting for individual trusts in which UIF is the Trustee), support for UIF management of real property and other non-cash assets.
5. Administrative support for UIF gift accounting, including establishing UIF gift accounts, preparation of gift revenue reports and reconciliation between UIF and UI, assist with transfers of gift funds to UI, assist with monitoring gift fund use to ensure compliance with wishes of donor, UIF policies and applicable laws.
6. Administrative support for UIF gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to UIF, assist with receipt of distributions from estates and trusts to UIF.
7. Administrative support for UIF gift receipting and acknowledgment including depositing cash, checks and credit card payments into UIF accounts, receipt,

verification and valuation of marketable securities gifted to UIF, issuing contribution receipts and acknowledgements to UIF donors, assist with training UI personnel in gift transmittal policies and procedures.

All University employees who provide support services to the UIF shall remain University employees under the direction and control of the University.

The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the UIF, the nature and location of which shall be in the University's discretion. In addition, the University shall furnish office space and office equipment for use by the UIF's Managing Director the nature and location of which shall be subject to agreement of the parties.

The UIF will pay directly to the University a reasonable consideration for the the services, facilities, equipment, software and operating supplies provided to the UIF pursuant to the Service Agreement based upon agreed upon budgets for the services and operations described herein. In conjunction with the University's annual budget process, the University will prepare and present to the UIF for consideration and acceptance an operating budget for the services and operations to be provided under this Agreement upon which the consideration shall be based.

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the University's fiscal year until terminated by either party. This Services Agreement may be terminated by either party upon written notice of termination, such termination to be effective \_\_\_\_ days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Memorandum of Understanding between the University and the UIF dated \_\_\_\_\_. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement which accrued prior to the date of termination.

UNIVERSITY OF IDAHO

UNIVERSITY OF IDAHO FOUNDATION

\_\_\_\_\_  
Lloyd Mues, Vice President  
Finance and Administration

\_\_\_\_\_  
William G. Gilbert, Jr, Chairman

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

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

# **University of Idaho Foundation, Inc.**

## **POOLED ENDOWMENT FUNDS Statement of Investment Policy and Management**

Presented by the  
Investment Committee

and

Adopted by the  
University of Idaho Foundation, Inc.  
Board of Directors

January 25, 2008

First Adopted November 18, 1995, Amended March 8, 1996, October 25, 1997, March 13, 1998,  
September 30, 2000, April 20, 2001, October 17, 2003, September 16, 2005, January 25, 2008

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## **BACKGROUND:**

On September 17, 1970, The University of Idaho Foundation, Inc. (Foundation) was incorporated under the laws of the State of Idaho as a non-profit organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code. The Foundation is governed by a Board of Directors. The Foundation's sole purpose is to support the University of Idaho (University) by the means at its disposal with an emphasis on soliciting financial support for the University and managing and investing the securities, monies and real and personal property it receives from such sources, and to expend its resources, beyond that required to cover the costs of its operation, to and for the benefit of the University.

The University is governed by the Regents of The University of Idaho (Regents) and is a constitutional corporation organized and existing under and by virtue of the Constitution of the State of Idaho. The University is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, as an educational organization.

The Consolidated Investment Trust (C.I.T.) was established by the Regents in July 1959, when the assets of 25 individual endowments having a combined market value of \$441,460 were pooled for investment purposes only and in return were issued unit participation shares in an investment account called the C.I.T. The purpose for creating the C.I.T. was to provide a well-managed, diversified investment vehicle owned entirely by endowments.

Effective July 1, 1975, the Regents transferred the assets of the C.I.T. to the Foundation. Upon accepting the C.I.T., the Foundation Board of Directors established an Investment Committee and charged it with the responsibility of monitoring and guiding the C.I.T.'s investment policy.

## **INVESTMENT POLICY:**

**Introduction:** The Foundation Investment Committee developed this policy through careful study and consideration of the returns and risks associated with alternative investment strategies in relation to the current and projected income needs of University and Foundation activities which are supported by the endowments. The policy provides a structure within which the funds may be managed to achieve the long term investment and financial objectives of all pooled endowment funds. The Foundation is committed to ensuring the assets of the pooled endowment funds are fully diversified and are managed efficiently and prudently by qualified investment personnel.

Because of the perpetual nature of endowments, decisions with regard to investment management and performance of all pooled endowment funds must focus on long-term goals and objectives which safeguard endowment principal and maximize returns which support the education, research, and service missions of the University.

**Statement of Investment Policy and Management**  
**University of Idaho Foundation, Inc.**  
**Page 4**

It is noted that the Foundation may accept and administer endowments and/or trusts which for various reasons are not invested in the C.I.T. or other pooled endowment funds. In those rare instances, the Investment Committee shall ensure the assets of said endowments/trusts are invested in a prudently and fiscally sound manner and are administered in accordance with the terms and conditions stipulated in the individual endowment/trust agreement which exists for each.

**Objectives:** The specific objectives of all pooled endowment fund investments are to:

1. provide a regular and reliable source of funding to meet the goals and objectives of the endowments which own pooled endowment fund unit participation shares,
2. target a long-term total rate of return that is, as a minimum, net of fees, at least five percent (5%) greater than the rate of inflation as measured by the Consumer Price Index (CPI),
3. maintain or increase the purchasing power of the corpus after withdrawals are taken, and
4. keep in perspective the long-term (ten year or longer) investment objectives when evaluating interim fluctuations.

**Spending Policy:** An endowment spending policy determines how the endowment payout amount will be calculated, including how much of the total return will be distributed to support the purposes of the endowment and how much will be reinvested. It is the intent of the Investment Committee to achieve a balance between the endowment growth objectives and stability in the annual investment revenue available for spending in support of the specified purposes of the endowments which own unit participation shares. A spending policy in conjunction with the investment policy is intended to help achieve this balance thereby allowing greater predictability in allocation planning.

**C.I.T. Endowment Classes:** The spending policy for each endowment is determined by the endowment agreement that exists for each endowment owning C.I.T. unit participation shares. There are two “classes” of endowments:

1. *“Old” or “Traditional” Language:* Most endowments that were created prior to 1996 stipulate that realized income is to be distributed and that all realized capital gains are to be reinvested as principal. Accordingly, the spending policy for these is to annually distribute all of the net realized income from dividends and interest to support activities and programs specified in the endowment agreements. Net realized capital gains, unless stated otherwise in the endowment agreements, are returned to the principal of the endowments and reinvested. The principal of all C.I.T. endowments is inviolate. The C.I.T. distributions are made on a unit participation share pro-rata basis.
2. *“New” or “Flexible” Language:* Most endowment agreements written since 1996 and some of the older endowments include more flexible language that allows for distributable earnings to be calculated in accordance with policy established by the Foundation’s governing board.



**Statement of Investment Policy and Management**  
**University of Idaho Foundation, Inc.**  
**Page 5**

In September 2000, the Foundation Board of Directors determined that a spending rate for “new” or “flexible” endowments will be established annually by the Foundation Board of Directors based upon the recommendation of the Investment Committee. The target spending rate, net of fees, will be four and a half percent (4.5%) of the three-year rolling average fair market value of the C.I.T.

*Assessment for Administration and Investment Management Expenses:* Each endowment participating in the C.I.T. will annually be assessed 75 basis points (.75%) of its three-year rolling average fair market value to pay for expenses associated with the administration and investment management of the C.I.T.

*Assessment for Foundation Operations:* Each “New” or “Flexible” Language Endowment will annually be assessed 50 basis points (.50%) of its three-year rolling average fair market value to be allocated to the Foundation for expenses including but not limited to operating costs and fund raising/development expenses.

**Investment Management Expenses:** Investment management expenses will be paid from the following sources: 1) the 75 basis points assessment described above; 2) revenues generated by commission recapture, and 3) temporary investment of realized investment earnings.

**Asset Allocation Guidelines:** The asset allocation process includes: 1) the selection of asset categories, i.e., domestic and international equities, fixed-income funds, real estate, private equity, other alternative investments and cash and/or cash equivalents; and 2) the percentage of the total portfolio for each asset category. Once the asset allocation has been determined by the Investment Committee, the selection of individual investments within each class is the responsibility of the investment managers. The Investment Committee is responsible for determining strategic (long-term) asset allocation, which focuses on the optimal combination of asset classes that is consistent with the Foundation’s risk-return preference and the time horizon.

Asset allocation includes the establishment of risk tolerance and the maximization of the long-run productivity of the pooled endowment fund’s portfolio. This determination, in conjunction with the spending policy, is the basis for balancing the investment policy to assure the growth and financial stability of the endowment in perpetuity.

The asset allocation as shown below will be reviewed at least annually by the Investment Committee, rebalanced, and reported to the Foundation Board.

### ASSET ALLOCATION TARGETS

#### Asset Allocation @ Market

<u>Asset Category</u>	<u>Minimum</u>	<u>Target</u>	<u>Maximum</u>	<u>Performance Benchmark</u> (net of fees)
<b>Equities</b>	<b>38%</b>	<b>43%</b>	<b>48%</b>	
<i>Broad US Equity</i>		30%		Russell 3000 Index
<i>Non-US Equity</i>		13%		MSCI EAFE Index
<b>Fixed Income</b>	<b>35%</b>	<b>40%</b>	<b>45%</b>	<b>Lehman Aggregate</b>
<b>Alternative &amp; Real Estate Investments</b>	<b>14%</b>	<b>17% (1)</b>	<b>20%</b>	
<i>REIT's</i>		6%		FTSE NAREIT Composite REIT
<i>Private Equity/Other</i>		11%		Russell 3000 + 5%
<b>Cash and Cash Equivalents</b>	<b>0%</b>	<b>0%</b>	<b>10%</b>	<b>90-day T-Bill</b>
<b>Total</b>		<b>100%</b>		

(1) Achievement of this target is expected to take 3 to 5 years.

## **INVESTMENT MANAGEMENT:**

**Foundation Board of Directors:** With regard to investment policy, the board is responsible for establishing and delegating the duties of the Investment Committee and for approving investment policies based on recommendations by the Investment Committee.

### **Investment Committee:**

The Investment Committee is responsible for managing the investment process in a fiscally responsible and prudent manner with regard to preserving principal while providing reasonable investment returns. The committee shall establish the policy to include, but not be limited to, selection of acceptable asset classes, allowable ranges of holdings in each asset class and by individual investment managers as a percent of assets, the determination of acceptable securities within each asset class, and investment performance expectations.

The committee will communicate in formal contracts the policy and performance expectations for each investment manager, and will review investment performance regularly to assure policy compliance. Performance will also be regularly evaluated to judge investment managers.

The Investment Committee is a standing committee of the Foundation. It generally meets three or four times a year with the staff from the University Trust and Investment Office (TIO). Membership of the Investment Committee shall be structured to assure investment acumen, continuity and opportunities for service.

The Investment Committee shall consist of a minimum of seven voting members including the Chairman of the Foundation, the Vice Chairman of the Foundation and a University of Idaho College Dean. The Treasurer of the Foundation and the Managing Director of the Foundation shall be included as non-voting members. Additional committee members shall be appointed by the Foundation's Chairman and approved by the Foundation Board of Directors. The chairman of the committee shall be appointed by the Foundation's Chairman and approved by the Foundation Board of Directors.

The primary responsibility of the Investment Committee is to oversee and provide guidance for the investment of Foundation assets. Its major responsibilities are:

1. Recommending investment goals and objectives to the Board of Directors.
2. Formulating investment policy (asset allocation, spending policy, and level of risk).
3. Selecting and hiring investment managers and reviewing their performance.
4. Establishing performance measurement criteria for investment managers and the overall portfolio.
5. Terminating investment managers.
6. Selecting, hiring and terminating investment advisory consultants.

**Trust & Investment Office:** The Trust & Investment Office (TIO) is responsible for the day-to-day stewardship of all funds and/or finances of the Foundation, including the fiduciary responsibility for all funds so designated to be in trust.

The TIO has the responsibility to comply with: applicable state and federal laws and regulations; Regents' regulations and requirements; University of Idaho policies and procedures; donor requirements; generally accepted accounting and financial management principles; the Foundation's Articles of Incorporation and the Foundation's by-laws.

Specifically with regard to the investment responsibilities, the TIO will oversee the administration and support of those functions essential to sound financial management of all Foundation funds, including pooled endowment funds, such as fiscal planning, budgeting, receipting and disbursing of funds, and investing/managing assets to include custodial and accounting functions.

The Foundation Board of Directors shall authorize specific individual(s) to endorse securities/stock or bond powers for sale, transfer, merger or other lawful purposes and to open or close brokerage accounts and accounts with commercial banks, as necessary to implement investment decisions and transact business in the name of and on behalf of the Foundation.

The TIO will, under the direction of the Investment Committee, provide and/or arrange for the following services: conducting selection processes for investment management; review, assess, and present to the Investment Committee analysis data about investment performance; analyze and present discussion agendas regarding modifications to the investment policy, especially the allocation matrix and spending policy; negotiate the management fee structure; and provide desired accounting and reporting to the Investment Committee and Foundation Board of Directors.

**Investment Managers:** The pooled endowment funds will be managed by qualified investment management personnel/investment management organizations. The investment managers have discretion, within the guidelines set forth in this investment policy statement and any additional guidelines provided each manager, to manage the assets in each portfolio to best achieve the investment objectives established by the Investment Committee. The investment managers shall be responsible for determining investment strategy and implementing security selection and the timing of purchases and sales within the policy guidelines set forth in this statement and as otherwise provided by the Investment Committee.

Each investment manager will be provided a copy of this statement of investment policy. In turn, as part of the investment management contract that will govern the allocated portfolio, each investment manager is to be provided a written statement of the Foundation's expectations, stated in terms of the objectives and comparative benchmarks that will be used to evaluate performance and the allowable investment vehicles that can be used to achieve these objectives.

**Investment Managers - General Guidelines:** These guidelines shall apply to all investment managers, unless addressed otherwise in individual management contracts.

Parameters:

1. All managers shall have discretion to invest in cash reserves; however, managers will be evaluated on total funds investment performance.
2. Cash and short-term instruments maturing in less than 360 days shall be restricted to a maximum of 10% of total assets except for brief periods and for temporary defensive purposes.
3. Mutual funds and other pooled asset portfolios are acceptable investment vehicles provided they conform to all other requirements and restrictions.
4. US equity holdings shall be restricted to readily marketable securities of corporations that are actively traded on the major US exchanges including National Market System Stocks. US equity holdings may include American Depositary Receipts traded on US Exchanges. Preferred and convertible preferred stocks may be held. Publicly traded Real Estate Investment Trust (REIT) shares may be held and are considered part of the allocation to stocks. There is no minimum market capitalization for holdings of individual issues. However, each holding shall be of sufficiently low percentage of average daily trading volume to ensure sale on favorable terms at the appropriate time.
5. At least 75% of all non-US equity holdings shall be highly liquid securities issued by corporations headquartered in countries included in the Morgan Stanley Capital International Europe, Australia, Far East Index and Canada. Up to 25% of non-US equity holdings may be issues purchased and sold on exchanges in other countries that offer a ready market for individual issues and have no restrictions on the transfer of funds to and from the US. Managers holding non-US dollar denominated securities are permitted to employ currency hedging strategies.
6. Fixed income investments shall be marketable securities which may include, but not necessarily be limited to US Treasury, federal agencies and US Government guaranteed obligations, sovereign debt, and domestic and foreign corporate issues including convertibles. Mortgage pass-throughs and collateralized debt obligations may be held. Quality preferred stock issued by domestic corporations may also be held. The overall rating of the fixed income assets will be at least "A" as measured by a nationally recognized rating agency. In cases where the yield spread adequately compensates for additional risk, BAA or BBB and below and non-rated securities may be purchased. However, no more than 30% of the holdings shall be in securities whose credit rating is less than BAA- or BBB-.

7. Cash equivalent reserves shall consist of cash instruments having a quality rating by at least one rating agency of A-2, P-2 or higher, maturing in 360 days or less.
8. The following securities and transactions are not authorized: letter stock and other unregistered equity securities; commodities or commodity contracts; short sales or margin transactions.
9. Financial options and futures may be employed in defensive and hedge strategies undertaken to preserve principal.
10. An investment manager shall not use derivatives to increase portfolio risk above the level that could be achieved in the portfolio using only traditional investment securities. Moreover, an investment manager will not use derivatives to acquire exposure to changes in the value of assets or indexes that, by themselves, would not be purchased for the portfolio. Under no circumstances will an investment manager undertake an investment that is non-covered or leveraged to the extent that it would cause portfolio duration to exceed normal duration limits. Investment in "exotic" derivatives with unstable durations is prohibited. These include IO's, PO's, Inverse IO's, and Inverse Floaters. Conventional classes of CMO's are allowed.

Diversification: Investments shall be diversified with the intent to minimize the risk of large realized and unrealized losses to the invested assets. Consequently, the total portfolio will be constructed and maintained to provide prudent diversification with regard to the concentration of holding in individual issues, corporations, or industries.

1. Not more than 5% of the total equity portfolio valued at market may be invested in the common stock of any one corporation.
2. Not more than 5% of the total outstanding shares of any one company may be held.
3. Not more than 20% of the equity portfolio valued at market may be held in any one industry category.
4. Fixed income securities of any one issuer shall not exceed 5% of the market value of the total bond portfolio at the time of the purchase (except US Treasury or other federal agency issues).
5. Holdings of any individual fixed income issue must not exceed 5% of the value of the total issue (except US Treasury or other federal agency issues).

Volatility: Consistent with the desire for adequate diversification, the investment policy is based on the assumption that the volatility of the combined equity portfolios will be similar to that of the market opportunity available to institutional investors with similar return objectives. Fixed income portfolio durations may exceed that of the market even though the volatility of fixed income portfolios, under these conditions, may be greater than the market.

Voting of Proxies: The Investment Managers shall vote shareholder proxy ballots.

Execution of Security Trades: The Investment Committee expects the purchase and sale of securities by investment managers to be made in a manner designed to receive the combination of best price and execution.

### **MONITORING AND EVALUATION:**

**Overall Portfolio:** This will entail a review of the investment objectives. Investment performance will be reviewed annually to determine the continued feasibility of achieving the investment objectives and the appropriateness of the investment policy for achieving these objectives.

It is not expected that the investment policy will change frequently. In particular, short-term changes in the financial markets should not require any adjustment in the investment policy.

**Managers:** The TIO will provide monthly investment activity reports to the Investment Committee, including a breakdown by each investment manager. The Investment Committee shall meet on a periodic basis with the Foundation's investment advisory consultant and TIO staff to review total assets and individual manager performance. Performance reviews will focus on:

1. Comparison of managers' results to funds using similar policies (in terms of diversification, volatility, style, etc.).
2. Manager and total assets adherence to the policy guidelines.
3. Material changes in the manager organizations, such as investment philosophy, personnel changes, acquisitions or losses of major accounts, etc.
4. Evaluate performance on a minimum rolling three to five-year investment horizon to judge interim fluctuations with an appropriate perspective.
5. Evaluate performance relative to performance benchmarks that realistically reflect the market of each investment portfolio.

The Investment Managers shall keep the Investment Committee advised of any material changes in personnel, investment strategy, or other pertinent information potentially affecting performance of all managers.

**Performance Expectations:** The most important performance expectation is the achievement of long-term investment results that are consistent with this Investment Policy Statement. The C.I.T. will be compared to a blended benchmark that represents the target asset classes. The

C.I.T. is expected to meet or exceed the passive policy benchmark over a majority of rolling three- and five-year periods. Implementation of the policy will be directed toward achieving this return and not toward maximizing return without considering the risk.

The Investment Committee recognizes that this real return objective may not be meaningful during some time periods. In order to ensure that investment opportunities available over a specific time period are fairly evaluated, comparative performance statistics will be used to evaluate investment results. The Investment Committee expects each manager to meet or exceed their passive index and the median of their respective performance evaluation universe. This performance should be achieved over a majority of rolling three to five year periods.

### **ACCOUNTING AND REPORTING**

In addition to retaining competent investment managers, essential elements of a successful portfolio include proper accounting, investment activity reporting, performance reporting and internal activity reporting. These functions are provided to the Foundation by financial systems and personnel of the TIO.

#### **Annual Audit:**

1. The accounting records for the pooled endowment funds will be maintained in conformity with generally accepted accounting principles and reporting standards, and will be audited annually by the same independent external auditors who audit the Foundation's financial statements.
2. The annual audited financial statements and auditor's letter to management will be presented at the Foundation's annual meeting.
3. The internal controls utilized by the Foundation will be adapted to meet the needs of all pooled endowment funds and will be routinely reviewed by external auditors for appropriateness.

#### **Investment Pool:**

1. Endowments which own pooled endowment fund unit participation shares will be separately accounted for -- each will have their own separate fund identification and subaccounts which detail uninvested cash, fund balance invested in a pooled endowment fund, and total fund balance.
2. Endowments which have cash available for investing in a pooled endowment fund will be allowed to purchase unit participation shares at their fair market value on the first day of each month.



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**University of Idaho Foundation, Inc.**  
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3. The fair market value of a unit participation share will be determined as of the close of business on the last working day of each month. The share value will be determined by valuing the pooled endowment fund's portfolio at market and dividing that market value by the number of permanent unit participation shares outstanding.
4. The pooled endowment fund's annual spending distributions will be made based on the number of distribution unit participation shares owned by each endowment.
5. The TIO will ensure idle cash is fully invested until needed for distributions at year end, and for transfer to a pooled endowment from individual endowments to purchase unit participation shares.
6. The TIO will receive all broker/custodial confirmations for purchases and sales of securities and ensure that (1) purchases are paid in a timely manner, (2) sales proceeds are received and immediately deposited in a Foundation brokerage/custodial or bank account and invested, (3) the financial records properly reflect all purchases and sales, and (4) sales and purchase commissions are reasonable.

**Investment Management:**

1. The TIO will monitor investment activity and determine whether or not current established portfolio investment parameters are being followed.
2. The TIO will receive monthly broker/custodial statements and reconcile detail shown thereon to the financial and investment records.
3. The TIO will receipt all interest and dividend checks and ensure they are (1) the proper amount, (2) properly recorded on the financial records, and (3) promptly deposited in a Foundation brokerage or bank account.
4. The TIO will maintain a detailed schedule of investments to ensure that all dividends and interest are, in fact, received when due, and that the exact location of all investments is known at all times.
5. The TIO will ensure accurate and timely investment data is submitted to an independent funds evaluation firm so that firm can prepare investment performance reports.
6. The TIO will ensure that accurate and timely Investment Activity Reports are prepared for use by Investment Managers, Investment Committee and others.
7. The TIO will prepare accurate and timely monthly valuations of the pooled endowment fund portfolios and calculate the value of a unit participation share.
8. The TIO will ensure that endowments which have cash available for the purchase of pooled endowment fund unit participation shares have that cash transferred to the appropriate

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**University of Idaho Foundation, Inc.**  
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pooled endowment fund in a timely manner, and that the investment manager is aware of the amount of new money available for investment.

9. The TIO will approve all operating expenses associated with the operation of all pooled endowment funds and initiate action to ensure said expenses are paid in a timely manner and properly recorded on the financial records.

**APPENDIX I: ASSET CLASS DESCRIPTIONS**

<b>Asset Class</b>	<b>Definition</b>
<b><u>Equities</u></b>	
U.S. Equities	Stocks issued by companies domiciled or registered in the United States, which trade on domestic stock exchanges.
Non-U.S. Developed Market Equity	Stocks issued by companies in developed economies, excluding the U.S.
Non-U.S. Emerging Market Equity	Stocks issued by companies domiciled in countries with less developed economies in terms of GDP per capita as defined by the World Bank.
<b><u>Fixed Income</u></b>	
Core U.S. Fixed Income	All fixed rate debt securities issued in the U.S., including government, corporate, agency, mortgage pass-through and asset-backed securities that are rated investment grade (BBB) or higher.
Core Plus Fixed Income	A portfolio of debt securities that may include all core fixed income investments, and typically has allocations to non-U.S. bonds (developing and developed countries), non-investment grade bonds (high yield credit), and sectors outside the LB Aggregate Bond Index (i.e., TIPS or Treasury Inflated Protected Securities).
High Yield	All corporate debt issued in the U.S. that is rated below investment grade, or is not rated. These securities have a higher yield than investment grade corporates, and are riskier, both in terms of price risk and default risk.
Non-U.S. Emerging Market Fixed Income	Emerging market fixed income includes debt securities in countries with less developed economies.
Non-U.S. Developed Market Fixed Income	Bonds that are issued by companies or governments in developed countries other than the U.S.

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Inflation Linked Bonds (TIPS)	A special type of Treasury note or bond that offers protection from inflation. As with other Treasuries, when you buy an inflation-linked bond you receive interest payments every six months, which is continuously adjusted for inflation.
<b><u>Alternative Asset Classes</u></b>	
Private Equity	Private equity represents a basket of private illiquid investments such as venture capital, leveraged buyouts, mezzanine financing, distressed securities, oil & gas and timber.
Real Estate	Real estate includes investment in income producing properties. Real estate investments can vary by property type, geographic location, position in the property cycle, structure of the deal and investment vehicle.
REIT's	A publicly traded pool of investments as described for Real Estate above.
Non Directional Hedge Fund of Funds	Long-short, arbitrage and other low risk strategies. Leverage used.

INDENTURE

THIS INDENTURE, made in Moscow, Idaho, on May 20, 1975, between the Regents of the University of Idaho, a constitutional corporation organized and existing under and by virtue of the Constitution of the State of Idaho, hereinafter called the Regents, and the University of Idaho Foundation, Inc., an Idaho not-for-profit corporation, having its principal place of business at the University of Idaho, Moscow, Idaho, hereinafter called the Foundation:

WHEREAS, the Foundation exists for the purposes to solicit and receive, by gift, devise or otherwise, monies and property, real and personal, to be managed and used exclusively for the benefit of the University of Idaho, and

WHEREAS, on February 7, 1974, and December 5, 1974, the Regents passed resolutions directing the Bursar of the University of Idaho to offer to the Foundation the responsibility for the investment and administration of the Consolidated Investment Trust and other private monies or properties inuring to the benefit of the University of Idaho by way of gift, and

WHEREAS, The Board of Directors of the Foundation, meeting in Boise, Idaho, on April 11, 1975, voted to accept the Regents' offer as of July 1, 1975.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES, AND OF THE MUTUAL COVENANTS CONTAINED BELOW, IT IS MUTUALLY AGREED, AS FOLLOWS:

FIRST. The Regents as of July 1, 1975, do convey, transfer, and assign, set over and deliver to the Foundation, in trust, the assets, and related records of the Consolidated Investment Trust Pooled Investment Fund, the Ella L. Olesen Endowment, the George T. Warren Endowment, the Guy Wicks Endowment, the Stillinger Trust Real Estate contracts, the Leora Stillinger Real Estate contract and the Leonard Halland Physics Building Real Estate contract, all to be particularly itemized and set forth in audited financial statements as of July 1, 1975.

SECOND. The Regents do hereby and by these presents offer to provide whatever support and assistance that the Foundation may wish to receive from the University of Idaho Business Office; PROVIDED HOWEVER THAT the Bursar, who is the Foundation Treasurer, shall continue to be responsible for providing necessary accounting services for the Foundation, custody of the Foundation's assets, and the ministerial functions pertinent to the individual trust accounts, and if either the Foundation or the Regents wish to reassign these functions elsewhere, either party shall first secure the written consent of the other; and further provided that all questions pertaining to the validity and construction of this Indenture shall be determined in accordance with the laws of the State of Idaho.

THIRD. The Regents reserve the right to entrust other property to the Foundation, to amend this Indenture in any respect or to revoke it entirely, and to withdraw at any time, or from time to time, any assets transferred to the Foundation, all upon reasonable notice to the Foundation.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand the date first above written.

UNIVERSITY OF IDAHO FOUNDATION, INC.

THE REGENTS OF THE UNIVERSITY  
OF IDAHO

Carol G. Berry  
Its President and duly authorized  
agent

Sherman Carter  
Bursar, Financial Vice President  
and duly authorized agent

Attest:

Attest:

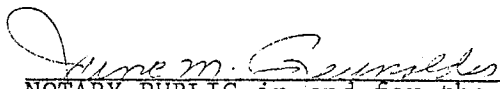
Frank P. McCreary  
Frank P. McCreary  
Executive Director

Ernest W. Hartung  
Ernest W. Hartung, President  
University of Idaho

STATE OF IDAHO     )  
                           ) ss.  
 County of Latah    )

On this 18th day of May, 1975, before me, the undersigned, a Notary Public in and for said State, personally appeared CARL BERRY, known to me to be the President of the University of Idaho Foundation, Inc., the corporation that executed the above and foregoing instrument, and acknowledged to me that such corporation executed the same.

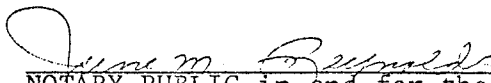
IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

  
 NOTARY PUBLIC in and for the State  
 of Idaho, residing at University of  
 Idaho, Moscow, Idaho

STATE OF IDAHO     )  
                           ) ss.  
 County of Latah    )

On this 18th day of May, 1975, before me, the undersigned, a Notary Public in and for said State, personally appeared FRANK MCCREARY, Executive Director of the University of Idaho Foundation, Inc., the corporation that executed the above and foregoing instrument, and acknowledged to me that such corporation executed the same.

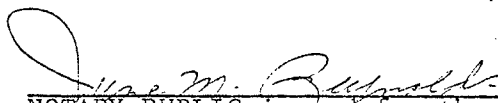
IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last written.

  
 NOTARY PUBLIC in and for the State of  
 Idaho, residing at Moscow, Idaho

STATE OF IDAHO        )  
                           ) ss.  
 County of Latah        )

On this 20th day of may, 1975, before me, the undersigned, a Notary Public in and for said State, personally appeared SHERMAN CARTER, known to me to be the Bursar, Financial Vice President and Duly Authorized Agent of THE REGENTS OF THE UNIVERSITY OF IDAHO, the corporation that executed the above and foregoing instrument, and acknowledged to me that such corporation executed the same.

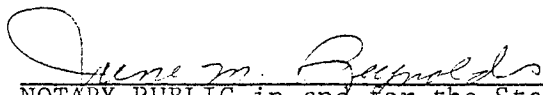
IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

  
 NOTARY PUBLIC in and for the State  
 of Idaho, residing at Moscow, Idaho

STATE OF IDAHO        )  
                           ) ss.  
 County of Latah        )

On this 10th day of may, 1975, before me, the undersigned, a Notary Public in and for said State, personally appeared ERNEST W. HARTUNG, known to me to be the President of the University of Idaho, the corporation that executed the above and foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

  
 NOTARY PUBLIC in and for the State  
 of Idaho, residing at Moscow, Idaho



THIRD REVISED AND RESTATED ARTICLES OF INCORPORATION  
THE UNIVERSITY OF IDAHO FOUNDATION, INC.

ARTICLE I

Name and Address

The name of this corporation is:

THE UNIVERSITY OF IDAHO FOUNDATION, INC.

The registered agent, location, and post office address of the registered and principal office of the Corporation is:

Executive Director  
 University of Idaho Foundation, Inc.  
 1106 Blake Street  
 PO Box 443150  
 Moscow, Idaho 83844-3150

ARTICLE II

Not for Profit

The Corporation is a nonprofit corporation under the Idaho Nonprofit Corporation Act. The Corporation is not formed for pecuniary profit. No part of the income or assets of the Corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except to the extent permissible by law and except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IV hereof.

ARTICLE III

Term

The term of the Corporation is perpetual.

ARTICLE IV

Purposes

The Corporation is organized, and shall be operated exclusively, for the following purposes: to exercise all of the rights and powers conferred by the laws of the state of Idaho upon nonprofit corporations, including without limiting the generality of the foregoing, to acquire by bequest, devise, gift, purchase, lease, charitable trusts, life estates, or any other method of transferring any property of any sort or nature, without limitation as to its amount or value, and to hold, invest, reinvest, manage, use, apply, employ, sell, expend, disburse, lease,

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 Revised October 2003

mortgage, convey, option, donate, or otherwise dispose of such property and the income, principal, and proceeds of such property for the benefit of the University of Idaho. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provision of any future federal tax code (hereinafter "Internal Revenue Code"), or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

## ARTICLE V

### Trusts and Trust Funds

Notwithstanding the provisions of Article IV, any donor or testator may direct that his or her gift shall be held in such charitable trusts as may be specifically designated by said donor or testator and in such case his or her intentions shall be carried out by The University of Idaho Foundation, Inc. (hereinafter "Foundation"). Donors or testators may give a principal sum to the Foundation for the benefit of said Foundation, and provide that the income thereof shall be payable to the donor during his or her life, or that it shall be paid to a beneficiary or beneficiaries named by him or by her for life, or for some other period of time, and that after the termination of the estate or estates so provided, the income or principal shall be disbursed as part of the unrestricted income or principal of said Foundation in accordance with Article IV or for such charitable purposes as the donor or testator may specify in accordance with this Article V.

If the members of the Foundation by the vote of ninety percent (90%) of the members shall at any time declare that the purposes of any gift made pursuant to this Article V have become (1) unnecessary, undesirable, impracticable, or impossible of fulfillment, or (2) if any beneficiary to which the income or principal of any gift shall be provided to be paid shall have become nonexistent or shall have ceased its activities, or (3) if for any other reasons the application or applications provided by the said donor or testator shall have become impossible, impracticable, unnecessary, or undesirable, the Foundation shall apply such gift to the purposes set forth in Article IV. The determination of the members that such purposes have become unnecessary, undesirable, impracticable, or impossible of fulfillment shall be binding and conclusive upon all persons.

The Foundation may accept appointments by any court of competent jurisdiction as trustee to hold any fund or funds under the terms of these articles.

## ARTICLE VI

### Commingleing of Funds

In the absence of any provisions expressing the intention of the donor or testator to the contrary, the Foundation shall be authorized to mingle any property given to it under the terms hereof with other property given to it under the terms hereof without obligation to retain any gift as a separate fund, but any donor or testator may direct that his or her gift be held as a separate fund and may, if he or she so desires, designate such fund as a memorial fund in memory

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Revised October 2003

of a particular person or event, and in such case the said fund shall be maintained as a separate fund forming a part of the said Foundation, under such name, if any, as may be properly designated therefor. The Foundation shall in any event be authorized to hold as a separate fund any gift which, in the discretion of the Foundation shall require segregation in order to carry out any specific provision expressed by the donor or testator, or which shall require such segregation or any other reason deemed sufficient by the Foundation.

Subject to any written agreement with the donor or testator to the contrary, if any fund, the income of which is directed by the donor or testator to be paid to any donor or other beneficiary, is commingled, the Foundation shall make available to pay to such donor or other beneficiary as income on such fund the average rate of return on such commingled funds.

If, at any time after such mingling of funds shall have taken place, it should thereafter for any reason be deemed by the foundation as desirable or necessary to separate any fund or funds, each fund so separated shall be considered to be that proportion of the value at the date of separation of the principal or income of the combined funds as the value at the date of gift of such fund so separated shall bear to the total value of such combined funds at said last mentioned date plus any subsequent gifts valued as of the date thereof.

#### ARTICLE VII

Membership The membership of this Corporation shall consist of one or more classes of members as prescribed in the bylaws. The manner of acting and meeting procedures for the members shall be as prescribed by the bylaws of this Corporation.

#### ARTICLE VIII

##### Board of Directors

Management of the affairs of the Corporation shall be by the board of directors who may delegate to officers and to committees of their own number and such additional members from the general membership as the board may deem appropriate such of their powers as they see fit. Directors shall be selected by the members at the times stated in the bylaws, for such terms and in such manner as the bylaws prescribe.

#### ARTICLE IX

##### Officers

Officers shall consist of a president, one or more vice presidents, a secretary, and a treasurer. The president and vice presidents shall be selected from members of the board of directors but the secretary and treasurer need not be directors or members. Two (2) or more offices may be held by the same person except that the president may not be secretary or treasurer. Officers shall be selected by the board of directors at the times, for such terms and in such manner as the bylaws prescribe.

ARTICLE XDissolution

In the event of the dissolution of this Corporation, or in the event that it should cease to carry out its purposes, no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the Corporation from any source, after the payment of all debts and obligations of the Corporation, shall be vested in the Board of Regents of the University of Idaho in trust for the use and benefit of the University.

Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

ARTICLE XITax Exemption

It is the intent of the incorporators that this organization shall be incorporated as a tax-exempt organization to which deductible gifts may be made pursuant to the terms of the Internal Revenue Code. To that end, this Corporation shall be subject to all the restrictions and requirements now or hereafter imposed by the United States Internal Revenue Code, any rules and regulations duly and properly promulgated in the application and interpretation of said Code with which compliance is required for qualification as a tax exempt organization. In particular, in any year in which this Corporation is a "private foundation," as that term is defined in the Internal Revenue Code, its income must be distributed at such time and in such manner as not to subject this Corporation to taxes under Section 4942, Internal Revenue Code, or in the regulations promulgated thereto, and the Corporation shall not engage in any act of self dealing as defined in Section 4941, Internal Revenue Code, or in the regulations promulgated pursuant thereto, and shall not retain any excess business holdings as defined in Section 4042(c), Internal Revenue Code, or under the regulations promulgated pursuant thereto, and shall not make any investments in such manner as to subject the Corporation to taxes under Section 4944, Internal Revenue Code, or in the regulations promulgated pursuant thereto, and shall not make any taxable expenditures as defined in Section 4945(d), Internal Revenue Code, or in the regulations promulgated pursuant thereto.

ARTICLE XIIAmendments

The articles of incorporation of this Corporation may be altered, amended, or newly adopted at any meeting of the members of the Corporation called for the purpose by majority of a quorum of the voting members present, in person or by proxy, provided that notice is sent to each member not less than ten (10) days prior to such meeting, and provided that a quorum is present. A majority of the voting members of the Corporation shall constitute a quorum for such purposes. Such notice shall state in a general way the nature of the proposed change.

ARTICLE XIIINotice

Except as otherwise specified, whenever notice is required, it shall be in writing sent prepaid not less than three (3) days before the event if by electronic transmission and not less than six (6) days if by mail, addressed to the last known address. Notice may be waived either before or after a meeting.

Pursuant to the provisions of the Articles of Incorporation and Bylaws of The University of Idaho Foundation, Inc., an Idaho nonprofit corporation, and pursuant to the Idaho Non-profit Corporation Act, the qualified voting members of the Corporation duly noticed, approved, and adopted the within and foregoing third revised and restated articles of incorporation and all of the amendments therein contained, at a duly constituted meeting held on October 17, 2003.

Executed in triplicate effective October 21, 2003

THE UNIVERSITY OF IDAHO FOUNDATION, INC.

By: Joanne B. Carr  
Joanne B. Carr, Secretary

THIRD REVISED AND RESTATED ARTICLES OF INCORPORATION, THE UNIVERSITY OF IDAHO FOUNDATION, INC.  
Revised October 2003

RESTATED BY-LAWS OF  
THE UNIVERSITY OF IDAHO FOUNDATION, INC.

Moscow, Idaho  
 January 25, 2007

ARTICLE I  
Name and Address

The name of this Corporation is:

THE UNIVERSITY OF IDAHO FOUNDATION, INC. (the "Foundation")

The registered agent, location, and post office address of the registered and principal office of the Foundation is:

Chairman  
 University of Idaho Foundation, Inc.  
 1106 Blake Street  
 PO Box 443150  
 Moscow, Idaho 83844-3150

ARTICLE II  
Purposes

The mission of The University of Idaho Foundation, Inc., Moscow, Idaho ("Foundation") is to secure, manage, and distribute private support to enhance the growth and development of the University of Idaho.

The Foundation is organized and operated exclusively for educational, charitable, scientific and literary purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law); specifically, the Foundation is organized and operated exclusively to seek, receive, hold, invest, and administer property and to make expenditures to or for the benefit of The University of Idaho ("University"), a State educational institution which is governed by the Regents of the University of Idaho, the governing board legally responsible for the performance and oversight of all aspects of University operations (the "Regents").

In furtherance of such purposes, the Foundation may solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property, absolutely or in trust, tangible or intangible, real, personal or mixed, and wherever located, from the general public, including individuals, corporations, and other entities and sources. The Foundation may administer, manage, invest and reinvest such money and property, and apply and expend the

principal, income and proceeds thereof for such purposes, all to or for the benefit of the above-described University.

The Foundation may hold and convey any real estate or other property necessary for, or in furtherance of, its operations or purposes or in relation to the execution or administration of any trust. The Board of Directors of the Foundation shall have full power, at its sole discretion, except as prohibited or limited by the terms of any instrument establishing or governing a gift, devise, bequest or other contribution or transfer, to change the form of any investment and to dispose of any securities or other property held by the Foundation.

### ARTICLE III MEMBERSHIP

SECTION 1. Members. The Board of Directors (Voting and Non-Voting) and the Foundation Council (Non-Voting) shall constitute the members of the Foundation.

SECTION 2. Annual Meeting. An annual meeting of the members shall be held in the second quarter of each fiscal year, at a time and place to be fixed by the Chairman, for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

SECTION 3. Notice of Meetings. A written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered or mailed by the Secretary, or by the officer or person calling the meeting to each member of record entitled to vote at that meeting, at the address which appears on the records of the Foundation, at least ten (10) days before the meeting date. Notice of any meeting of members may be waived in writing filed with the secretary or by attendance in person.

SECTION 4. Quorum. A majority of the persons qualified to vote as members at any meeting shall constitute a quorum.

SECTION 5. Voting by Proxy Prohibited. Except as provided in Section 6 of this Article III, a member must be present in person to vote on any matter coming before a meeting of the members. Voting by proxy is prohibited.

SECTION 6. Participation by Telephone or other Electronic Means. Any or all of the members may participate in a meeting of the membership by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by these means constitutes presence in person at the meeting.

ARTICLE IV  
DIRECTORS

SECTION I. Voting and Non-Voting Directors. The Board of Directors shall consist of at least fifteen (15) but no more than twenty-five (25) Voting Directors, and a number of Non-Voting Directors, which shall vary from time to time, depending upon the number of individuals who shall meet the criteria of a non-voting member as hereinafter set out.

- (A) Voting Directors. The Board of Directors shall consists of at least fifteen (15) but no more than twenty-five (25) voting directors elected generally, upon recommendation by the Board's Committee on Directors, at the annual meeting of the members by a majority vote of the members present. The term of an elected Voting Director shall begin immediately following his or her election and shall continue for a period of three (3) years (unless elected to fill out the un-expired balance of a newly created term or the term of a Director who resigns, is deceased or is removed from office). Any elected Voting Director shall be eligible to serve two (2) consecutive three (3)-year terms as a Director of the Foundation, provided, however: Should any director be elected to the office of Chairman or Vice-Chairman during their final 3-year term as a Director of the Foundation, then that director's term shall be extended until the termination of their service in that office, with the understanding that the Vice-Chairman's term shall include service as Chairman, should that director be so elected. Any director having served two (2) consecutive terms may be re-elected to the Board of Directors after a minimum of one year from the date of previous service as a Director. Any vacancy on the Board of Directors of an elected Voting Director may be filled at the next regularly scheduled meeting by the remaining Voting Directors choosing a Director to fill the un-expired term.
- (B) Non-Voting Directors. Non-Voting Directors shall consist of a varying number of members who shall be eligible for election by virtue of a certain position of responsibility which each has occupied or presently occupies with the Foundation, as follows:
- (1) Emeritus Directors  
Any person who has previously served on the Board of Directors as President or Chairman will automatically be appointed an "Emeritus Director" for life at the conclusion of his or her term of office. Any person who has previously served on the Board of Directors and has exhibited exemplary service to the Foundation shall be eligible to be elected an "Emeritus Director" by the Board at the conclusion of his or her last term of office and shall serve as such Emeritus Director for life. Emeritus Directors shall be invited to attend at least one (1) meeting of the Board during each fiscal year (Annual Meeting).



- (2) **Managing Director**  
The Managing Director of the Foundation shall serve as a Non-Voting Director for the same time that he or she is employed by the Foundation and shall attend all Board meetings at which his or her presence is required by the Board.
- (3) **Executive Director**  
The Vice President for University Advancement will also serve as Executive Director of the Foundation. This position shall serve as a Non-Voting Director for the same period of time that he or she is employed by the University and shall attend all Board meetings at which his or her presence is required by the Board.
- (4) **Ex Officio Directors**  
The following persons shall be designated non-voting ex-officio directors of the Board of Directors so long as they shall hold their position:
- The president of the University;
  - The provost of the University;
  - The president of the University of Idaho Alumni Association, Inc;
  - The president of the Vandal Scholarship Fund;
  - The chair of the Faculty Council of the University;
  - The president of the Associated Students of the University of Idaho
- (5) **Officers of the Foundation**  
Any Officer of the Foundation who is not otherwise designated or elected as a Voting Director of the Foundation shall serve as a Non-Voting Director of the Foundation and shall attend all Board meetings at which his or her presence is required by the Board.
- (C) **Classes of Directors.** As nearly as mathematically possible, one-third (1/3) of the positions on the Board of Directors elected shall be open for election each year at the annual meeting.

**SECTION 2. Resignation and Removal.** Any Director may resign at any time by giving written notice to the Chairman, Secretary, or the Board of Directors of the Foundation. Such resignation shall take effect at the time specified therein. Any Director may be removed from office by a vote of three-fourths (3/4) of all Voting Directors at any annual, regular or special meeting of the Board.

**SECTION 3. Meetings.** At least four (4) meetings of the Board of Directors shall be held in each fiscal year. An annual meeting of the Board of Directors shall be held in the second quarter of each fiscal year, at a time and place to be fixed by the Chairman. Regular meetings

of the Board of Directors shall be held three (3) additional times during each fiscal year at a time and place to be fixed by the Chairman. Special meetings may be called at any time by the Chairman, or by a majority of the Voting Directors upon request made to the Secretary. A majority of the Voting Directors shall constitute a quorum for election of officers or any other business. Notice of any annual, regular or special meeting of the Board shall be delivered or mailed by the Chairman or Secretary to each Voting Director at least ten (10) days prior to the date of any such meeting unless such notice is waived in writing, filed with the Secretary or by attendance in person by any such Voting Director.

SECTION 4. Participation by Telephone or other Electronic Means. Any or all of the Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by these means constitutes presence in person at the meeting.

SECTION 5. Board Action Without a Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if, prior to such action, a consent in writing setting forth such action is signed by all of the Directors, and is filed in the minutes of the proceedings of the Board. Action is effective when the last Director signs the consent, unless the consent specifies a different prior or subsequent effective date.

SECTION 6. General Powers of Directors. The Board of Directors shall have all of the general powers provided by the Idaho Nonprofit Corporation Act (the Act), as amended, to the extent not prohibited by these Bylaws.

SECTION 7. Standards of Conduct for Directors. The Board of Directors shall be subject to the Standards of Conduct for Directors as provided by the Act, as amended.

SECTION 8. Directors Conflict of Interest. No contract or other transaction between the Foundation and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its Directors is a director or officer or is financially interested, shall be either void or voidable because of such relationship or interest or because such Director or Directors are present at the meeting of the Board of Directors which authorizes, approves or ratifies such contract or transaction, if:

- (a) The interested Director does not participate in the vote on the contract or transaction;
- (b) The fact of such relationship or interest is disclosed or known to the Board of Directors which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the vote or consents of such interested Directors; and
- (c) The contract or transaction is fair and reasonable to the Foundation.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors, which authorizes, approves or ratifies such contract or transaction.

## ARTICLE V OFFICERS

SECTION 1. Designated Officers. The officers of the Foundation shall consist of a Chairman, Vice-Chairman, Executive Director, Managing Director, Secretary and Treasurer (which latter two offices may be held by one and the same individual). The Board of Directors may appoint such other Assistant Officers as it may from time to time determine necessary and may define their powers and duties. The Chairman and Vice-Chairman of the Board shall be chosen from among the Voting Directors of the Foundation. The Executive Director, Managing Director, Secretary, Treasurer, and such Assistant Officers as may be appointed by the Board, need not be Voting Directors.

SECTION 2. Election. The Officers of the Foundation shall be elected at the annual meeting of the Board of Directors and shall hold office until the next annual meeting or until the successor for any such officer shall have been elected and qualified. A vacancy in any office may be filled by the Board at any meeting for the balance of the term of such office. A Voting Director who is elected as an officer is eligible to serve in that office for two (2) consecutive one (1)-year terms. A Non-Voting Director who serves as an officer because of his or her position of employment may serve as an officer so long as he or she holds the position.

SECTION 3. Removal. Any officer may be removed from office by a vote of three-fourths (3/4) of all Voting Directors at any annual, regular, or special meeting of the Board.

SECTION 4. Duties of Officers. The duties of the officers of the Foundation shall be as follows:

- (A) Chairman. The Chairman shall be the chief volunteer officer of the Foundation; and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the Foundation. He or she shall, when present, preside at all meetings of the Board of Directors. He or she may sign, with the Treasurer or other proper officer of the Foundation, so authorized by the Board of Directors, contracts, deeds, mortgages, notes, or other instruments which the Board of Directors has authorized to be executed. He or she will present a slate of Committee chairs and appointees to the Board of Directors for ratification. He or she shall in general perform all duties as may be prescribed from time-to-time by the Board of Directors.
- (B) Vice-Chairman. The Vice-Chairman shall, in the absence of the Chairman or in the event of his or her death, inability or refusal to act, perform the duties of the

Chairman, and, when so acting, shall have all the powers and be subject to all the restrictions upon the Chairman.

- (C) Managing Director. The Managing Director is an employee of the University of Idaho Foundation and shall be the chief operating officer. Subject to the direction of the Chairman and the control of the Board of Directors, the Managing Director shall in general supervise and control the day-to-day operations of the Foundation. The Managing Director shall serve pursuant to the terms of a written employment agreement approved by the Board of Directors. He or she shall in general perform all duties as may be prescribed from time to time by the Board of Directors.
- (D) Executive Director. The Vice President for University Advancement also serves as Executive Director and shall be responsible for serving as a liaison with the Foundation and the University of Idaho as well supporting and directing volunteers in fundraising and advancement efforts.
- (E) Secretary. The Secretary shall attend all meetings of members and of the Board of Directors and shall keep, or cause to be kept, in a book or file provided for the purpose, a true and complete record of the proceedings of such meetings, and he or she shall perform a like duty, when requested, for all standing committees appointed by the Board of Directors. He or she shall attend to the giving and serving of all notices of the Foundation required by these By-Laws, have power to authenticate records, have custody of the books (except books of account), records and corporate seal of the Foundation, and in general shall perform all duties pertaining to the office of Secretary and such other duties as these By-Laws or the Board of Directors may prescribe. The Secretary shall also keep or cause to be kept at the principal office of the Foundation a register of the names and addresses of each Director.
- (E) Treasurer. The Treasurer shall keep, or cause to be kept, correct and complete records of account. He or she shall be responsible for all funds and securities and other valuables which may from time to time come into the possession of the Foundation. The Treasurer shall deposit, or cause to be deposited, all funds of the Foundation with such depositories as the Board of Directors shall designate. He or she shall deposit with a Trustee, hold in a safe deposit box, or handle in any other manner as directed by the Board of Directors, all securities and other valuables of the Foundation. The Treasurer shall furnish to the Board of Directors at each annual meeting, as of the end of each fiscal year, and whenever requested, financial statements in the form and content as prescribed by the Board of Directors. He or she shall in general perform all duties pertaining to the office of Treasurer and such other duties as these By-Laws or the Board of Directors may prescribe.
- (F) Execution of Contracts. All bonds, mortgages, leases, deeds, promissory notes and other written instruments, except checks, leases, and contracts for normal budgeted

operations, shall be authorized by resolution of the Board of Directors and shall be executed in the name of the Foundation and on its behalf by the Managing Director of the Foundation or by such officers or members of the Board as the Board may specifically designate. All checks, drafts and other evidences of indebtedness payable to the Foundation shall be endorsed for collection in the name of the Foundation by the Managing Director, Treasurer or such other persons as the Board may designate.

SECTION 5. Assistant Officers. Such assistant officers as the Board of Directors shall from time to time designate and elect shall have such powers and duties as these By-Laws or the Board of Directors may prescribe.

SECTION 6. Vacancies. Whenever any vacancies shall occur in any office of the Foundation, such vacancy shall be filled by the Directors by the election of a new officer who shall hold office until the next annual meeting or until his or her successor is duly elected and qualified.

## ARTICLE VI COMMITTEES

SECTION 1. Executive Committee. The Executive Committee of the Board shall consist of the Chairman, the Vice-Chairman, the Treasurer, the Executive Director/Secretary, the Managing Director, the Chairman of the Operations and Finance Committee, the Chairman of the Committee on Directors, the Chairman of the Investment Committee, and any other committee chairman as determined by the Chairman of the Board. During the intervals between meetings of the Board of Directors, the Executive Committee shall possess and may exercise all powers of the Board of Directors in the management and direction of the affairs of the Foundation in such manner as it shall deem best for the interest of the Foundation in all cases in which specific directions shall not have been given by the Board of Directors. Regular minutes of the proceedings of the Committee shall be kept in a book provided for that purpose. All actions by the Executive Committee shall be reported to the Board at its next meeting succeeding such action, and shall be subject to revision or alteration by the Board provided that no rights of third parties shall be affected by any such revision or alteration. Vacancies in the Executive Committee shall be filled by the Board of Directors by election from the Voting Directors. The presence of a majority shall be necessary to constitute a quorum, and in every case, the affirmative vote of the majority of the members of the Committee present shall be necessary. Such Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board, and shall also meet at the call of the Chairman or any three (3) members of the Committee.

SECTION 2. Committee on Directors. In addition to other duties assigned to it by the Board of Directors, the Committee on Directors shall (i) screen, recruit, and recommend

potential Board and Foundation Council members; based upon the diversity of: skills needed, ethnicity, gender, and geography, (ii) recommend to the Board of Directors a slate of officers for election, (iii) evaluate the performance of Directors and officers, both individually and collectively; and (iv) be responsible for orientation and deployment of new Board members. This committee shall also propose nominees to the Foundation Council, a supporting organization of the Foundation.

SECTION 3. Operations and Finance Committee. In addition to other duties assigned to it by the Board of Directors, the Operations and Finance Committee shall advise the Board of Directors on (i) general fiscal policy, fiscal management and all operational matters including budgetary and financial issues, (ii) personnel issues including determination of the Foundation's salary pool and its salary structure, and (iii) evaluating the Managing Director.

SECTION 4. Investment Committee. In addition to other duties assigned to it by the Board of Directors, the Investment Committee shall be responsible for (i) deciding how investments will be managed, (ii) making asset allocation decisions, (iii) making direct investments, (iv) selecting the investment managers, (v) reviewing the investment portfolio performance, and (vi) providing periodic reports to the Board on investment operations and results.

SECTION 5. Audit Committee. In addition to other duties assigned to it by the Board of Directors, the Audit Committee shall oversee the Foundation's audit process, including (i) communicating with the auditors and the Foundation's staff, (ii) review of the audit and management letter process, and (iii) recommending to the Board of Directors potential audit firms.

SECTION 6. Development Committee. In addition to other duties assigned to it by the Board of Directors, the Development Committee shall (i) promote, support and enhance the development program on behalf of the University of Idaho and its donors, (ii) review and recommend development program policies and procedures, and amendments thereto, including gift acceptance and donor recognition and stewardship policies, (iii) assist when appropriate with the cultivation, education and solicitation of gift donor prospects.

SECTION 7. Other Committees. The Board of Directors, upon the recommendation of the Chairman or otherwise, may appoint such other committees as may be desirable for carrying out the purposes of the Foundation. Such committees shall have and may exercise such powers as shall be conferred or authorized by the resolution of appointment by the Board. Both Voting and Non-Voting Board members, and where appropriate, non-board members may be appointed by the Chairman of the Board to any such committees.

SECTION 8. Ex Officio Committee Members. The Chairman and Vice Chairman of the Board shall serve as *ex officio* voting members of the Committee on Directors, Operations and Finance Committee, Investment Committee, and any other committees established by the Board of Directors with the exception of the Audit Committee. The Managing Director and

the Treasurer shall serve as *ex officio* non-voting members of the Executive Committee, Operations and Finance Committee, and Investment Committee. The Managing Director shall also serve as an *ex officio* non-voting member of the Committee on Directors. Additional *ex-officio* non-voting directors (as outlined in Article III, Section II (B)(3)) may serve on such committees as designated by the Board of Directors so long as said directors shall hold their respective designated position.

SECTION 9. Selection of Committee Chairmen and Committee Members. The Chairman of the Board of Directors shall recommend to the Board of Directors for its approval a Chairman for each of the Foundation's committees and a list of members for each committee. Vacancies in the membership of a committee other than the Executive Committee may be filled by the Chairman of the Board of Directors with the consent of the Board at Directors. Prior to the making of any such recommendations, the Chairman shall endeavor to determine the preferences of Directors regarding committee assignments and shall assign each Director to at least one (1) standing committee. Chairmen of committees shall be members of the Board of Directors. Members of committees must be in good standing with the University of Idaho Foundation, Inc. Board of Directors and the Foundation Council.

SECTION 10. Terms and Term Limitations. Committee chairman and committee members are elected to serve for one (1) year or until his or her successor is elected and qualified. A committee member may serve on a particular committee for any number of consecutive terms.

SECTION 11. Committee Meetings. Meetings of any committee may be called by the Chairman of such committee or by the Chairman of the Board, by giving or causing to be given notice of such meeting, setting forth its time and place and delivered personally or by mail or telephone to the residence or place of business of the committee member as listed in the records of the Foundation, at least two (2) calendar days prior to such meeting. A majority of the voting members of any committee shall constitute a quorum for the transaction of business. Each committee shall keep minutes of its meetings and report to the Board and/or Chairman as necessary with recommendations.

SECTION 12. Participation by Telephone or other Electronic Means. Any or all of the voting members of any committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation in this manner constitutes presence in person at the meeting.

SECTION 13. Committee Action Without a Meeting. Any action which may be taken at a meeting of a committee may be taken without a meeting if, prior to such action, a consent in writing setting forth such action is signed by all of the voting members of the committee and is filed in the minutes of the proceedings of the committee.

ARTICLE VII  
FISCAL YEAR

The fiscal year of the Foundation shall begin on the first day of July of each year and end on the thirtieth day of June of the next succeeding year.

ARTICLE VIII  
DISSOLUTION

In the event of the dissolution of this Foundation, or in the event that it should cease to carry out its purposes, no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the Foundation for any source, after the payment of all debts and obligations of the Foundation, shall be vested in the Board of Regents of the University of Idaho in trust for the use and benefit of the University.

Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

ARTICLE IX  
BOOKS AND RECORDS

The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep at the principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Foundation may be inspected by any member, or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE X  
INDEMNIFICATION AND INSURANCE

SECTION 1. Indemnification. The Foundation shall indemnify each member of the Board of Directors and each Officer of the Foundation now or hereafter serving as such, who was or is a party, or is threatened to be made a party, to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he or



she is or was a Director or Officer or is or was serving at the request of the Foundation as a Director, Officer or member of another corporation, partnership, joint venture, trust or other enterprise, against expenses, (including attorney's fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such claim, action, suit or proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Foundation, and with respect to any criminal action or proceeding when he or she had no reasonable cause to believe the act was unlawful. The termination of any claim, action, suit or proceeding, civil or criminal, by judgment, settlement (with or without court approval), or conviction or upon a plea of guilty or of nolo contendere, or its equivalent, shall not create a presumption that a Director or Officer did not meet the standards of conduct set forth in the preceding sentence.

SECTION 2. When Made.

- (a) To the extent that a Director or Officer has been successful on the merits or otherwise in defense of any claim, action, suit or proceeding referred to in Section (1) of this Article, or in defense of any claim, issue or matter therein, he or she shall be indemnified against the expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith.
- (b) To the extent that a Director or Officer has not been successful on the merits in defense of any action, suit or proceeding referred to in Section 1 of this Article, or the defense of any claim, issue or matter therein, indemnification (unless ordered by the court) shall be made at the discretion of the Foundation and only upon a determination that indemnification of the Director or Officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Section (1). Such determination shall be made: (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or (2) if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel (who may be regular counsel of the Foundation) in a written opinion.

SECTION 3. Expenses. As authorized by the Board of Directors, expenses incurred by any person who may have a right of indemnification under this Article in defending a civil or criminal claim, action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such claim, action, suit or proceeding, or where appropriate the Foundation may, itself, undertake the defense of such claim, action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Foundation pursuant to this Article.

SECTION 4. Non-exclusive. The indemnification provided by this Article for Directors and Officers shall not be deemed exclusive of any other rights to which any of them may be entitled, under any bylaw, agreement, vote of the disinterested Directors, as a matter of law or otherwise, both

as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director or Officer and shall inure to the benefit of the heirs, executors and administrators of any such person.

SECTION 5. Agents and Employees. In addition to the indemnification which shall be provided by the Foundation to its Directors and Officers as hereinbefore provided in this Article, the Foundation may, if authorized by action of the Board of Directors, indemnify any agent or employee of the Foundation, to the same extent and under the same circumstances as such indemnification is assured to the Directors and Officers of the Foundation under this Article

SECTION 6. Insurance. The Foundation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a Director, Officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the Foundation would have the power to indemnify the person against such liability under the provisions of this Article or otherwise under the laws of the State of Idaho.

#### ARTICLE XI AMENDMENT

These By-Laws, or any Article thereof, may be amended in whole or in part by a majority vote of the Board of Directors at any annual, regular or special meeting of the Board of Directors.

#### ARTICLE XII COMPENSATION

Directors shall receive no compensation for their services as directors. The board of directors may, however, reimburse a director out of Foundation funds for professional or other services actually performed. Officers may be paid such reasonable compensation as the board of directors may prescribe, and, in the case of officers who are employees of the University, in accordance with the policies of the Regents of the University of Idaho. (See Idaho State Board of Education Governing Policies and Procedures V.E2.i.)

#### ARTICLE XIII FUNDS AND SECURITIES

SECTION 1. The board of directors may authorize any officer or officers or officer together with any member, in the name of and on behalf of the Foundation to enter into any contract or execute and deliver any instrument, or to sign checks, drafts, or other orders for the payment of money or notes or other evidences of indebtedness, and such authority may be general or

confined to specific instances; and, unless so authorized by the board of directors, no officer shall have power or authority to bind the Foundation by any contract or engagement or to render it pecuniarily liable for any purpose or to any amount.

SECTION 2. No loan shall be contracted on behalf of the Foundation and no negotiable paper shall be issued in its name unless authorized by the board of directors. When authorized by the board of directors so to do, any officer of the Foundation may effect loans and advances at any time for the Foundation from any bank, trust company, or other institution, or from any firm, corporation, or individual. Such authority may be general or confined to specific instances.

SECTION 3. All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, trust companies, investment funds, or accounts, or other depositories as the board of directors may select, or as may be selected by any officer or officers of the Foundation to whom such power may from time to time be delegated by the board of directors.

#### ARTICLE XIV SEAL

The seal of the Foundation shall be circular in form and shall bear the name of the Foundation, the year of its organization, and the words "corporate seal, State of Idaho".

CERTIFICATE

Know all men by these presents:

That we, the undersigned Chairman and Secretary of THE UNIVERSITY OF IDAHO FOUNDATION, INC., an Idaho corporation, do hereby certify that the foregoing By-laws, supersede all prior By-laws, amended or restated, were duly adopted as the restated By-laws of said corporation at a duly constituted meeting of the members of the corporation at which a quorum was present, in person or by proxy, said meeting held on the 25<sup>th</sup> day of January, 2007 and that the same do now constitute the By-laws of said corporation.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2007.

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William G. Gilbert, Jr.  
Chairman

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Christopher P. Murray  
Secretary

## University of Idaho Foundation, Inc.

### Conflicts of Interest Policy

- A. **Purpose.** The purpose of this Conflicts of Interest Policy is to protect the Foundation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director or committee member of the Foundation. Such transactions may include services provided by the Foundation, purchase of services and/or tangibles from a vendor; and/or access to specialized or privileged information which can be used for personal gain. This policy is intended to supplement but not replace any Idaho laws governing conflicts of interest applicable to nonprofit and charitable corporations.
- B. **Applicability.** This Policy applies to any transaction or arrangement between the Foundation and any "interested person".

An "interested person" is a director, officer or member of a committee with board-delegated powers who has a direct or indirect "financial interest".

A "financial interest" is:

1. An ownership or investment interest in any entity with which the Foundation has a transaction or arrangement;
2. A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement; or
3. Being an officer, director, employee or agent of any entity or individual with which the Foundation has a transaction or arrangement.

Compensation includes direct and indirect remuneration and gifts or favors which are substantial in nature.

- C. **Determination of a Conflict of Interest.** With respect to any proposed transaction or arrangement between the Foundation and any entity or individual being considered by the board of directors or any committee with board-delegated powers:
1. Any interested person shall disclose any financial interest and all material facts related thereto to the board or committee as soon as the interested person becomes aware of a possible conflict of interest.
  2. Upon the disclosure by an interested person of a financial interest and all material facts relating thereto and discussion with the interested person, he or she shall leave the meeting while the remaining members of the board or committee discuss the matter and determine, by majority vote without the interested person voting,

whether or not the financial interest of the interested person constitutes a conflict of interest.

**D. Addressing a Conflict of Interest.** If a conflict of interest is determined to exist, then the board or committee shall:

1. Require the interested person to leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest; provided, however, that the interested person may make a presentation at the meeting prior to leaving;
2. Appoint, if it deems appropriate, a non-interested person or committee to investigate alternatives to the proposed transaction or arrangement; and
3. Determine, by a majority vote without the interested person voting, that the transaction or arrangement is in the Foundation's best interests and for its own benefit; is fair and reasonable to the Foundation, and, after exercising due diligence, determine that the Foundation cannot obtain a more advantageous transaction or arrangement with reasonable efforts under the circumstances.

Any interested person who violates this Conflict of Interest Policy shall be subject to appropriate discipline, including removal from office.

**E. Recording Conflicts of Interest.** The minutes of all board meetings and the meetings of all committees with board-delegated powers shall include:

1. The names of the persons who disclose financial interests, the nature of the financial interests and whether the board or committee determined that there was a conflict of interest; and
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement; the content of these discussions, including any alternatives to the proposed transaction or arrangement; and a record of the vote.

**F. Distribution of Conflict of Interest Policy.**

1. At the first board meeting following the annual board meeting, and at the first meeting of each committee with board-delegated powers following the annual board meeting, a copy of the Foundation's current Conflicts of Interest Policy shall be distributed to all directors and committee members.
2. On or before the date of the second board or committee meeting following the annual board meeting, each director and committee member shall sign and return to the secretary of the board a written statement that he or she:
  - a. Has received a copy of the Conflicts of Interest Policy;
  - b. Has read and understands the Policy;

- c. Agrees to comply with the Policy;
- d. Understands that the Policy applies to all committees and subcommittees having board-delegated powers; and
- e. Understands that the Foundation is a charitable organization and that in order to maintain its tax-exempt status, it must continuously engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**G. Periodic Reviews.** At the first board meeting following the annual board meeting, and at the first meeting of each committee with board-delegated powers following the annual board meeting, and at such other times as the board or committee may deem appropriate, the board or committee shall conduct a review of the Foundation's activities to ensure that the Foundation is operating in a manner consistent with accomplishing its charitable purposes and that its operations do not result in private inurement or impermissible benefit to private interests.

Adopted by the Board of Directors of the University of Idaho Foundation, Inc. on \_\_\_\_\_, 2006.

\_\_\_\_\_  
Name, Secretary

## University of Idaho Foundation, Inc.

### Conflicts of Interest Statement

The undersigned hereby states that he or she is an officer, director or committee member of the University of Idaho Foundation, Inc. ("Foundation") and that he or she:

- a. has received a copy of the Foundation's Conflicts of Interest Policy;
- b. has read and understands the Policy;
- c. agrees to comply with the Policy;
- d. understands that the Policy applies to all committees and subcommittees having board-delegated powers;
- e. understands that the Foundation is a charitable organization and that in order to maintain its tax-exempt status, it must continuously engage primarily in activities which accomplish one or more of its tax-exempt purposes; and
- f. recognizes the need to maintain confidentiality regarding information he or she might receive as an officer, director or committee member regarding the activities of the Foundation.

The undersigned hereby states that, to the best of his or her knowledge and belief, he or she is not in a position of possible conflict of interest with the Foundation except as stated below:

Name of Organization

Position Held

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Signature