

AUDIT
JUNE 16, 2021

TAB	DESCRIPTION	ACTION
1	IDAHO STATE UNIVERSITY Foundation Operating Agreement	Motion to approve

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 16, 2021

IDAHO STATE UNIVERSITY

SUBJECT

Operating agreement between Idaho State University (ISU) and the Idaho State University Foundation, Inc.

REFERENCE

June 2018 Board re-approval of ISU Operating Agreement with ISU Foundation

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Board policy requires formal Board recognition of a nonprofit or affiliated foundation to benefit a public college or university in Idaho. The institution and an affiliated foundation must enter an operating agreement to address the topics outlined in Policy V.E. The operating agreement between an institution and an affiliated foundation must be approved by the Board prior to execution and must be re-submitted to the Board every three (3) years, or as otherwise requested by the Board, for review and re-approval.

ISU worked with the ISU Foundation to make changes to the existing operating agreement, which was approved by the Board in June 2018. The substantive change to the agreement allows the Executive Director of Foundation and Advancement Services, an ISU position, to function as the Managing Director for the ISU Foundation. The changes preserve the Foundation's oversight authority over Foundation-related responsibilities, while allowing the position to support University Advancement functions more broadly.

The changes to the Operating Agreement, which are highlighted in the attached documents, are summarized as follows:

- Identify Idaho State University as the Institution/Agency.
- The Managing Director will no longer operate under a loaned employee agreement. Instead, the Managing Director will fulfill all Foundation-related responsibilities as described in the Services Agreement.
- Preserve the right and duty of the Foundation Board of Directors to recommend personnel actions regarding the Managing Director, and to fully participate in the evaluation of the Managing Director's performance.
- Correct minor punctuation, formatting and signatory changes as shown.

Changes to the Attachments are summarized as follows:

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 16, 2021

- Update the Service Agreement in conformity with the proposed Operating Agreement.
- Replace the Investment Policy with the Foundation's current policy.
- Update the titles of Foundation officers.
- Correct exhibit titles, formatting and grammatical errors.

IMPACT

Approval of the operating agreement maintains compliance with Board policy V.E. and reflects updated operational standards between ISU and the Foundation.

ATTACHMENTS

Attachment 1 - Proposed operating agreement between Idaho State University and Idaho State University Foundation

Attachment 2 – Proposed operating agreement redlined to the Board's Foundation Agreement Template

Attachment 3 – Proposed operating agreement redlined to current operating agreement

Attachment 4 - Exhibit A – Loaned Employment Agreement

Attachment 5 - Exhibit B – Service Agreement

Attachment 6 - Exhibit C – Investment Policy

Attachment 7 - Exhibit D – Articles of Incorporation

Attachment 8 - Exhibit E – Bylaws

Attachment 9 - Exhibit F – Conflict of Interest

Attachment 10 - Exhibit G - Code of Ethical Conduct

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Board staff have reviewed the documents to assure substantial alignment with the template developed in in 2019 as part of Board Policy V.E. The Audit Committee reviewed the Operating Agreement at its meeting on June 8, 2021 and recommended its approval to the Board.

BOARD ACTION

I move to approve the operating agreement between Idaho State University and Idaho State University Foundation, Inc., as presented.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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

This Operating Agreement (“Operating Agreement”) between Idaho State University Foundation, Inc. (“Foundation”) and Idaho State University (“University”) is entered into as of this ____ day of _____, 2021.

WHEREAS, the Foundation was organized and incorporated in 1967 for the purpose of generating 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 University 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, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Operating Agreement, personnel experienced in planning for and managing private support.

WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development of the University.

WHEREAS, the University and Foundation 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 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 Operating Agreement for initial State Board of Education (“State Board”) approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

WHEREAS, the Foundation and the University intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

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: (1) conflict with federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) cause the University to be in violation of applicable policies of the State Board; or (3) conflict with the role and mission of the University.

ARTICLE II

Foundation's Organizational Documents

The Foundation shall provide the University with access to its Articles of Incorporation and Bylaws, as amended, via the Foundation’s public website. The Foundation, to the extent practicable, also shall provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws. The University shall provide all such documents to the State Board.

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 designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the University to the Foundation's Board of Directors regarding the University's fundraising efforts.

b. *Managing Director:* The Managing Director of the Foundation is an employee of the University. The Managing Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation, and subject to the direction and control of the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). More specific duties of the Managing Director are set forth in the Service Agreement.

d. *Other University Employees Holding Key Foundation or Administrative or Policy Positions:* In the event the University and the Foundation determine it is appropriate for one or more additional University employees who function in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) to serve both the University and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such University employee.

e. *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 Services. The University shall provide administrative, financial, accounting, investment, and development services to the Foundation, as set forth in the 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 agreed that the direction and control of any such employee will be vested with the Foundation through a written Service Agreement. In consideration of the services provided to the Foundation by the University, the Foundation will pay directly to the University that portion of the overhead costs agreed to between the parties under 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 and equipment to the Foundation 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 and equipment shall be as set forth in the Service Agreement.

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

ARTICLE IV

Management and Operation of Foundation

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

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.

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.

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 Gift Transfers.* 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. 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 an University employee.

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 University 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. 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 apply to payments by the University to the Foundation for obligations of the University to the Foundation, operating expenses of the Foundation or other costs of the Foundation.
- d. The transfer is of funds raised by the University for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.

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. 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. 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 University Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is posted on the Foundation's public website; 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 the University with access to its investment policy, as amended, via the Foundation's public website.

10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the Bylaws, as amended. The Foundation shall provide the University and State Board with access to its Articles of Incorporation and Bylaws, as amended, via the Foundation's public website.

ARTICLE V

Foundation Relationships with the University

At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the University and the Foundation acknowledge that the Foundation carries out functions for the benefit of the University. As such, the Parties shall share certain information as provided below.

1. Access to Records. Subject to recognized legal privileges, each Party shall have the right to access the other Party's financial, audit, donor and related books and records as needed to properly conduct its operations.

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. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

3. Name and Marks. 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 Idaho State University, for use in its support of the University. The Foundation shall

operate under the University's logotype in support of its organizational business and activities. Any use by the Foundation of the University's logotypes or other trademarks must be with prior approval of the University through the Office of Marketing and Communications.

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 will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing to the Managing Director and 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. Any supplemental compensation of University employees by the Foundation must be preapproved by the State Board. Any such supplemental payment or benefits 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. 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 State Board, in accordance with the State Board's schedule for receipt of said annual audit. The Foundation's annual statements will 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, the Foundation will prepare schedules reconciling the FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor's independent opinion regarding such financial statements, and schedules shall be submitted to the University Office of Finance and Business Affairs in sufficient time to incorporate the same into the University's 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 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 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 VII
Conflict of Interest and Code of Ethics and Conduct

1. Conflicts of Interest Policy and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit "F", and its Code of Ethical Conduct is set forth as Exhibit "G".

2. Dual Representation. Under no circumstances may an University employee represent both the University and the Foundation in any negotiation, sign for both entities in transactions, or direct any other University 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 with respect to State Board 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 by the Foundation for the University, the University shall notify the State Board at the earliest possible date. Any such proposed purchase 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 the open meeting law, set forth in Idaho Code, Title 74, Chapter 2.

ARTICLE VIII

General Terms

1. Effective Date. This Operating 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 State Board) to further attempt 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. 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 Chair of the Board of the Foundation and the University President. If the Foundation Board Chair and University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board 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 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 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 to the State Board (or University, as applicable) the balance of all property and assets of the Foundation from any source, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the use and benefit of the University.

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 by 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 three (3) years or more frequently if otherwise requested by the State Board.

6. Modification. Any modification to the Operating 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 Operating Agreement may be mailed or delivered as follows:

To the University:

President
Idaho State University
921 S 8th Avenue, Stop 8310
Pocatello, ID 83209

To the Foundation:

Managing Director
Idaho State University Foundation, Inc.
921 S. 8th Avenue, Stop 8050
Pocatello, ID 83209

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. To the extent allowed by law, 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 Operating Agreement is not assignable by either Party, in whole or in part.

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

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

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

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

Idaho State University

By: _____
Its: President

Idaho State University Foundation, Inc.

By: _____
Its: Chair

OPERATING AGREEMENT

BETWEEN

IDAHO STATE UNIVERSITY FOUNDATION, INC.

AND

~~INSTITUTION/AGENCY~~IDAHO STATE UNIVERSITY

This Operating Agreement ("Operating Agreement") between Idaho State University Foundation, Inc. ("Foundation") and ~~Institution/Agency~~ ("~~Operating Agreement~~") Idaho State University ("University") is entered into as of this ____ day of _____, 20__, by and between ~~Institution, herein known as "Institution/Agency" and the Foundation, Inc., herein known as "Foundation"; 2021.~~

WHEREAS, the Foundation was organized and incorporated in ~~____~~ 1967 for the purpose of generating voluntary private support from _____, ~~alumni, parents,~~ friends, corporations, foundations, and others for the benefit of the ~~Institution/Agency~~ University.

WHEREAS, the Foundation exists to raise and manage private resources supporting the mission and priorities of the ~~Institution/Agency~~ University, and provide opportunities for _____ (~~e.g., students~~) and a degree of ~~institutional~~ University excellence unavailable with state funding levels.

WHEREAS, the Foundation is dedicated to assisting the ~~Institution/Agency~~ University in the building of the endowment to address, through financial support, the long-term academic and other priorities of the ~~Institution/Agency~~ 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 ~~Institution/Agency~~ University, soliciting cash, securities, real and intellectual property, and other private resources for the support of the ~~Institution/Agency~~ University, and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

WHEREAS, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Operating Agreement, personnel experienced in planning for and managing private support.

WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development of the ~~Institution/Agency~~ University.

WHEREAS, the Institution/AgencyUniversity and Foundation 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 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 Operating Agreement for initial State Board of Education ("State Board") approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

WHEREAS, the Foundation and the Institution/AgencyUniversity intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

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 Institution/AgencyUniversity. 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 Institution/AgencyUniversity 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 Institution/AgencyUniversity; and (3) support and assist the Institution/AgencyUniversity in fundraising and donor relations.

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

ARTICLE II **Foundation's Organizational Documents**

The Foundation shall provide ~~copies of the University with access to its current~~ Articles of Incorporation and Bylaws ~~to the Institution/Agency, as amended, via the Foundation's public website.~~ The Foundation, to the extent practicable, also shall provide the Institution/AgencyUniversity with an advance copy of any proposed amendments to the

Foundation's Articles of Incorporation and Bylaws. The Institution/AgencyUniversity shall provide all such documents to the State Board.

ARTICLE III Institution/Agency University Resources and Services

1. Institution/AgencyUniversity Employees.

a. Institution/AgencyUniversity Foundation Liaison: The Institution/Agency'sUniversity's Vice President for Institution/AgencyUniversity Advancement shall serve as the Institution/Agency'sUniversity's Liaison to the Foundation.

i. The Institution/Agency'sUniversity's Vice President for Institution/AgencyUniversity Advancement shall be responsible for coordinating the Institution/Agency'sUniversity's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the Institution/AgencyUniversity to the Foundation.

ii. The Vice President for Institution/AgencyUniversity Advancement or designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the Institution/AgencyUniversity to the Foundation's Board of Directors regarding the Institution/Agency's coordination with the Foundation'sUniversity's fundraising efforts.

b. Managing Director: The Managing Director of the Foundation is an employee b. of the Institution/Agency loaned to the Foundation. All of the Managing Director's services shall be provided directly to the Foundation as follows:

University. The Managing Director shall be responsible for the supervision and control of
the day-to-day operations of the Foundation, and subject to the direction and control of
the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). More specific duties of the Managing Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in paragraph (iii) below. The Managing Director shall be subject to the control and direction of the Foundation.Service Agreement.

ii. The Managing Director shall be entitled to Institution/Agency benefits to the same extent and on the same terms as other full-time Institution/Agency employees of the same classification as the

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~~Managing Director. The Foundation shall reimburse the Institution/Agency for all costs incurred by the Institution/Agency in connection with the Institution/Agency's employment of the Managing Director including such expenses as salary, payroll taxes, and benefits.~~

- ~~iii. The Foundation and the Institution/Agency shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the Managing Director is an employee of the Institution/Agency 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 Institution/Agency with respect to the Managing 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 constitute grounds for a termination proceeding by the Institution/Agency or for non-renewal of any obligation of the Institution/Agency to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the Institution/Agency.~~
- ~~3. The 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 designee.~~

~~e. d. Other Loaned Employees. Other loaned employees providing services pursuant to this Operating Agreement shall also serve pursuant to a Loaned Employee Agreement which shall set forth their particular responsibilities and duties.~~

~~d. Other Institution/Agency University Employees Holding Key Foundation or Administrative or Policy Positions: In the event the Institution/Agency University and the Foundation determine it is appropriate for one or more additional Institution/Agency University employees who function in a key administrative or policy making capacity for the Institution/Agency University (including, but not limited to, any Institution/Agency University Vice-President or equivalent position) to serve both the Institution/Agency University and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended~~

to clearly set forth the authority and responsibilities of the position of any such Institution/AgencyUniversity employee.

e. Limited Authority of Institution/AgencyUniversity Employees. Notwithstanding the foregoing provisions, no Institution/AgencyUniversity employee who functions in a key administrative or policy making capacity for the Institution/AgencyUniversity (including, but not limited to, any Institution/AgencyUniversity 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 Services. The Institution/AgencyUniversity shall provide administrative, financial, accounting, investment, and development services to the Foundation, as set forth in the Service Agreement ~~attached hereto as Exhibit "B" ("Service Agreement")~~. All Institution/AgencyUniversity employees who provide support services to the Foundation shall remain Institution/AgencyUniversity employees under the direction and control of the Institution/AgencyUniversity, unless agreed that the direction and control of any such employee will be vested with the Foundation ~~inthrough~~ a written ~~Loaned Employee~~ Service Agreement. ~~The Foundation-In consideration of the services provided to the Foundation by the University, the Foundation will pay directly to the Institution/Agency the University that~~ portion of the overhead costs ~~associated with the services provided to the Foundation pursuant agreed to between the parties under~~ the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.

3. Institution/AgencyUniversity Facilities and Equipment. The Institution/AgencyUniversity shall provide the use of the Institution/Agency'sUniversity's office space and equipment to the Foundation upon the terms agreed to by the Institution/AgencyUniversity and the Foundation. The terms of use (including amount of rent) of the Institution/Agency'sUniversity's office space and equipment shall be as set forth in the Service Agreement.

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

ARTICLE IV Management and Operation of Foundation

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

Authority of Vice President for Institution/AgencyUniversity Advancement. All Foundation gift solicitations shall be subject to the direction and control of the Vice President for Institution/AgencyUniversity Advancement.

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 Institution/AgencyUniversity; 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 Institution/AgencyUniversity.

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 Institution/AgencyUniversity, the Foundation shall obtain the prior written approval of the Institution/AgencyUniversity. Similarly, the Foundation shall also obtain the prior written approval of the Institution/AgencyUniversity of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the Institution/AgencyUniversity.

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 Institution/AgencyUniversity shall be approved by the State Board before acceptance by the Institution/AgencyUniversity and the Foundation. In cases where the real property is intended to be used by the Institution/AgencyUniversity in connection with carrying out its proper functions, the real property may be conveyed directly to the Institution/AgencyUniversity, in which case the Institution/AgencyUniversity 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 Institution/AgencyUniversity 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 Institution/AgencyUniversity 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 Gift Transfers.* The Foundation shall inform the Institution/AgencyUniversity 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 Institution/AgencyUniversity officials shall account for such restricted funds separate from other program and department funds in accordance with applicable Institution/AgencyUniversity 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. If the Foundation elects to use unrestricted gifts to make grants to the Institution/AgencyUniversity, 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 Institution/AgencyUniversity; provided, however, in no event may the person with Foundation signature authority for financial transactions be an Institution/AgencyUniversity employee.

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

6. Transfer of Institution/AgencyUniversity Assets to the Foundation. No Institution/AgencyUniversity 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 Institution/AgencyUniversity 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 institutionalUniversity account, and State Board approval will be required prior to the Institution/Agency'sUniversity's transfer of such funds to the Foundation.

- b. The ~~Institution/Agency~~University has gift funds that were originally transferred to the ~~Institution/Agency~~University from the Foundation and the ~~Institution/Agency~~University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
- c. Transfers of a *de minimis* amount not to exceed \$10,000 from the ~~Institution~~University to the Foundation provided such funds are for investment by the Foundation for scholarship or other general ~~Institution/Agency~~University support purposes. This exception shall not apply to payments by the ~~Institution~~University to the Foundation for obligations of the ~~Institution~~University to the Foundation, operating expenses of the Foundation or other costs of the Foundation.
- d. The transfer is of funds raised by the ~~Institution~~University for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.

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. For convenience purposes, some Foundation expenses may be paid through the ~~Institution/Agency~~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. 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~~University Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is ~~attached hereto as Exhibit "C";~~ posted on the Foundation's public website; 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 Institution/Agency any updates to such~~University with access to its investment policy ~~which updates shall also be attached hereto, as Exhibit "C";~~ amended, via the Foundation's public website.

10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the Bylaws, as amended. The Foundation ~~agrees to~~shall provide ~~copies of such~~the University and State Board with access to its Articles of Incorporation and Bylaws ~~as well, as any subsequent amendments to such documents to both the Institution/Agency and~~ amended, via the State Board. Any such amendments

~~to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and "E", respectively.~~Foundation's public website.

ARTICLE V

Foundation Relationships with the ~~Institution/Agency~~University

At all times and for all purposes of this Operating Agreement, the ~~Institution~~University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the ~~Institution~~University and the Foundation acknowledge that the ~~Association~~Foundation carries out functions for the benefit of the ~~Institution~~University. As such, the Parties shall share certain information as provided below.

1. Access to Records. Subject to recognized legal privileges, each Party shall have the right to access the other Party's financial, audit, donor and related books and records as needed to properly conduct its operations.

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 ~~Institution/Agency~~University shall be limited to the ~~Institution/Agency's~~University's President and any designee of the ~~Institution/Agency's~~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. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

3. Name and Marks. Consistent with its mission to help to advance the plans and objectives of the ~~Institution~~University, the ~~Institution~~University grants the ~~Association~~Foundation the limited, non-exclusive use of the name ~~Institution~~Idaho State University, for use in its support of the ~~Institution~~University. The ~~Association~~Foundation shall operate under the ~~Institution's~~University's logotype in support of its organizational business and activities. Any use by the ~~Association~~Foundation of the ~~Institution's~~University's logotypes or other trademarks must be with prior approval of the ~~Institution~~University through the Office of ~~Trademark Licensing~~Marketing and ~~Enforcement~~Communications.

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 Institution/AgencyUniversity 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 will vote to accept such operating budget. Any of the Institution/Agency'sUniversity's funding requests to the Foundation shall be communicated in writing to the Managing Director and the Foundation's ~~Treasurer and Assistant~~ Treasurer by April 1 of each year.

6. Attendance of Institution/Agency'sUniversity's President at Foundation's Board of Director Meetings. The Institution/Agency'sUniversity'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 Institution/AgencyUniversity Employees. Any supplemental compensation of Institution/AgencyUniversity employees by the Foundation must be preapproved by the State Board. Any such supplemental payment or benefits must be paid by the Foundation to the Institution/AgencyUniversity, and the Institution/AgencyUniversity shall then pay compensation to the employee in accordance with the Institution/Agency'sUniversity's normal practice. No Institution/AgencyUniversity 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 Institution/AgencyUniversity 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 Institution/Agency'sUniversity's President and the State Board, in accordance with the State Board's schedule for receipt of said annual audit. The Foundation's annual statements will be presented in accordance with standards promulgated by the Financial Accounting Standards Board (FASB). The Foundation is a component unit of the Institution/AgencyUniversity as defined by the Government Accounting Standards Board (GASB). Accordingly, the Institution/AgencyUniversity is required to include the Foundation in its financial statements which follow a GASB format. Therefore, the Foundation will ~~include in its audited financial statement, prepare~~ schedules reconciling the FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor's independent opinion regarding such financial statements, and schedules shall be submitted to the Institution/AgencyUniversity Office

of Finance and ~~Administration~~Business Affairs in sufficient time to incorporate the same into the ~~Institution/Agency's~~University's statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

3. Separate Audit Rights. The ~~Institution/Agency~~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 ~~Institution/Agency's~~University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the ~~Institution/Agency~~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 ~~Institution/Agency~~University President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the ~~Institution/Agency~~University President setting forth the following items:

- a. the annual financial audit report;
- b. an annual report of Foundation transfers made to the ~~Institution/Agency~~University, summarized by ~~Institution/Agency~~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 ~~Institution/Agency~~University employees for whom the Foundation made payments to the ~~Institution/Agency~~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 ~~Institution/Agency~~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 and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit "F", and its Code of Ethical Conduct is set forth as Exhibit "G".

2. Dual Representation. Under no circumstances may an Institution/AgencyUniversity employee represent both the Institution/AgencyUniversity and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institutionUniversity employee under their immediate supervision to sign for the related Party in a transaction between the Institution/AgencyUniversity and the Foundation. This shall not prohibit Institution/AgencyUniversity employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.

3. Contractual Obligation of Institution/AgencyUniversity. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the Institution/AgencyUniversity without first obtaining the prior written approval of the Institution/AgencyUniversity. University approval of any such contract shall comply with policies of the State Board with respect to State Board approval of Institution/AgencyUniversity contracts.

4. Acquisition or Development or Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the Institution/Agency'sUniversity's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate by the Foundation for the Institution/AgencyUniversity, the Institution/AgencyUniversity shall notify the State Board at the earliest possible date. Any such proposed purchase for the Institution/Agency'sUniversity's use shall be a coordinated effort of the Institution/AgencyUniversity 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 the open meeting law, set forth in Idaho Code, Title 74, Chapter 2.

ARTICLE VIII

General Terms

1. Effective Date. This Operating 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 Institution/AgencyUniversity 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 ~~Institution/Agency~~University to pay, within 180 days of written notice, all debt incurred by the Foundation on the ~~Institution/Agency's~~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 ~~Institution/Agency~~University that is not cured within the time frame set forth above, the ~~Institution/Agency~~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 State Board) to further attempt 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. 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 Chair of the Board of the Foundation and the ~~Institution/Agency~~University President. If the Foundation Board Chair and ~~Institution/Agency~~University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board 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 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 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 to the State Board (or ~~Institution~~University, as applicable) the balance of all property and assets of the Foundation from any source, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the use and benefit of the ~~Institution/Agency~~University.

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 by 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 three (3) years or more frequently if otherwise requested by the State Board.

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

7. Providing Document to and Obtaining Approval from the Institution/Agency/University. Unless otherwise indicated herein, any time documents are to be provided to the Institution/Agency/University or any time the Institution/Agency's/University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the Institution/Agency's/University's President or an individual to whom such authority has been properly delegated by the Institution/Agency's/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 Operating Agreement may be mailed or delivered as follows:

To the Institution/Agency/University:

President

Institution/Agency

Street Address

City, Idaho State and Zip/University

921 S 8th Avenue, Stop 8310

Pocatello, ID 83209

To the Foundation:

Managing Director

Idaho State University Foundation, Inc.

Street Address

City, State and Zip

921 S. 8th Avenue, Stop 8050

Pocatello, ID 83209

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

11. Liability. The ~~Institution/Agency~~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. To the extent allowed by law, the ~~Institution/Agency~~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 ~~Institution/Agency's~~University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

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

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

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

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

IN WITNESS WHEREOF, the Institution/AgencyUniversity and the Foundation
have executed this Operating Agreement on the above specified date.

Institution/AgencyIdaho State University

By: _____
Its: President

Institution/Agency
Idaho State University Foundation, Inc.

By: _____
Its: ~~Chairman~~Chair

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

~~THIS AGREEMENT, entered into as of this 9 day of, July 2018 ("Effective Date"), is between Idaho State University, herein known as "University" and the Idaho State University Foundation, Inc., herein known as "Foundation". This Operating Agreement ("Operating Agreement") between Idaho State University Foundation, Inc. ("Foundation") and Idaho State University ("University") is entered into as of this _____ day of _____, 2021.~~

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 Operating Agreement, personnel experienced in planning for and managing private support ~~contributions and works with the University to assist and advise in such activities.~~

~~WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development of the University.~~

~~WHEREAS, the University and Foundation 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.~~

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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 Operating -Agreement for initial ~~prior~~ State Board of Education ("State Board") approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

~~WHEREAS, the Foundation and University entered into an Operating Agreement on February 5, 2009, which was amended on September 17, 2013 and again on September 24, 2015.~~

WHEREAS, the Foundation and the University intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

NOW THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the ~~p~~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) cause the University to be in violation of applicable polices of the State Board; or (3) conflict with the role and mission of the University.

ARTICLE II Foundation's Organizational Documents

The Foundation ~~shall provide the University with access to its posts its current~~ Articles of Incorporation and ~~Bylaws, as amended, via the Foundation's on its~~ public website. The Foundation ~~will update its public website for any amendments to such documents, as soon as possible, after they are adopted. Furthermore, T~~he Foundation ~~shall~~, to the extent practicable, also shall provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws. The University shall provide all such documents to the State Board.

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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 Foundation's Board of Directors regarding the University's ~~coordination with the Foundation's~~ fundraising efforts.
- ~~a.b. Finance Managing Director:~~ *The Finance Managing Director* of the Foundation is an employee of the University. ~~loaned to the Foundation. The Managing Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation, and subject to the direction and control of the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). More specific duties of the Managing Director are set forth in the Service Agreement. All of the Finance Director's services shall be provided directly to the Foundation as follows:~~
- iii. ~~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.~~
- iv. ~~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.~~
- v. ~~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~~

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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.~~

~~b. 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. The effective dates of all loaned employee agreements, the names and duties of the loaned employees, and the compensation amount shall be revised and updated as needed by the University and Foundation.~~

Other University Employees Holding Key Foundation or Administrative or Policy Positions: In the event the University and the Foundation determine it is appropriate for one or more additional University employees who function in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) to serve both the University and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such University employee.

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, financial, accounting, investment, and development services to the Foundation, as set forth in the Services Agreement ~~attached hereto as Exhibit "B" ("Services Agreement").~~ All University

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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. Through a written Service Agreement. In consideration of the services provided to the Foundation by the University, t~~The Foundation will pay directly to the University the portion of the overhead costs ~~agreed to between the parties under the Service Agreement associated with the services provided to the Foundation pursuant to the Services 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; ~~and 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; ~~and equipment and associated services~~ shall be as set forth in the Services Agreement, ~~Exhibit "B" hereto.~~
4. No Foundation Payments to University Employees. Notwithstanding any provision of this Operating 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

The management and control of the Foundation shall rest with its Board of Directors.

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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.

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~~b.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.

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~~e.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.

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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

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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.

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- 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 Services Agreement.

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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 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.~~ 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.

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- ~~a-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. 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.

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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 with the University. 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 with the University 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.

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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.

~~e. 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.~~

c. 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.

~~d. The transfer is of funds raised by the University for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in~~

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accordance with the purpose for which the funds were raised.

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 current investment policy which is posted on the Foundation's public website; 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, ~~to the extent practicable,~~ provide the University with ~~an advance copy of any proposed amendments access to the its investment policy, as amended, via the Foundation's public website, and will update its public website for any amendments, as soon as possible, after they are adopted.~~
10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the ~~Foundation's Amended and Restated Bylaws, as amended. The Foundation posts the current version of such documents on its public website. The Foundation will update its public website for any amendments to such documents, as soon as possible, after they are adopted.~~ The Foundation shall provide the University and State Board with access to its Articles of Incorporation and Bylaws, as amended, via the Foundation's public website.
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 and the Foundations Code of Ethical Conduct will be provided to the Board as requested.~~

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ARTICLE V Foundation Relationships with the University

At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the University and the Foundation acknowledge that the Foundation carries out functions for the benefit of the University. As such, the Parties shall share certain information

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as provided below.

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 such 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. Subject to recognized legal privileges, each Party shall have the right to access the other Party's financial, audit, donor and related books and records as needed to properly conduct its operations.~~

~~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 auditing standards 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. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to~~

public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

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. 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 Idaho State University, for use in its support of the University. The Foundation shall operate under the University's logotype in support of its organizational business and activities. Any use by the Foundation of the University's logotypes or other trademarks must be with prior approval of the University through the Office of Marketing and Communications.~~
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 Managing Director and Treasurer and Assistant Treasurer ~~by April 1 of each year. If the request is for reimbursement, the University shall provide appropriate documentation to the Foundation to ensure that the funds to be reimbursed were used in compliance with donor intent.~~
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 that 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. Any supplemental compensation of University employees by the Foundation must be preapproved by the State Board. Any such supplemental payment or benefits 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. 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 Audited Financial 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 Board Standards Board (GASB). Accordingly, the University, which follows a GASB format, is required to include the Foundation in its Financial Statements. Therefore, ~~if the Foundation presents its audited Financial Statement under FASB, will prepare~~ schedules reconciling the FASB Statements to GASB standards must be provided to the Idaho State University Controller in the detail required by GASB standards. The annual audited ~~F~~financial ~~S~~statements, including the auditor's independent opinion regarding such financial statements, and ~~S~~schedules shall be submitted to the University's Office of Finance and Business Affairs Administration in sufficient time to incorporate the same into the University's statements, State of Idaho's Comprehensive Annual Financial Review 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 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 VII

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 attached as Exhibit "F", and its Code of Ethical 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 State Board 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, ~~a~~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 the open meeting law, set forth in Idaho Code Section 67-2345(4)(c), Title 74, Chapter 2.

ARTICLE VIII General Terms

1. Effective Date. This Operating 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 State Board) to further attempt to negotiate a new agreement~~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. 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 Chair of the Board of the Foundation and the University President. If the Foundation Board Chair and University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board 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 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.

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4. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and 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 to the State Board (or University, as applicable) the balance of all property and assets of the Foundation from any source, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the use and benefit of the University.

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2.5. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by 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 three (3) years or more frequently if otherwise requested by the State Board.

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

4.7. Providing Documents 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.

5.8. 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.

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

To the University:

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

To the Foundation:

~~Vice President for Advancement Idaho-
State University
921 South 8th Ave. Stop 8024
Pocatello, ID 83209-8024~~

~~Managing Finance~~ Director
Idaho State University Foundation 921 South 8th
Ave. Stop 8050
Pocatello, ID 83209-8050

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

8.11. 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.

9.12. 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 the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

~~10. Dispute Resolution. The parties agree that in the event of any dispute arising from this 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, 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 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.~~

~~11. 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.~~

12.13. Assignment. This Agreement is not assignable by either Pparty, in whole or in part.

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

14.15. 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.

15.16. 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.

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

Idaho State University

By: 

Its: President

By: 

Idaho State University Foundation, Inc.

Its: ~~President~~Chair

EXHIBIT "A"

Loaned Employee Agreement

[Not applicable at this time](#)

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”) effective for the period Insert Beginning and Ending Dates.~~

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, Insert Name (“Loaned Employee”), to ISUF to act in the capacity of Finance Director 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 Insert Amount, 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. Such duties shall include, but shall not be limited to, supervision of the back office operational processing of gifts and reporting to various stakeholders; responsibility for the management and operations of the donor system; support of development staff and other personnel associated with the utilization of the donor system; relations with the University relative to IT support and security; oversight and management of ISUF operational policies; and, direct supervision of the Finance Manager, and other staff. Loaned Employees 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.~~

~~a. 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 _____ Phone: (208) 282-3470
 President _____ Fax: (208) 282-4994
 921 South 8th Ave. Stop 8050
 Pocatello, ID 83209-8050

To the University:

Idaho State University _____ Phone: (208) 282-3198
 Vice President for Advancement _____ Fax: (208) 282-4487
 821 South 8th Ave, Stop 8024
 Pocatello, ID 83209-8024

To the Loaned Employee:

EMPLOYEE NAME
 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

 Brian Hickenlooper _____ Valerie Hoybjerg
 Interim Vice President _____ Chair
 Finance and Administration _____ ISUF Board of Directors

Date: _____ Date: _____

~~Kent Tingey~~
~~Vice~~
~~President~~
~~University Advancement~~

~~Date: _____~~

~~LOANED EMPLOYEE concurrence and commitment:~~

~~Date: _____~~

EXHIBIT "B"

SERVICES AGREEMENT

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 Idaho nonprofit corporation ("Foundation").

RECITALS

- a. As stated in the Operating Agreement, the Foundation exists to support the mission and priorities of the University, including but not limited to managing private resources and providing opportunities for students that may not otherwise occur.
- b. Currently, each and every one of the employees in the University's Advancement office are employees of the University. Currently, there are no employees employed by the Foundation.
- c. Because the Foundation has no employees, it relies entirely and exclusively upon one or more University employees to provide the support services it needs to fulfill its responsibilities, mission and purpose timely, adequately and competently. The Vice President for University Advancement has committed the necessary support and services to enable the Foundation to timely, adequately and competently fulfill its responsibilities and mission.
- d. At this time, the University and Foundation are entering into this Service Agreement with the purpose of memorializing their discussions and understanding.

NOW, THEREFORE in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. The University agrees to provide to the Foundation the following services:

1. The Executive Director of Advancement and Foundation Services, an employee of the University, shall serve as the Managing Director of the Foundation and provide administrative, financial, accounting, investment, development and support services to the Foundation, as directed by the Foundation. The University is responsible for the employment and compensation of all University Advancement Staff who provide services to the Foundation, including the Executive Director of Advancement and Foundation Services in his or her capacity as the Managing Director of the Foundation. While providing services to the Foundation, University employees are subject to the oversight and direction of the Foundation's Board of Directors. The University acknowledges and agrees that the Executive Director of Advancement and Foundation Services will prioritize the work of the Foundation, as necessary, to ensure the timely, adequate and competent fulfillment of the Foundation's mission and responsibilities.

2. The University agrees to provide the following specific services to the Foundation:
 - a. The University's Advancement employees will provide support services required to enable the Foundation to fulfill its administrative and fiduciary duties, including but not limited to: (1) gift acknowledgment, processing and receipting; (2) management and operation of the donor database/system; (3) records maintenance; (4) routine, day to day, accounting (4) preparation of the annual financial audit; (5) filing of tax documents; (6) management of endowment and other investments under UPMIFA and in compliance with Foundation policies and procedures; (7) IT security and support; (8) maintenance of Foundation operational policies and (8) all other administrative and support services as required and requested by the Foundation.
 - b. Access to the University's financial system to receive, disburse and account for funds of the Foundation.
 - c. Accounting services, to include cash receipts and disbursements, accounts receivable and payable, bank reconciliation, reporting and analysis, and internal auditing.
 - d. Development services, including but not limited to document preparation, donor records, research, communications and special events.
3. The Managing Director shall:
 - a. Supervise the University Advancement staff who are also employees of the University and who will provide support services to the Foundation.
 - b. At the direction of the Foundation's Investment and/or Finance Committees, facilitate investment transactions on behalf of the Foundation. Signature authority to facilitate any investment transaction, will be subject to limits and controls specified by the Foundation, including internal controls established by any financial institution. Specifically, the Managing Director's authority to assist in investment transactions is limited to the administrative task of transferring funds: (1) between accounts within the Foundation's operational bank account; (2) between accounts within the Foundation's investment account; and (3) between the Foundation's operational bank account and the Foundation's investment account. All other financial transactions must be executed by officers of the Foundation.
 - c. Review proposed gift agreements between the University, Foundation and donors, and execute the agreements on behalf of the Foundation. Any agreement that contains an exception to the Foundation's gift acceptance policy will be reviewed by the Executive Committee of the Foundation prior to gift acceptance and execution.
 - d. Attend regularly scheduled Foundation Board meetings, including monthly and specially called committee meetings. Additionally, the Managing Director will attend all other meetings as requested by the Foundation, its board members or officers.
 - e. Promptly perform any and all tasks requested by the Foundation, consistent with the Managing Director job description.
4. The President, and the Vice President for University Advancement, of the University

shall serve as Ex Officio Foundation Board members, but shall have no voting rights. Executive officers of the University (President and Vice Presidents) shall not serve as Foundation Board officers.

B. Facilities, Furnishings and Office Equipment:

1. The business office of the Foundation shall be located in the University Advancement Office, the nature and location of which shall be in the University's discretion.
2. The University will provide office space to the Foundation, including providing all maintenance and utilities, and local and long-distance telephone service for use in the business of the Foundation. The furnishings, computers, copiers and other items of office equipment used in the Foundation's office are owned by the University but shall be made available for use in the business of the Foundation. The cost of repairing, maintaining and replacing such furnishings and equipment shall be paid by the University.

C. Reimbursement:

1. The Foundation is responsible to reimburse the University for the Managing Director's personnel costs, including benefits. Other than that responsibility, the Foundation shall have no further obligation to reimburse the University for the costs incurred by the University for personnel, use of facilities or equipment or for other services provided to the Foundation by the University. No payments shall be made directly from the Foundation to College employees in connection with resources or services provided to the Foundation under this Agreement.
2. The Foundation shall provide unrestricted support to the University based on its annual budget, with consideration of requests made by the University.

D. Performance:

The Foundation via the Board Chair shall, at a minimum annually, have the right and responsibility to provide performance evaluation information and a performance rating for the Managing Director position and duties. The parties agree that one or more Foundation board members or officers have the option to be present during the performance evaluation review of the Executive Director of Advancement and Foundation Services, specifically and only for the Managing Director role and duties portion. The Foundation agrees to provide the written performance information via the University performance management system and in alignment with the University performance management timelines. Upon request, the University likewise agrees to provide the Foundation with a copy of any written performance evaluations prepared by the University for employees who provide support services to the Foundation.

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 most recently signed Operating Agreement between the University and the Foundation. 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:

Kevin Satterlee, President

Date

Idaho State University Foundation:

David Jeppesen, Chair

Date

EXHIBIT "B"

SERVICES AGREEMENT

IDAHO STATE UNIVERSITY IDAHO STATE UNIVERSITY FOUNDATION

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

A.

RECITALS

a. As stated in the Operating Agreement, the Foundation exists to support the mission and priorities of the University, including but not limited to managing private resources and providing opportunities for students that may not otherwise occur.

b. Currently, each and every one of the employees in the University's Advancement office are employees of the University. Currently, there are no employees employed by the Foundation.

c. Because the Foundation has no employees, it relies entirely and exclusively upon one or more University employees to provide the support services it needs to fulfill its responsibilities, mission and purpose timely, adequately and competently. The Vice President for University Advancement has committed the necessary support and services to enable the Foundation to timely, adequately and competently fulfill its responsibilities and mission.

d. At this time, the University and Foundation are entering into this Service Agreement with the purpose of memorializing their discussions and understanding.

NOW, THEREFORE in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. The University agrees to provide to the ISUF Foundation the following services:

1. The Executive Director of Advancement and Foundation Services, an employee of the University, shall serve as the Managing Director of the Foundation and provide administrative, financial, accounting, and investment support services, development and support services to the Foundation, as directed by the Foundation. The University is responsible for the employment and compensation of all University Advancement Staff who provide services to the Foundation, including the Executive Director of Advancement and Foundation Services in his or her capacity as the Managing Director of the Foundation. While providing services to the Foundation, University employees are subject to the oversight and direction of the Foundation's Board of Directors. The University acknowledges and agrees that the Executive Director of Advancement and Foundation Services will prioritize the work of the Foundation, as necessary, to ensure the timely,

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adequate and competent fulfillment of the Foundation's mission and responsibilities.

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.

2. The University agrees to provide the following specific services to the Foundation:

a. The University's Advancement employees will supply provide support services required to enable the Foundation to fulfill its administrative and fiduciary duties, including but not limited to: (1) gift acknowledgment, processing and receipting; (2) management and operation of the facilities, equipment, software and operating supplies necessary for donor database/system; (3) records maintenance; (4) routine, day to day, accounting (4) preparation of the University employees supplying the above support services to the ISUF annual financial audit; (5) filing of tax documents; (6) management of endowment and other investments under UPMIFA and in compliance with Foundation policies and procedures; (7) IT security and support; (8) maintenance of Foundation operational policies and (9) all other administrative and support services as required and requested by the Foundation.

b. Access to the University's financial system to receive, disburse and account for funds of the Foundation.

c. Accounting services, to include cash receipts and disbursements, accounts receivable and payable, bank reconciliation, reporting and analysis, and internal auditing.

d. Development services, including but not limited to document preparation, donor records, research, communications and special events.

3. The Managing Director shall:

a. Supervise the University Advancement staff who are also employees of the University and who will provide support services to the Foundation.

b. At the direction of the Foundation's Investment and/or Finance Committees, facilitate investment transactions on behalf of the Foundation. Signature authority to facilitate any investment transaction, will be subject to limits and controls specified by the Foundation, including internal controls established by any financial institution. Specifically, the Managing Director's authority to assist in investment transactions is limited to the administrative task of transferring funds: (1) between accounts within the Foundation's operational bank account; (2) between accounts within the Foundation's investment account; and (3) between the Foundation's operational bank account and the Foundation's investment account. All other financial transactions must be executed by officers of the Foundation.

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- c. Review proposed gift agreements between the University, Foundation and donors, and execute the agreements on behalf of the Foundation. Any agreement that contains an exception to the Foundation's gift acceptance policy will be reviewed by the Executive Committee of the Foundation prior to gift acceptance and execution.
- d. Attend regularly scheduled Foundation Board meetings, including monthly and specially called committee meetings. Additionally, the Managing Director will attend all other meetings as requested by the Foundation, its board members or officers.
- e. Promptly perform any and all tasks requested by the Foundation, consistent with the Managing Director job description.

4. The President, and the Vice President for University Advancement, of the University shall serve as Ex Officio Foundation Board members, but shall have no voting rights. Executive officers of the University (President and Vice Presidents) shall not serve as Foundation Board officers.

B. Facilities, Furnishings and Office Equipment:

- 1. The business office of the Foundation shall be located in the University Advancement Office, the nature and location of which shall be in the University's discretion. ~~In addition, the~~
- 2. The University shall furnish will provide office space and office to the Foundation, including providing all maintenance and utilities, and local and long-distance telephone service for use in the business of the Foundation. The furnishings, computers, copiers and other items of office equipment used in the Foundation's office are owned by the University but shall be made available for use in the business of the Foundation. The cost of repairing, maintaining and replacing such furnishings and equipment for use by the loaned employees, the nature and location of which shall be subject to agreement of the parties shall be paid by the University.

C. Reimbursement:

- 1. The ISUF will pay directly Foundation is responsible to reimburse 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, Managing Director's personnel costs, including benefits. Other than that responsibility, the Foundation shall have no further obligation to reimburse the University, will prepare and present to the ISUF for the costs incurred by the University for consideration and acceptance an operating budget personnel, use of facilities or equipment or for other services provided to the Foundation by the University. No payments shall be made directly from the services and operations to be Foundation to College employees in connection with resources or services provided to the Foundation under this Agreement upon which the consideration shall.
- 2. The Foundation shall provide unrestricted support to the University based on its annual budget, with consideration of requests made by the University.

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D. Performance:

The Foundation via the Board Chair shall, at a minimum annually, have the right and responsibility to provide performance evaluation information and a performance rating for the Managing Director position and duties. The parties agree that one or more Foundation board members or officers have the option to be based-present during the performance evaluation review of the Executive Director of Advancement and Foundation Services, specifically and only for the Managing Director role and duties portion. The Foundation agrees to provide the written performance information via the University performance management system and in alignment with the University performance management timelines. Upon request, the University likewise agrees to provide the Foundation with a copy of any written performance evaluations prepared by the University for employees who provide support services to the Foundation.

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 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 most recently signed Operating Agreement between the University and the ISUF Foundation. 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

Brian Hickenlooper _____ Valerie Hoybjerg

Interim Vice Idaho State University:

Kevin Satterlee, President _____ President
Finance and Administration

Date: _____ Date: _____

Idaho State University Foundation:

David Jeppesen, Chair _____ Date

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EXHIBIT "C"

Investment Policy

[See Foundation's Public Website](#)

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 managed under Policies of the Investment Committee.~~

Supervision and Delegation

~~The Board of the Idaho State University Foundation has adopted these policies and has formed an Investment Committee (the Committee), 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

~~See Section 9.05 for a description of the Investment Committee.~~

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. See Section 9.05 for further details.~~

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 Chair will have the option to 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

- a) Strategic asset allocation,
- b) Manager and investment entity performance,
- c) Investment management expenses,
- d) Anticipated additions to or withdrawals from funds,
- e) Future investment strategies,
- f) Any other matters of interest to the committee.

~~Person responsible for the periodic review of policy: Investment Committee Chair~~

Section 9 Committees

Section 9.05 — Investment Committee

Investment Committee Job Description

9.05.01 — Membership

~~The Investment Committee shall be comprised of the Board Chair, Ex Officio, three or more voting Board members appointed by the Board Chair, and others who may be appointed by the Board Chair who are non-voting. The Committee Chair shall be elected by the Investment Committee and must be a voting Board member unless an exception is granted by a vote of the Board. It shall be the responsibility of the Investment Committee to~~

- ~~a. Prepare and update annually an investment plan that will contain the Investment Committee's policies, asset allocation strategies, risk-based fund objectives, and appropriate investment management structures. The Plan will be presented and discussed with the Board annually.~~
- ~~b. Supervise the overall implementation of the Idaho State University Foundation's investment policies by the Idaho State University Foundation's staff and outside advisors~~
- ~~c. Monitor and evaluate the investment performance of the Idaho State University Foundation's funds~~
- ~~d. Set performance goals for the portfolio.~~
- ~~e. Follow closely the markets and their development.~~
- ~~f. Follow new regulations and judicial interpretation of investment-related rules.~~
- ~~g. Plan scenarios for unforeseen situations affecting invested assets.~~
- ~~h. Consider all morally responsible investment concerns.~~
- ~~i. Report on the Idaho State University Foundation investment matters to the Board at each Board meeting~~
- ~~j. Grant exceptions as permitted in these policies and recommend changes in approved policy, guidelines, and objectives as needed~~
- ~~k. Execute such other duties as may be delegated by the Board~~

The policies contained in the ISUF Policy manual contain all amendments, if any, made to them through the April 13, 2018 Board of Director's meeting.

Section 9 — Committees — Page 11

Investment Policy Statement

Idaho State University Foundation, Inc.
921 South 8th Ave., Stop 8050
Pocatello, ID 83209-8050

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PURPOSE

This Investment Policy Statement (IPS) sets forth the standards and guidelines governing the investment and management of the Foundation’s financial assets in compliance with donor restrictions.

the Foundation's governing policies and procedures, and state and federal laws and regulations including, but not limited to, the Uniform Prudent Investors Act and the Uniform Management of Institutional Funds Act.

This policy defines the responsibilities of the Foundation Board of Directors (Board) and any other parties involved in managing the Foundation's investments. It identifies or provides permissible investments, target asset allocations, and diversification requirements.

The IPS serves to guide the Investment Committee (Committee) in effectively supervising and monitoring the overall management of the various investments of the Foundation, and to provide direction to investment managers employed to manage its assets on behalf of the Foundation Board.

The Investment Committee has considered the following in the development of this Policy:

- Primary Investment Goals and Constraints;
- Rate of Return Objective;
- Investment Risks;
- Investment Time Horizon;
- Role of different asset classes;
- Liquidity;
- Spending Policy;
- Asset Allocation;
- Laws and Regulations; and
- Tax Considerations.

This IPS shall be reviewed from time to time to ensure that it continues to reflect the appropriate expectations, goals, and objectives for the various investments of the Endowment.

DUTIES AND RESPONSIBILITIES

Board of Directors

The Board has the ultimate fiduciary responsibility for the prudent and effective investment of the assets of the Foundation. The Board has delegated responsibility for the investment management process to the Investment Committee (Committee) as indicated in Policy Section 5.04 – Investments.

Investment Committee

The Committee shall perform the functions of an investment fiduciary responsible for the prudent management of the Foundation's investments. The Committee has the authority to establish all investment policy statements for the Foundation's investments, as delegated by the Board in Policy Section 5 – Investments and Policy Section 9.05 – Investment Committee.

A Committee member shall act in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the Foundation. In discharging Committee duties, a Committee member shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by the Foundation officers or employees whom the member reasonably believes are reliable and competent in the matters presented, including from legal counsel, investment consultants, OCIOs, advisors, public accountants or other persons as to matters the member reasonably believes are within the person's professional or expert competence or a committee of the Board of which the committee member is not a member if the member reasonably believes the committee merits confidence.

A member who meets the foregoing standards shall be presumed to have discharged his or her duties as a Committee member.

Outsourced Chief Investment Officer

The Board has specifically authorized the Committee to retain and direct one or more investment advisors in Policy Section 9.05.03. The Outsourced Chief Investment Officer (OCIO) advises the Committee with regard to the implementation of this Policy and manages certain investment assets on a day-to-day discretionary basis within the guidelines of this Policy. The specific responsibilities of the OCIO are listed in Policy Section 9.05.03.

Custodian

The Committee shall review and consider a custodian to hold and account for certain Foundation assets. The investment custodian is responsible for safekeeping the investment assets, reporting on holdings and transactions, pricing assets using independent pricing mechanisms, collecting interest and dividends and effecting transactions.

Governance Matrix

	Set and approve investment and spending policy	Asset allocation guidelines	Investment strategy	Evaluate/ select investment managers	Portfolio rebalancing	Monitor ongoing activities and reports performance	Portfolio holdings	Committee education/ Asset allocation studies	Fiduciary responsibility
ISUF, Inc. Board of Directors	Decides	Delegates				Delegates			Yes (ultimate)
Investment Committee		Implements	Approves	Recommends	Sets ranges	Oversees			Yes
SEI as OCIO*		Advises	Implements	Researches/ Selects	Implements	Assists/ Provides	Decides/ Monitors	Provides	Yes*
SEI as Custodian							Safeguards		No

*Outsourced provider assumes fiduciary responsibility and performs all of the functions of the investment manager(s), investment consultants and custodian. Only a fiduciary with respect to the investment manager selection (where delegated the responsibility) and possibly co-fiduciary if given discretion over asset allocation

INVESTMENT CATEGORIES

This Policy governs the investment of six distinct groups of funds: the endowment pool, the medium-term cash pool, the short-term cash pool, the split-interest agreement account, the Foundation account and miscellaneous other investments. Because each group of investments has a different objective, this Policy addresses them separately.

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

ENDOWMENT POOL**Objectives**

The primary objective of the endowment pool is to preserve the long-term purchasing power of the investments after withdrawals are taken. The objectives for the endowment have been established in conjunction with a comprehensive review of the current and projected requirements.

With its endowment management practices, the Foundation seeks to:

1. Support and augment Idaho State University's programs by responsible stewardship of the money donated to the endowment funds.
2. Promote growth of the endowment in order to realize the greatest return on the endowment assets. Growth is expected to occur through positive net returns, building reserves and attracting new donors as a result of responsible management of the assets.

3. Achieve on average, over a full market cycle, the hurdle rate (net of investment management fees) or higher as it relates to annualized endowment performance. The hurdle rate is the aggregate of:

- Spending rate (currently 4%)
- Administrative fee (currently 1.5%)
- Inflation rate (CPI; variable; approximately 2%)

4. Exceed, over a full market cycle, the average return (net of investment management fees) of appropriate indexes weighted by asset allocation target percentages. This total portfolio benchmark is viewable on the monthly performance statement for the endowment provided by the OCIO; this benchmark can change throughout time as the asset mix changes.

5. Exceed, over a full market cycle, appropriate index returns in each asset class.

Due to the nature of the financial markets, there can be no assurance that these objectives will be met. The Committee also realizes and agrees that historical performance is no guarantee of future performance.

Asset Allocation Targets

It is the policy of the Endowment to invest assets with an allocation as shown below:

<u>Asset Class</u>	<u>Permitted Ranges*</u>
<u>Growth</u>	<u>80% - 90%</u>
<u>Risk Reduction</u>	<u>5% - 15%</u>
<u>Inflation Hedge</u>	<u>3% - 10%</u>
<u>* Specific weightings to each strategy within each asset class is viewable on the latest Investment Management Agreement Schedule A document.</u>	

MEDIUM-TERM CASH POOL

Objectives

The Foundation holds funds that are not intended for long-term investment as part of the endowment pool. These funds are expected to be called by the University within a 1-3 year time frame, but could be called at any time.

Asset Allocation Targets

In order to maximize the investment revenues, these funds may be invested in securities or other investment vehicles assuming a level of risk and commensurate return less than the endowment pool, but more than the short-term cash pool.

SHORT-TERM CASH POOL

Objectives

The Foundation holds funds that are not intended for long-term investment as part of the endowment pool. These funds are expected to be called by the University within a 1-3 year time frame, but could be called at any time.

Asset Allocation Targets

In order to maximize the investment revenues, these funds may be invested in securities or other investment vehicles assuming a level of risk and commensurate return less than the endowment or medium-term cash pools, but more than would be earned if carried as cash.

SPLIT-INTEREST ACCOUNT

Objectives

The Foundation has oversight of funds that will be paid to beneficiaries over a period of years. Trust documents specify the amount or rate of payment. The annual spending rate to fund these payments is approximately 5% and may change over time depending on the beneficiaries remaining in the account. The objective is for the account to pay beneficiaries until all liabilities are funded based on the terms outlined in each beneficiary's agreement. Funds that remain after all liabilities are satisfied revert to the Foundation to be administered according to the donor's intent.

Asset Allocation Targets

The investment allocation is structured to achieve expected returns and risk commensurate with funding beneficiary liabilities.

It is the policy of the Split-Interest Account to invest assets with an allocation as shown below:

<u>Asset Class</u>	<u>Permitted Ranges*</u>
<u>Growth</u>	<u>45% - 65%</u>
<u>Risk Reduction</u>	<u>25% - 45%</u>
<u>Inflation Hedge</u>	<u>0% - 20%</u>
<u>* Specific weightings to each strategy within each asset class is viewable on the latest Investment Management Agreement Schedule A document.</u>	

FOUNDATION ACCOUNT

Objectives

The Foundation holds funds that are intended for long-term investment. Funds are used as reserves in the case additional funds are required to meet cash needs. However, it is not expected these assets will be drawn upon. There is no specified hurdle rate or spend rate required for this account.

Asset Allocation Targets

The allocation for these assets shall follow the allocation of the Endowment account but will be modified so as not to include alternative asset classes.

OTHER INVESTMENTS

From time to time, the Foundation may hold other investments that are not appropriately included in any other category. These investments may include certificates of deposits, gifts of securities intended for immediate liquidation and interests in partnerships, joint ventures or limited liability companies that have been donated to or purchased by the Foundation.

Within each asset class in all of the Investment Categories preceding this section, assets will be invested in accordance with the Guidelines set out below.

In accordance with the terms of the Investment Management Agreement, Manager will retain discretion with respect to the SEI mutual funds utilized by Manager to implement the Strategy. Additionally, Investment Manager will retain discretion with respect to modifications required to the asset allocation identified above.

Adherence to Policy Targets and Rebalancing

The asset allocation established by this Investment Policy Statement represents a long-term perspective. As such, rapid unanticipated market shifts or changes in economic conditions may cause the asset mix to fall outside of the policy range. These divergences should be of a short-term nature.

To ensure divergence from the target policy is within acceptable limits, rebalancing of assets may be necessary. Rebalancing procedures are authorized in accordance with the Investment Management Agreement and are implemented by the Investment Manager.

Rebalancing among funds will occur to ensure that the target asset allocation specified in this Investment Policy is maintained within acceptable ranges as determined by the Investment Manager. The Investment Manager will identify the amount of assets that must be reallocated in order to bring the Endowment back into compliance with this Investment Policy and will issue the necessary instructions for the transfer of funds.

Investment Securities, Strategies and Diversification

As described in the Investment Management Agreement, the Investment Manager implements this Investment Policy through pooled investment vehicles, including mutual fund products, separate managed accounts, collective investment trust funds, and/or other alternative fund products (the "SEI Funds"). The principal investment objectives and strategies of the SEI Funds can be found in the Fund's prospectus, offering documents, and related fund fact sheets which govern and control any SEI Fund's objective, strategy and permitted investments.

It is the responsibility of the Investment Manager to provide a prospectus (or other offering documents) for each investment and the responsibility of the Committee to read and understand the information contained in the prospectus. Investment Manager will provide additional copies of mutual fund

prospectuses, other offering documents or fact sheets upon request.

Volatility

Consistent with the desire for adequate diversification, the investment policy is based on the assumption that the volatility of the combined equity investment will be similar or less than that of the market opportunity available to institutional investors with similar return objectives. The volatility of fixed income portfolios may be greater than the market during periods when the portfolio duration exceeds that of the market.

CONTROL PROCEDURES

Review of Assumptions

All major assumptions regarding spending, fundraising, inflation, and liquidity needs will be subject to an annual review by the Committee. This review will focus on an analysis of major differences between the Foundation's assumptions and actual experience.

Review of 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. In addition, the validity of the stated objective will be reviewed annually.

It is not expected that the Investment Policy will change frequently. In particular, short-term changes in the financial markets should not require an adjustment to the Investment Policy.

Review of Investment Manager and Investments

The Investment Manager will report on a quarterly basis to review the total Endowment investment performance.

The Investment Manager will be responsible for keeping the Committee advised of any material change in its personnel, the investment strategy, or other pertinent information potentially affecting performance of all investments.

Performance reviews will focus on:

- Comparison of investment results to appropriate benchmarks, as well as market index returns in both equity and debt markets.
- Investment adherence to this Investment Policy and guidelines.
- Material changes in the investment organizations, such as in investment philosophy and personnel, etc.

Performance Expectations

The most important performance expectation is the achievement of long-term investment results that are consistent with the Endowment's Investment Policy. Implementation of the policy will be directed toward achieving this return and not toward maximizing return without regard to risk.

The 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 (including benchmark indices) will be used to evaluate investment results.

EXHIBIT D

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

Frank W. Keizer
Frank D. Seelye

161 16th Place
Pocatello, Idaho
724 So 19th
Pocatello Idaho

William Ryan

300 myer st.
Pocatello, Idaho

E. A. Rozer

28 Willowood
Pocatello, Idaho

James M. McIner

42 Calgate
Pocatello, Idaho

William E. Davis

341 S. 7th
Pocatello, Idaho

Samuel J. Merrill

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 13th 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.

Herman 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

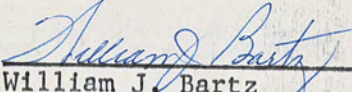
UNIVERSITY FOUNDATION

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 ~~Edmund A. Bogert, Jr.~~ to serve on the Board of Directors of the Foundation.

Edmund A. Bogert, Jr.

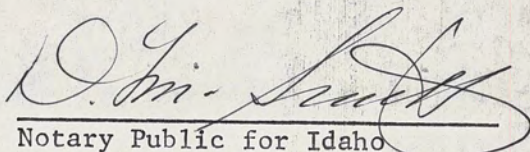
Copies of the Articles of Incorporation and the By-Laws are attached for the information of the Board. (Appendix B)

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.

No. 38255

Articles of Incorporation
of
IDAHO STATE UNIVERSITY FOUNDATION, INC.

Place of business Pocatello
Existence Perpetual
Capital Stock NONE

STATE OF IDAHO
Department of State
Boise, Idaho

Approved, filed and admitted to the
records of Articles of Incorporation
of the State of Idaho and certificate
issued this 17th
day of March 1967
at 10:00 o'clock A. M.

FEES PAID

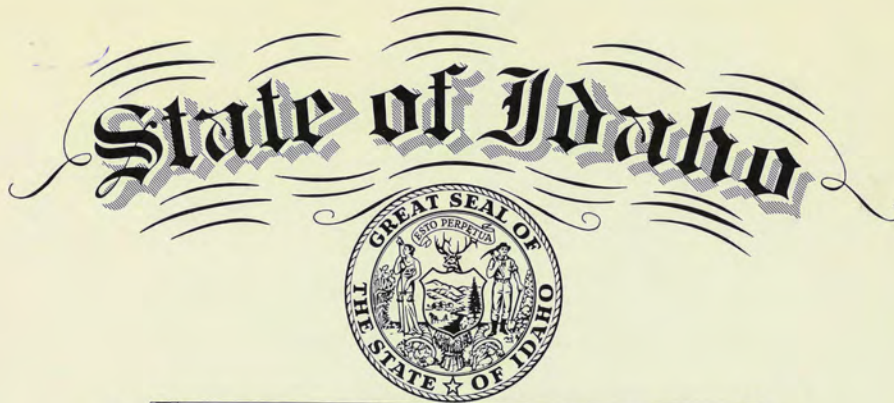
Filing	\$ <u>15.00</u>
Recording	<u>5.20</u>
- Cert. Copy	_____
Certificate	_____
- License Tax -	_____
_____	_____
_____	_____

TOTAL \$ 20.20

EDSON H. DEAL

SECRETARY OF STATE

BY Rayola Black
Ass't. CORPORATION CLERK



Department of State.

CERTIFICATE OF INCORPORATION

EDSON H. DEAL

I, ~~ARNOLD WILLIAMS~~, 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 / ~~is~~ duly recorded on ~~INDEX~~ / 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, this 17th day of March, A.D., 19 67.

Edson H. Deal
Secretary of State.

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/^{Secretary} 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/^{Secretary} 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/^{members} 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 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."

"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 22nd day of April, 1983.

IDAHO STATE UNIVERSITY
FOUNDATION, INC.

By: *Harry F. Magnuson*
President

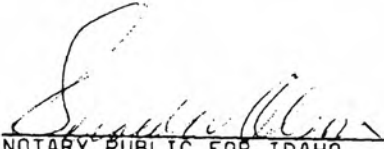
ATTEST:

Rennus 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 22nd day of April, 1983, personally appeared before Harry F. Magnuson, who, being by me first duly sworn, declared that he is the President of the Idaho State University Foundation, Inc., that he signed the foregoing document as

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

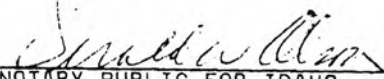

 NOTARY PUBLIC FOR IDAHO
 Residing at Pocatello, Idaho

(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 22nd 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



ARTICLES OF AMENDMENT (Non-profit)

To the Secretary of State of the State of Idaho
Pursuant to Title 30, Chapter 3, Idaho Code, the undersigned
non-profit corporation amends its articles of incorporation as
follows:

2005 JUN 19 AM 10:04

SECRETARY OF STATE
STATE OF IDAHO

FILED EFFECTIVE

1. The name of the corporation is:
Idaho State University Foundation, Inc.

If the corporation has been administratively dissolved and the corporate name is no longer
available for use, the amendment(s) below must include a change of corporate name.

2. The text of each amendment is as follows:
See attached for Amended and Restated Article III.

3. The date of adoption of the amendment(s) was: June 7, 2006

4. Manner of adoption (check one):

- ☒ Each amendment consists exclusively of matters which do not require member approval pursuant to
section 30-3-90, Idaho Code, and was, therefore, adopted by the board of directors. (Please fill spaces below)
- a. The number of directors entitled to vote was: 22
 - b. The number of directors that voted for each amendment was: 18
 - c. The number of directors that voted against each amendment was: 0

- ☐ The amendment consists of matters other than those described in section 30-3-90, Idaho Code, and was,
therefore adopted by the members. (Please fill spaces below)
- a. The number of members entitled to vote
was: _____
 - b. The number of members that voted for each
amendment was: _____
 - c. The number of members that voted against
each amendment was: _____

Dated: June 8, 2006

Signature: Kent M. Tingey

Typed Name: Kent M. Tingey

Capacity: Executive Vice President

Customer Acct #:

(if using pre-paid account)

Secretary of State use only

g:\corp\complaints of amendment_no.pmd
Revised 10/2003

Web Form

IDAHO SECRETARY OF STATE
06/19/2006 05:00
CK: 4817 CT: 2982 BH: 960836
1 @ 30.00 = 30.00 NON PROF A # 2

AMENDED AND RESTATED

ARTICLE III

PURPOSES

- A. Said organization is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.
- B. No part of the net earnings of the organization shall inure to the benefit of, or be distributed to, its members, trustees, officers or other private persons, except that the organization 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 the purpose clause hereof.
- C. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.
- D. Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by the District Court of the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

EXHIBIT "E"

Amended and Restated Bylaws

[See Foundation's Public Website](#)

EXHIBIT E

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

Adopted ~~February 25, 2011~~ October 11, 2019

Idaho State University Foundation**Policy I-D Bylaws****Bylaws****Table of Contents**

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

Article 1 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 2 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.

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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.

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Article 3 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.

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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)~~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;

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~~(b)~~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

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~~(c)~~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

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designated

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

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.

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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 Board Past Chair ("PCoB"), Board-Chair ("CoB") President or Vice President Chair ("VPC") of the Foundation. The term of the director elected VP-VC shall be extended an additional one year after the completion of service as PCob and Chair CoB and 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 Emeritus Director status and may be re-elected to the Board after a term of absence from the Board of at least one (1) year.

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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 Emeritus Director. 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.

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Section 3.04 Qualifications.

Any person of good moral character having a genuine interest in the objectives 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.

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Section 3.05 Ex Officio Membership.

The following shall be ex officio members of the Board of this Foundation:

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

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

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; and

~~h. The President of the Bengal Athletic Boosters, Inc., Idaho State University Bengal Foundation.~~

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

~~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.

The Board shall meet semi-annually and at such other times as meetings may be called. The ~~PCob, Chair, VC, CoB, President, 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)a.~~ 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.

~~(e)b.~~ 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)c.~~ A majority of the voting membership of the Board 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 at which a quorum is present.

~~(e)d.~~ 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~~ Emeritus Directors.

Section 3.07 Committees of the Board of Directors.

The Foundation Board will have the following standing committees to assist in accomplishing the duties and responsibilities of the Foundation. Standing committees shall include the following: Executive, Governance, Audit, Finance, Investment, Development and Nominating. ~~committees: Executive, Governance, Audit, Finance, Investment, Development and Nominating.~~ The responsibilities and other details concerning of the standing committees, are described in Section 9.00 IX of the Policy Manual.

The Board shall have the right to create ~~any other~~ ad hoc committees from time to

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time to assist in accomplishing the duties and the responsibilities of the Foundation.
[Other details concerning ad hoc committees are described in Section 9.08 of the Policy Manual.](#)

Membership on any

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[Amended and Restated Bylaws of
Idaho State University Foundation, Inc.](#)

committee need not be limited to members of the Board or ~~Board Associates~~ Emeritus Directors. All committee members shall be subject to Foundation policies and in particular, policies and practices concerning conflicts of interest and -confidentiality. Such ad hoc committees are discussed in Section IX. H. of the Policy Manual.

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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.

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Section 3.09 Removal of Directors.

(a) 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.

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(b) 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.

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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 all the members of the Board consent in writing to that action.~~ Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

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Section 3.11 Open Meetings.

~~The Board shall. It is the intent of the Foundation to~~ conduct its business in open sessions whenever possible. However, the ~~Board may meet in executive session meeting shall be closed~~ in those circumstances where the Board is discussing or acting upon strategy with respect to litigation; discussing the purchase or sale 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 or on any matter which the Board feels must be dealt with in a confidential manner.

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~~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.~~

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Section 3.12 Records

Although the Foundation, is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, will, to the extent reasonable, be open to public inquires related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

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Section 3.132 Director Conflicts of Interest.

All members of the Board shall comply with all provisions of the Conflict of Interest Policy as set forth in Section 2.04 Section H, D. of the Policy Manual.

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Section 3.143 Loans to Directors.

The Foundation shall not lend money to or guarantee the obligation of a director.

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Article 4IV Board AssociatesEmeritus Directors

The Foundation shall have honorary AssociatesEmeritus Directors to provide advisory services to the Foundation. Directors who have completed three (3) terms on the Board will automatically be eligible to serve as an Emeritus Director, unless they decline to do so. Emeritus Directors shall be unlimited in number and shall serve until resignation or until removal by a majority vote of the Board. Emeritus Directors may attend all regular meetings of the Board, and committee meetings, though they shall not be required to attend. Emeritus Directors may not vote on matters being considered by the Board or matters being considered by a committee.

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At the discretion of the Board of Directors a Director who has not served a full 9 years on the Board may be named an Emeritus Director. 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

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

~~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~~5 Officers

Section 5.01 Designation and Method of Selection.

Officers of the Foundation shall consist of the ~~Board Past Chair ("PCOB"), Board Chair ("CoB"), President,~~ Vice ~~President Chair ("VPVC"),~~ Executive Vice President ("EVP"), Secretary and Treasurer. Except as otherwise provided herein, the officers shall be elected by the Board and, other than the ~~PCob, CoB, President and VP~~and VC, shall serve at the pleasure of the Board or until their respective successors are duly elected and qualified. The term of the ~~PCoB and of the CoB and of the President~~ shall be two years each. The term of the ~~VP-VC~~ shall be one year and shall begin one year before the end of the ~~President's COB's~~ term. The ~~VP-VC~~ will automatically assume the role of ~~President Chair~~ at the end of the term of the previous ~~President Chair~~. The ~~President Chair~~ will automatically assume the role of ~~PCoB~~ at the end of the term of the previous ~~PCoB~~. Persons elected as Secretary or Treasurer shall be then current members of either the Board or ~~Board Associates~~ ~~Emeritus Directors~~. ~~They serve a term of three years, and may serve additional three year terms after going through the nominating process at the end of each term.~~ 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.

Section 5.02 Duties of the Officers.

The duties and responsibilities of the various officers are described in Section ~~III-3.00~~ of the Board's policies.

It is not expected that any officer, other than the EVP, shall devote his or her full time to the affairs of the Foundation or the University 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.

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Section 5.04 Officer Conflict of Interest.

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All officers shall comply with all provisions of the Conflict of Interest Policy as set forth in Section H-D-2.04 of the Board's policies.

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Section 5.05 Loans to Officers.

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The Foundation shall not lend money to or guarantee the obligation of an officer.

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Article ~~VI~~ Miscellaneous

Section 6.01 Indemnification.

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The Foundation shall indemnify any director, officer or former

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

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.

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Section 6.02 Investment.

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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.

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Section 6.03 Depositories.

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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.

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Section 6.04 Contracts.

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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 6.05 Checks, Drafts, Etc.

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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

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Section 6.06 Fiscal Year.

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The fiscal year of the Foundation shall end on the last day of June of each year.

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Section 6.07 Books and Records.

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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.~~

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Section 6.08 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.

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Section 6.09 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 of any official or member of this Foundation to appear before any legislative committee, to testify as to matters involving the Foundation.

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Section 6.10 Gifts.

The Board may accept, on behalf of the Foundation, any contribution, gift,

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

bequest, or devise for the general purposes or for any special purposes of the Foundation.

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Section 6.11 Parliamentary Procedure.

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~~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. The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Foundation in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Foundation Board may adopt.~~

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Section 6.12 Staff Conflict of Interest.

All staff members shall comply with all provisions of the Conflict of Interest Policy as set forth in Section ~~H.D.2.04~~ of the Policy Manual.

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Article ~~VII~~ Amendments

These Bylaws may be amended by an affirmative vote of a majority of the voting directors present at any regular meeting of the Board or at a special meeting called for the specific purpose of amending such Bylaws. 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.

The Secretary is authorized to correct clerical errors and make conforming changes in the Foundation's Bylaws (including making sure numerical protocol within the Bylaws is followed) without the need for further approval from the Board, as long as the corrections do not change the meaning or constitute a substantive change.

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

SECRETARY'S CERTIFICATION

~~This is to certify that the foregoing Bylaws of the Idaho State University Foundation have been
duly adopted by the Board of Directors at a meeting held on February 25, 2011.~~

Secretary

7-15-2011 *James B. Atman*

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Idaho State University Foundation

Policy II D Conflict of Interest PolicySection 2.04 - Conflict of Interest Policy

1. 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.

2. Definitions

- a. Interested Person. Any director, officer, member of a committee with Board delegated powers, or staff member 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

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- 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.
- c. 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.
- d. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
- e. A financial interest is not necessarily a conflict of interest. Under Section 6.03 Paragraph (b) below, 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.

3. 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.
 - i. 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.

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- ii. 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.
- iii. 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.
- iv. 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.
- v. 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.

4. 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.

5. 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.

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- 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.

6. 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.

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7. 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.

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8. 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.

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- 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.

9. 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.

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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.

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11. Material Gifts

No director, trustee, officer, or staff member of the Foundation shall accept from any source any material gift or gratuity in excess of fifty dollars (\$50.00) that is offered, or reasonably appears to be offered, because of the position held with the Foundation; nor shall an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis.

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Date of Board Approval: ~~October 17, 2008~~ April 13, 2018

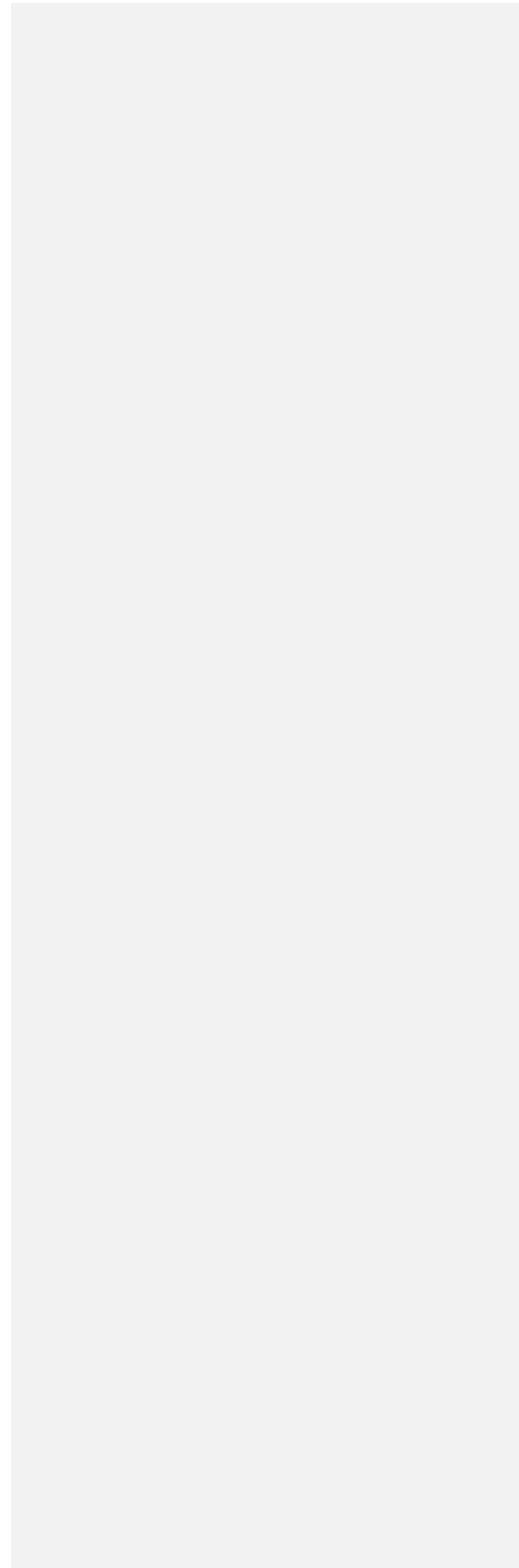
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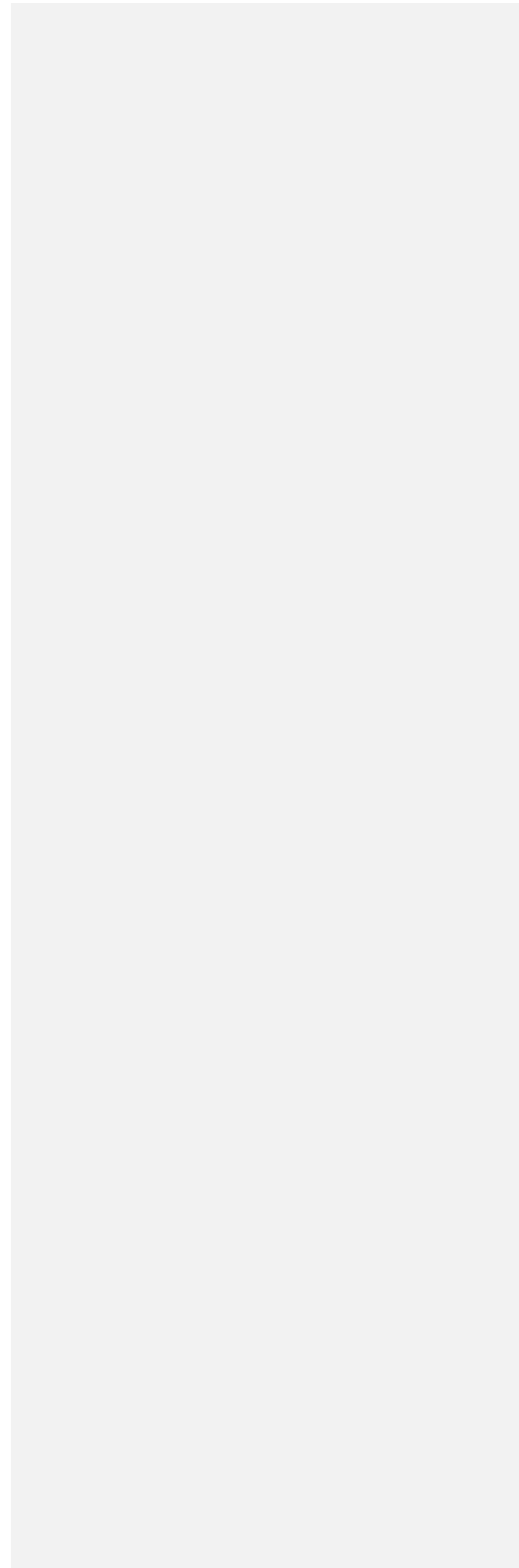
Person responsible for the periodic review of policy and submitting proposed revisions to the Board for approval: Board Chair

~~Date of Last Review~~

EXHIBIT "G"

Code of Ethics and Conduct





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Idaho State University Foundation**Policy II - Code of Ethical Conduct****Section 2.03 - Code of Ethical Conduct****1. Personal and Professional Integrity**

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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.

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2. 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.

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3. 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

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- a. 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

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- b. 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

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- c. Has a statement of personal commitment that provides attestation to

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the commitment to the Idaho State University Foundation's goals and values

- d. 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

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- e. Ensures that the Idaho State University Foundation conducts all transactions and dealings with integrity and honesty
- f. 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

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- g. Ensures that the organization is fair and inclusive in its hiring and promotion policies and practices for all board, staff, and volunteer positions

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- h. Ensures that policies of the Idaho State University Foundation are in writing, clearly articulated, and officially adopted

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- i. 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

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- j. Ensures that the resources of the Idaho State University Foundation are responsibly and prudently managed

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- k. Ensures that the Idaho State University Foundation has the capacity to carry out its programs effectively

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4. Responsible Stewardship

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

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- a. Spends an adequate amount on administrative expenses to ensure effective

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accounting systems, internal controls, competent staff, and other expenditures critical to professional management

b. Intends that all who are entitled to receive compensation for the organization are, reasonably, fairly and appropriately compensated

c. Knows that solicitation of funds has reasonable fundraising costs, recognizing the variety of factors that affect fundraising costs

d. Does not accumulate operating funds excessively

e. Draws prudently from endowment funds consistent with donor intent and to support the public purpose of the Idaho State University Foundation

f. Ensures that all spending practices and policies are fair, reasonable, and appropriate to fulfill the mission of the Idaho State University Foundation

g. Ensures that all financial reports are factually accurate and complete in all material respects

h. Ensures compliance with laws and regulations

5. 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.

6. 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.

7. Organizational Effectiveness

The Idaho State University Foundation is committed to improving its organizational

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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.

8. Inclusiveness and Diversity

The Idaho State University Foundation has a policy of promoting inclusiveness. Its staff, board, and volunteers should 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.

9. 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:

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

a-b. 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

b-a. Have access to the Idaho State University Foundation's most recent financial reports

e-b. Be assured their gifts will be used for purposes for which they are given to the extent that such gifts are in compliance with University and Foundation policy.

d-c. Receive appropriate acknowledgment and recognition

e-d. Be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law

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f-e. Be approached in a professional manner

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g-f. Be informed whether those seeking donations are volunteers, employees of Idaho State University or of the Foundation, or hired solicitors

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h-g. Have the opportunity for their names to be deleted from mailing lists that the Idaho State University Foundation may intend to share

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

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10. Reporting Responsibility

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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.

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Date of Board Approval: October 17, 2008

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Person responsible for the periodic review of policy and submitting proposed revisions to the Board for approval: Board Chair

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Date of Last Review

The policies contained in the ISUF Policy manual contain all amendments, if any, made to them through the April 13, 2018 Board of Director's meeting.