

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 23, 2023

UNIVERSITY OF IDAHO

SUBJECT

Temporary Exception Request for UI Foundation and Advancement Staffing

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.E.
Gifts and Affiliated Foundations

BACKGROUND/DISCUSSION

The University of Idaho Foundation (UIF) is currently working with the University of Idaho Administration on a restructuring of the UIF and of the Advancement/Fundraising arm of the University to integrate the Advancement/Fundraising function into the UIF. The University and UIF anticipate having a full proposal for the restructuring for consideration by the State Board of Education (Board) at the regularly scheduled board meeting in December. However, while this work continues, the UIF is experiencing the loss of three key personnel including their Interim Executive Director (pending retirement), the Chief Financial Officer (resigned June 30, 2023), and the Director of Gift and Endowment Administration (pending retirement). The UIF Board of Directors (UIF Board) has requested the University provide operating assistance at this time, recognizing the State Board of Education will likely be considering integration of University Advancement and UIF.

The proposed temporary solution would loan three key University Advancement Employees to UIF: the Vice President for Advancement, the Associate Vice President for Advancement Solutions, and the Director of Stewardship. The intent of temporarily loaning the three University employees to UIF for a percentage of their time will temporarily expand their scope of work to ensure continuity of UIF operations. When the temporary loaned employees are working as UIF employees, they will report to the UIF Board of Directors. When working as University employees they will report to the President. See Attachments 1 through 3 for contract drafts for each employee.

The temporary University loaned employees will not have the ultimate authority for Foundation policy making, financial oversight, spending authority, investment, or employment decisions. The ultimate authority for these will rest with the UIF Board of Directors. In addition, it's important to note the University employees, including the Vice President for Advancement currently:

- Do not make policy on behalf of the University,
- Are not able to contract on behalf of the University,
- Do not have control of University funds beyond their University assigned operating budgets in Advancement.

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The University of Idaho is seeking a temporary waiver of Idaho State Board of Education Governing Policies and Procedures Section: V Financial Affairs, Subsection: E. Gifts and Affiliated Foundations 2.b.i.1 and 2.b.iii.3. If the temporary waiver is approved, the University and UIF would then temporarily amend the Operating Agreement, Article III, A.3.a, and A.3.b as set out in Attachment 4. Both the temporary waiver to State Board Policy and the temporary amendment to the Operating Agreement would allow UIF and University employees to report to each other for the duration of this exception.

The University and UIF are not attempting to integrate the two organizations prior to the Board's full consideration of the pending proposal for integrating Advancement and UIF. This request is intended to stabilize UIF during the staff leadership transition and until a final decision is made by the Board on integration of the two organizations. If integration is approved by the Board the temporary positions will only continue until the integration is put into effect. If integration is not approved and does not move forward, the temporary positions will only continue until permanent replacements can be found and hired.

IMPACT

The proposed temporary structure will provide leadership in three key UIF business functions as follows:

- **Interim Executive Director and VP for Advancement**
 - The VP for Advancement will be loaned to UI Foundation for 50% of the appointment to assume additional responsibilities as the Interim Executive Director of the UI Foundation
 - Clear fiduciary separation will be maintained through the direct report to the Foundation Board of Directors

- **Interim AVP for Foundation Services and AVP for Advancement Solutions**
 - The AVP for Advancement Solutions will be loaned to UIF to assume additional responsibilities as the Interim AVP for Foundation Services

- **Interim Director of Gift and Endowment Administration and Director of Stewardship**
 - The Director of Stewardship will be loaned to UIF to assume additional responsibilities as the Interim Director of Gift and Endowment Administration

Continuity during a time of transition ensures essential business functions will continue without interruption. Temporary University loaned employees will not have the ultimate authority for Foundation policy making, financial oversight, spending authority, investment, or employment decisions, and the ultimate authority will rest with the UIF Board of Directors.

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ATTACHMENTS

Attachment 1 – Proposed Loaned Employee Agreement - Interim Executive Director and VP for Advancement

Attachment 2 – Proposed Loaned Employee Agreement - Interim AVP for Foundation Services and AVP for Advancement Solutions

Attachment 3 – Proposed Loaned Employee Agreement - Interim Director of Gift and Endowment Administration and Director of Stewardship

Attachment 4 – Temporary Amendment to Operating Agreement

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Board Policy Section: V Financial Affairs, Subsection: E. Gifts and Affiliated Foundations 2.b.i.1 – Foundation Operating Agreements: Institution Resources and Services covers whether, and how, an institution intends to provide contract administrative and/or support staff services to an affiliated foundation, then the operating agreement must clearly define the authority and responsibilities of this position within the foundation. Notwithstanding, no employee of an institution who functions in a key administrative or policy making capacity shall be permitted to have responsibility or authority for foundation policy making financial oversight, spending authority, investment decisions, or the supervision of foundation employees. The responsibility of this position within the foundation that is performed by an institution employee in a key administrative or policy making capacity shall be limited to the coordination of institution and affiliated foundation fundraising efforts, and the provision of administrative support to the foundation fundraising activities.

Board Policy Section: V Financial Affairs, Subsection: E. Gifts and Affiliated Foundations 2.b.iii.3 – Foundation Relationships with the Institutions covers whether, and how, supplemental compensation from the foundation may be made to institutional employees. Any such payments must have prior Board approval, and shall be paid by the foundations to the institutions, which in turn will make payment to the employee in accordance with normal practice. Employees shall not receive any payment or other benefits directly from the foundation.

UI has clearly describes an immediate need for a temporary waiver of Board Policy Section V. E. subsections 2.b.i.1 and 2.b.ii.3 due to UIF's urgent necessity for business continuity of operations for three key UIF business functions described above, with the intent of UI and UIF to provide a clear restructuring proposal to the Board for the December 2023 meeting. Staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho for a temporary waiver through December 2023 of Board Policy Section V. E. subsections 2.b.i.1 and 2.b.iii.3 so as to allow temporary loaning of University employees to the University of Idaho Foundation in the fashion described in the materials presented to the Board; and further to authorize the President of the University, or the President's

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designee, to execute the Temporary Amendment to Operating Agreement, and the loaned employment agreements in substantial conformance to the Attachments presented to the Board. This approval is conditioned on UI and UIF formally providing the Board a well-defined staff restructuring proposal at its regularly scheduled December 13, 2023 Board meeting.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**AGREEMENT FOR LOANED EMPLOYEE
UNIVERSITY OF IDAHO/UNIVERSITY OF IDAHO FOUNDATION, INC.**

This Loaned Employee Agreement (“Agreement”) is entered into by and between the Regents of the UNIVERSITY OF IDAHO (“UI” or “University”), a state educational institution, and body politic and corporate organized and existing under the Constitution and laws of the state of Idaho, whose address is Office of the Provost, University of Idaho, Moscow, Idaho 83843, and THE UNIVERSITY OF IDAHO FOUNDATION, INC. (“UIF”) a nonprofit corporation and is effective upon the date of last signature.

- UIF has asked University to make certain staff members available temporarily, on a part-time basis, to fulfill various staffing requirements for UIF’s day-to-day operations.
- The Foundation’s need arises due to the transition of key personnel away from the Foundation.
- The Foundation and the University anticipate that this need will be temporary, lasting only until implementation of a possible restructuring of the UIF and the University Advancement (the Integration Plan), or if the Integration Plan is not approved by the Board of Regents, until a successful search for permanent replacements can be found and placed with the Foundation. University has agreed to loan its employee, **Ben McLuen** (“Loaned Employee”), to UIF to act, on a part-time basis, in the capacity of **Interim Executive Director** for UIF pursuant to the terms of this Agreement.

1. The foregoing recitals are incorporated into and made an integral part of this Agreement.

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

- a. Status. At all times under this Agreement, Loaned Employee shall be an **exempt employee** of the University subject to all applicable policies and procedures of the Regents and the University. UIF shall have control over all aspects of Loaned Employee’s day to day work for the UIF, and Loaned Employee shall devote 50% of their working time to performing services for UIF. Only the University may terminate the employment of Loaned Employee. Notwithstanding the foregoing, for matters arising under the Loaned Employee’s work for the UIF hereunder, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. The parties acknowledge that University and Loaned Employee have agreed and acknowledged that Loaned Employee’s contract with the University is conditionally contingent upon continuation of this Agreement and in the event this Agreement is terminated Loaned Employee’s contract with the University ~~will~~ may also terminate at the University’s discretion. Loaned Employee will be considered a loaned employee under the worker’s compensation law of the state of Idaho for the percentage of Loaned Employee’s work time allocated to the UIF.
- b. Compensation. University shall pay Loaned Employee a fiscal year salary rate of **\$ [REDACTED]**, for work performed for the Foundation, payable on the regular bi-weekly paydays of the University, and subject to adjustment in accordance with the University’s regular policies and procedures. Loaned Employee will be entitled to University benefits to

the same extent and on the same terms as other full-time University employees of their classification. UIF shall pay University for this cost as provided in Section 4 below.

The foregoing salary amount is for the Loaned Employee's work for the Foundation, and additional salary will be paid by the University for the remainder of the Loaned Employee's work for the University in a manner and amount consistent with the employee's University position.

- c. Travel Expenses. University shall reimburse directly to Loaned Employee costs incurred for UIF travel that is approved in advance by the UIF or the University. UIF shall pay University for this cost as provided in Section 3. below.
- d. No Prohibition on Leasing Employee to UIF. University represents and warrants to UIF that there is no agreement with Loaned Employee nor any University policy or procedure (including, without limitation, any agreement, policy, or rule of the Idaho State Board of Education, the Regents or the University) that prohibits the University from leasing Loaned Employee to UIF pursuant to the terms of this Agreement. University further represents and warrants that Loaned Employee is eligible for benefits as a full-time leased employee under the term of all applicable University benefit plans.

3. Relationship between UIF and Loaned Employee.

- a. Supervision. Loaned Employee will work under the supervision and direction of the UIF Board of Directors for the percentage of the Loaned Employee's work time described in 2.a above. Loaned Employee will report directly to the UIF Board of Directors or their designee, who shall determine their duties to perform work for UIF. The Loaned Employee, when working for the UIF, may be authorized to supervise other University employees loaned to the UIF as determined by the UIF Board of Directors.

For the percentage of the Loaned Employee's work time not allocated to the UIF under 2.a above, the Loaned Employee shall report to a University supervisor in the manner consistent with the employee's University position and may supervise University employees as is consistent with the employee's University position.

- b. Performance Evaluations. UIF will evaluate the performance of Loaned Employee on an annual basis at a time consistent with the annual reviews of exempt employees at the University. UIF will provide University with a copy of any written documentation regarding the evaluation within fourteen (14) days after the evaluation is complete.

4. Relationship between UIF and University.

- a. Lease of Loaned Employee. During the term of this Agreement, so long as Loaned Employee is employed by University, University shall make available to UIF the services of Loaned Employee for the percentage of time set forth in 2.a above, subject to University's continued employment of Loaned Employee. The furnishing of Loaned Employee shall not be considered a professional service of the University to UIF, nor shall University be considered a contractor of UIF.

- b. University to Provide Salary and Benefits. As indicated above, University shall provide Loaned Employee with a fiscal year salary rate of \$ [REDACTED] and other University benefits to the same extent and on the same terms as other full-time University employees of their classification. University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including, without limitation, withholding and payment of payroll taxes, unemployment compensation, worker's compensation coverage, social security, and providing any fringe and welfare benefit programs for Loaned Employee.
- c. Reimbursement of Salary and Benefits by UIF. UIF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary set forth in 2.a above and one-half of the Loaned Employee's benefits and 100% of any reimbursable costs such as travel expenses associated with Loaned Employee's work for the Foundation. Such costs will be billed annually and paid to the University in one annual installment. University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, UIF shall have the right to inspect and copy said books and records, which the University agrees to retain according to the standard employment practice for all other University personnel following the termination of this Agreement.
- d. Review of Loaned Employee's Status/Discipline/Termination for Cause. Loaned Employee shall at all times remain an employee of University. Accordingly, University shall have the power to evaluate, discipline, and terminate Loaned Employee in its discretion and in accordance with any of its policies, procedures, or agreements between University and Employee. As provided above, UIF will conduct an annual review of Loaned Employee. UIF will provide a copy of any documents related to its evaluation to the University no later than fourteen (14) days after the evaluation is completed. Based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.
- e. Indemnification by UIF for Acts of Loaned Employee. University shall have no liability to UIF for loss or damage directly resulting from the fault, negligence, misconduct, or other acts of the Loaned Employee while Loaned Employee is performing activities on behalf of or at the direction of UIF. UIF therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, for injuries (including death) to persons and for damages to property (including damage to property of UIF or others) arising out of or in connection with the activities of the Loaned Employee performed on behalf of or at the direction of UIF. Notwithstanding the foregoing, both parties may maintain any liability insurance

coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

f. Compliance With Employment Discrimination Laws.

- 1) UIF agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee as if Loaned Employee were an employee of UIF. UIF shall notify University within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. UIF shall indemnify, defend, and hold University harmless from any claims or losses resulting from UIF's failure to comply with any applicable employment discrimination laws.
- 2) University agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee. University shall notify UIF within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination.

5. **General Terms**

- a. Term, Termination. The term that University shall lease Loaned Employee to UIF shall extend to **June 22, 2024**, which is the expiration of fiscal year 2024, unless it is terminated earlier upon the occurrence of any of the following:
 - 1) Notice to University Due to Loaned Employee Performance Problems. Pursuant to Section 3(d) above, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.
 - 2) Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to UIF upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) days' notice of the default and an opportunity to cure such default within the notice period.

- 3) Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to UIF shall automatically terminate if Loaned Employee is no longer an employee of University for any reason.
- 4) Final determination of Integration Plan. Should the Integration Plan not be approved by The University of Idaho Board of Regents, the temporary employment agreement will terminate upon the successful hire of the UIF Executive Director. If the Integration Plan is approved by The University of Idaho Board of Regents, the temporary employment agreement may be renewed until the leadership is installed for the newly integrated organization.

The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee's renewed contract with the University. The UIF is under no obligation to extend the term of this Agreement for a new term, however, (in order to be consistent with University policies which call for at least 60 days' notice if the University will not renew the Loaned Employee's employment agreement) in the event the UIF determines that it will not agree to an extension of the term of this Agreement the UIF will give University notice of its intention not to extend the term of this Agreement at least 60 days prior to the expiration of the term of this Agreement. Failure to give the notice required hereunder shall NOT effect a renewal of the term of this Agreement, rather it will only extend the term of this Agreement long enough for 60 days' notice to be given.

- b. No Third Party Beneficiaries. The parties acknowledge that there are no intended third party beneficiaries of this Agreement. Without limiting the foregoing, this Agreement shall not be construed as a promise of continuing employment to Loaned Employee, who remains subject to all applicable Regents and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline.
- c. Governing Law. This Agreement will be governed by the laws of the state of Idaho as an agreement to be performed within the state of Idaho. The venue for any legal action under this Agreement shall be in Latah County.
- d. Notice. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may direct in a future writing:

To UIF:

University of Idaho Foundation, Inc. Phone: (208) 885-4000
875 Perimeter Drive MS 3143
Moscow, ID 83844-3143

To the University:

University of Idaho Phone: (208) 885-6365
Office of the President

P.O. Box 443151
Moscow, ID 83844-3151

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

- e. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
- f. Attorney's Fees. In the event an action is brought to enforce any of the terms, covenants, or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law, if awarded by a court of competent jurisdiction.
- g. Assignment. Neither party shall assign this Agreement without the prior written consent of the other.
- h. Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by both of the parties.
- i. Acknowledgment by Employee. This Agreement shall not be effective until it is executed by University and UIF and acknowledged by Loaned Employee pursuant to the signature blocks below.

Signature page follows.

The parties have executed this Agreement effective as of the date of the last signature.

UNIVERSITY OF IDAHO
FOUNDATION, INC.

UNIVERSITY OF IDAHO

Linda Copple Trout, Chair

C. Scott Green, President

Date: _____

Date: _____

Acknowledgment by Loaned Employee:

Loaned Employee, by their signature below, acknowledges the terms of this Agreement between University and UIF and agrees that they are an employee of the University that is loaned to UIF pursuant to the terms of this Agreement. Loaned Employee further acknowledges that they are a 'loaned employee' pursuant to all state worker's compensation laws. Accordingly, Loaned Employee acknowledges and agrees that in the event of any work-related injury that is covered by worker's compensation insurance held for the benefit of Loaned Employee by University, Loaned Employee will be precluded from recovering damages from UIF for such injury in accordance with applicable state worker's compensation laws.

Name: Ben McLuen

Date: _____

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- UIF has asked University to make certain staff members available temporarily, on a part-time basis, to fulfill various staffing requirements for UIF’s day-to-day operations.
- The Foundation’s need arises due to the transition of key personnel away from the Foundation.
- The Foundation and the University anticipate that this need will be temporary, lasting only until implementation of a possible restructuring of the UIF and the University Advancement (the Integration Plan), or if the Integration Plan is not approved by the Board of Regents, until a successful search for permanent replacements can be found and placed with the Foundation. University has agreed to loan its employee, **Jessica Hotchkiss** (“Loaned Employee”), to UIF to act, on a part-time basis, in the capacity of **Interim Director of Gift and Endowment Administration** for UIF pursuant to the terms of this Agreement.

1. The foregoing recitals are incorporated into and made an integral part of this Agreement.
2. **Relationship between Loaned Employee and University.**
 - a. Status. At all times under this Agreement, Loaned Employee shall be an **exempt employee** of the University subject to all applicable policies and procedures of the Regents and the University. UIF shall have control over all aspects of Loaned Employee’s day to day work for the UIF, and Loaned Employee shall devote % of their working time to performing services for UIF. Only the University may terminate the employment of Loaned Employee. Notwithstanding the foregoing, for matters arising under the Loaned Employee’s work for the UIF hereunder, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. The parties acknowledge that University and Loaned Employee have agreed and acknowledged that Loaned Employee’s contract with the University is conditionally contingent upon continuation of this Agreement and in the event this Agreement is terminated Loaned Employee’s contract with the University ~~will~~ may also terminate at the University’s discretion. Loaned Employee will be considered a loaned employee under the worker’s compensation law of the state of Idaho for the percentage of Loaned Employee’s work time allocated to the UIF.
 - b. Compensation. University shall pay Loaned Employee a fiscal year salary rate of **\$**, for work performed for the Foundation, payable on the regular bi-weekly paydays of the University, and subject to adjustment in accordance with the University’s regular policies and procedures. Loaned Employee will be entitled to University benefits to

the same extent and on the same terms as other full-time University employees of their classification. UIF shall pay University for this cost as provided in Section 4 below.

The foregoing salary amount is for the Loaned Employee's work for the Foundation, and additional salary will be paid by the University for the remainder of the Loaned Employee's work for the University in a manner and amount consistent with the employee's University position.

- c. Travel Expenses. University shall reimburse directly to Loaned Employee costs incurred for UIF travel that is approved in advance by the UIF or the University. UIF shall pay University for this cost as provided in Section 3. below.
- d. No Prohibition on Leasing Employee to UIF. University represents and warrants to UIF that there is no agreement with Loaned Employee nor any University policy or procedure (including, without limitation, any agreement, policy, or rule of the Idaho State Board of Education, the Regents or the University) that prohibits the University from leasing Loaned Employee to UIF pursuant to the terms of this Agreement. University further represents and warrants that Loaned Employee is eligible for benefits as a full-time leased employee under the term of all applicable University benefit plans.

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- b. Performance Evaluations. UIF will evaluate the performance of Loaned Employee on an annual basis at a time consistent with the annual reviews of exempt employees at the University. UIF will provide University with a copy of any written documentation regarding the evaluation within fourteen (14) days after the evaluation is complete.

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- c. Reimbursement of Salary and Benefits by UIF. UIF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary set forth in 2.a above and [REDACTED]% of the Loaned Employee's benefits and 100% of any reimbursable costs such as travel expenses associated with Loaned Employee's work for the Foundation. Such costs will be billed annually and paid to the University in one annual installment. University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, UIF shall have the right to inspect and copy said books and records, which the University agrees to retain according to the standard employment practice for all other University personnel following the termination of this Agreement.
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coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

f. Compliance With Employment Discrimination Laws.

- 1) UIF agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee as if Loaned Employee were an employee of UIF. UIF shall notify University within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. UIF shall indemnify, defend, and hold University harmless from any claims or losses resulting from UIF's failure to comply with any applicable employment discrimination laws.
- 2) University agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee. University shall notify UIF within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination.

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 - 2) Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to UIF upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) days' notice of the default and an opportunity to cure such default within the notice period.

- 3) Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to UIF shall automatically terminate if Loaned Employee is no longer an employee of University for any reason.
- 4) Final determination of Integration Plan. Should the Integration Plan not be approved by The University of Idaho Board of Regents, the temporary employment agreement will terminate upon the successful hire of the UIF Director of Gift and Endowment Administration. If the Integration Plan is approved by The University of Idaho Board of Regents, the temporary employment agreement may be renewed until the leadership is installed for the newly integrated organization..

The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee’s renewed contract with the University. The UIF is under no obligation to extend the term of this Agreement for a new term, however, (in order to be consistent with University polices which call for at least 60 days’ notice if the University will not renew the Loaned Employee’s employment agreement) in the event the UIF determines that it will not agree to an extension of the term of this Agreement the UIF will give University notice of its intention not to extend the term of this Agreement at least 60 days prior to the expiration of the term of this Agreement. Failure to give the notice required hereunder shall NOT effect a renewal of the term of this Agreement, rather it will only extend the term of this Agreement long enough for 60 days’ notice to be given.

- b. No Third Party Beneficiaries. The parties acknowledge that there are no intended third party beneficiaries of this Agreement. Without limiting the foregoing, this Agreement shall not be construed as a promise of continuing employment to Loaned Employee, who remains subject to all applicable Regents and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline.
- c. Governing Law. This Agreement will be governed by the laws of the state of Idaho as an agreement to be performed within the state of Idaho. The venue for any legal action under this Agreement shall be in Latah County.
- d. Notice. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may direct in a future writing:

To UIF:

University of Idaho Foundation, Inc. Phone: (208) 885-4000
875 Perimeter Drive MS 3143
Moscow, ID 83844-3143

To the University:

University of Idaho Phone: (208) 885-6365

Office of the President
P.O. Box 443151
Moscow, ID 83844-3151

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

- e. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
- f. Attorney's Fees. In the event an action is brought to enforce any of the terms, covenants, or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law, if awarded by a court of competent jurisdiction.
- g. Assignment. Neither party shall assign this Agreement without the prior written consent of the other.
- h. Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by both of the parties.
- i. Acknowledgment by Employee. This Agreement shall not be effective until it is executed by University and UIF and acknowledged by Loaned Employee pursuant to the signature blocks below.

Signature page follows.

The parties have executed this Agreement effective as of the date of the last signature.

UNIVERSITY OF IDAHO
FOUNDATION, INC.

UNIVERSITY OF IDAHO

Linda Copple Trout, Chair

C. Scott Green, President

Date: _____

Date: _____

Acknowledgment by Loaned Employee:

Loaned Employee, by their signature below, acknowledges the terms of this Agreement between University and UIF and agrees that they are an employee of the University that is loaned to UIF pursuant to the terms of this Agreement. Loaned Employee further acknowledges that they are a 'loaned employee' pursuant to all state worker's compensation laws. Accordingly, Loaned Employee acknowledges and agrees that in the event of any work-related injury that is covered by worker's compensation insurance held for the benefit of Loaned Employee by University, Loaned Employee will be precluded from recovering damages from UIF for such injury in accordance with applicable state worker's compensation laws.

Name: **Jessica Hotchkiss**

Date: _____

**AGREEMENT FOR LOANED EMPLOYEE
UNIVERSITY OF IDAHO/UNIVERSITY OF IDAHO FOUNDATION, INC.**

This Loaned Employee Agreement (“Agreement”) is entered into by and between the Regents of the UNIVERSITY OF IDAHO (“UI” or “University”), a state educational institution, and body politic and corporate organized and existing under the Constitution and laws of the state of Idaho, whose address is Office of the Provost, University of Idaho, Moscow, Idaho 83843, and THE UNIVERSITY OF IDAHO FOUNDATION, INC. (“UIF”) a nonprofit corporation and is effective upon the date of last signature.

- UIF has asked University to make certain staff members available temporarily, on a part-time basis, to fulfill various staffing requirements for UIF’s day-to-day operations.
- The Foundation’s need arises due to the transition of key personnel away from the Foundation.
- The Foundation and the University anticipate that this need will be temporary, lasting only until implementation of a possible restructuring of the UIF and the University Advancement (the Integration Plan), or if the Integration Plan is not approved by the Board of Regents, until a successful search for permanent replacements can be found and placed with the Foundation. University has agreed to loan its employee, Christian Elsberry (“Loaned Employee”), to UIF to act, on a part-time basis, in the capacity of Interim AVP for Foundation Services for UIF pursuant to the terms of this Agreement.

1. The foregoing recitals are incorporated into and made an integral part of this Agreement.
2. **Relationship between Loaned Employee and University.**
 - a. Status. At all times under this Agreement, Loaned Employee shall be an exempt employee of the University subject to all applicable policies and procedures of the Regents and the University. UIF shall have control over all aspects of Loaned Employee’s day to day work for the UIF, and Loaned Employee shall devote % of their working time to performing services for UIF. Only the University may terminate the employment of Loaned Employee. Notwithstanding the foregoing, for matters arising under the Loaned Employee’s work for the UIF hereunder, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. The parties acknowledge that University and Loaned Employee have agreed and acknowledged that Loaned Employee’s contract with the University is conditionally contingent upon continuation of this Agreement and in the event this Agreement is terminated Loaned Employee’s contract with the University ~~will~~ may also terminate at the University’s discretion. Loaned Employee will be considered a loaned employee under the worker’s compensation law of the state of Idaho for the percentage of Loaned Employee’s work time allocated to the UIF.
 - b. Compensation. University shall pay Loaned Employee a fiscal year salary rate of \$, for work performed for the Foundation, payable on the regular bi-weekly paydays of the University, and subject to adjustment in accordance with the University’s regular policies and procedures. Loaned Employee will be entitled to University benefits to

the same extent and on the same terms as other full-time University employees of their classification. UIF shall pay University for this cost as provided in Section 4 below.

The foregoing salary amount is for the Loaned Employee's work for the Foundation, and additional salary will be paid by the University for the remainder of the Loaned Employee's work for the University in a manner and amount consistent with the employee's University position.

- c. Travel Expenses. University shall reimburse directly to Loaned Employee costs incurred for UIF travel that is approved in advance by the UIF or the University. UIF shall pay University for this cost as provided in Section 3. below.
- d. No Prohibition on Leasing Employee to UIF. University represents and warrants to UIF that there is no agreement with Loaned Employee nor any University policy or procedure (including, without limitation, any agreement, policy, or rule of the Idaho State Board of Education, the Regents or the University) that prohibits the University from leasing Loaned Employee to UIF pursuant to the terms of this Agreement. University further represents and warrants that Loaned Employee is eligible for benefits as a full-time leased employee under the term of all applicable University benefit plans.

3. Relationship between UIF and Loaned Employee.

- a. Supervision. Loaned Employee will work under the supervision and direction of the UIF Board of Directors for the percentage of the Loaned Employee's work time described in 2.a above. Loaned Employee will report directly to the UIF Board of Directors or their designee, who shall determine their duties to perform work for UIF. The Loaned Employee, when working for the UIF, may be authorized to supervise other University employees loaned to the UIF as determined by the UIF Board of Directors.

For the percentage of the Loaned Employee's work time not allocated to the UIF under 2.a above, the Loaned Employee shall report to a University supervisor in the manner consistent with the employee's University position and may supervise University employees as is consistent with the employee's University position.

- b. Performance Evaluations. UIF will evaluate the performance of Loaned Employee on an annual basis at a time consistent with the annual reviews of exempt employees at the University. UIF will provide University with a copy of any written documentation regarding the evaluation within fourteen (14) days after the evaluation is complete.

4. Relationship between UIF and University.

- a. Lease of Loaned Employee. During the term of this Agreement, so long as Loaned Employee is employed by University, University shall make available to UIF the services of Loaned Employee for the percentage of time set forth in 2.a above, subject to University's continued employment of Loaned Employee. The furnishing of Loaned Employee shall not be considered a professional service of the University to UIF, nor shall University be considered a contractor of UIF.

- b. University to Provide Salary and Benefits. As indicated above, University shall provide Loaned Employee with a fiscal year salary rate of \$ [REDACTED] and other University benefits to the same extent and on the same terms as other full-time University employees of their classification. University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including, without limitation, withholding and payment of payroll taxes, unemployment compensation, worker's compensation coverage, social security, and providing any fringe and welfare benefit programs for Loaned Employee.
- c. Reimbursement of Salary and Benefits by UIF. UIF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary set forth in 2.a above and [REDACTED]% of the Loaned Employee's benefits and 100% of any reimbursable costs such as travel expenses associated with Loaned Employee's work for the Foundation. Such costs will be billed annually and paid to the University in one annual installment. University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, UIF shall have the right to inspect and copy said books and records, which the University agrees to retain according to the standard employment practice for all other University personnel following the termination of this Agreement.
- d. Review of Loaned Employee's Status/Discipline/Termination for Cause. Loaned Employee shall at all times remain an employee of University. Accordingly, University shall have the power to evaluate, discipline, and terminate Loaned Employee in its discretion and in accordance with any of its policies, procedures, or agreements between University and Employee. As provided above, UIF will conduct an annual review of Loaned Employee. UIF will provide a copy of any documents related to its evaluation to the University no later than fourteen (14) days after the evaluation is completed. Based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.
- e. Indemnification by UIF for Acts of Loaned Employee. University shall have no liability to UIF for loss or damage directly resulting from the fault, negligence, misconduct, or other acts of the Loaned Employee while Loaned Employee is performing activities on behalf of or at the direction of UIF. UIF therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, for injuries (including death) to persons and for damages to property (including damage to property of UIF or others) arising out of or in connection with the activities of the Loaned Employee performed on behalf of or at the direction of UIF. Notwithstanding the foregoing, both parties may maintain any liability insurance

coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

f. Compliance With Employment Discrimination Laws.

- 1) UIF agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee as if Loaned Employee were an employee of UIF. UIF shall notify University within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. UIF shall indemnify, defend, and hold University harmless from any claims or losses resulting from UIF's failure to comply with any applicable employment discrimination laws.
- 2) University agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee. University shall notify UIF within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination.

5. **General Terms**

- a. Term, Termination. The term that University shall lease Loaned Employee to UIF shall extend to **June 22, 2024**, which is the expiration of fiscal year 2024, unless it is terminated earlier upon the occurrence of any of the following:
 - 1) Notice to University Due to Loaned Employee Performance Problems. Pursuant to Section 3(d) above, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.
 - 2) Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to UIF upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) days' notice of the default and an opportunity to cure such default within the notice period.

- 3) Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to UIF shall automatically terminate if Loaned Employee is no longer an employee of University for any reason.

- 4) Final determination of Integration Plan. Should the Integration Plan not be approved by The University of Idaho Board of Regents, the temporary employment agreement will terminate upon the successful hire of the UIF AVP for Foundation Services. If the Integration Plan is approved by The University of Idaho Board of Regents, the temporary employment agreement may be renewed until the leadership is installed for the newly integrated organization.

The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee’s renewed contract with the University. The UIF is under no obligation to extend the term of this Agreement for a new term, however, (in order to be consistent with University policies which call for at least 60 days’ notice if the University will not renew the Loaned Employee’s employment agreement) in the event the UIF determines that it will not agree to an extension of the term of this Agreement the UIF will give University notice of its intention not to extend the term of this Agreement at least 60 days prior to the expiration of the term of this Agreement. Failure to give the notice required hereunder shall NOT effect a renewal of the term of this Agreement, rather it will only extend the term of this Agreement long enough for 60 days’ notice to be given.

- b. No Third Party Beneficiaries. The parties acknowledge that there are no intended third party beneficiaries of this Agreement. Without limiting the foregoing, this Agreement shall not be construed as a promise of continuing employment to Loaned Employee, who remains subject to all applicable Regents and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline.

- c. Governing Law. This Agreement will be governed by the laws of the state of Idaho as an agreement to be performed within the state of Idaho. The venue for any legal action under this Agreement shall be in Latah County.

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

To UIF:

University of Idaho Foundation, Inc. Phone: (208) 885-4000
875 Perimeter Drive MS 3143
Moscow, ID 83844-3143

To the University:

University of Idaho Phone: (208) 885-6365
Office of the President

P.O. Box 443151
Moscow, ID 83844-3151

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

- e. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
- f. Attorney's Fees. In the event an action is brought to enforce any of the terms, covenants, or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law, if awarded by a court of competent jurisdiction.
- g. Assignment. Neither party shall assign this Agreement without the prior written consent of the other.
- h. Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by both of the parties.
- i. Acknowledgment by Employee. This Agreement shall not be effective until it is executed by University and UIF and acknowledged by Loaned Employee pursuant to the signature blocks below.

Signature page follows.

The parties have executed this Agreement effective as of the date of the last signature.

UNIVERSITY OF IDAHO
FOUNDATION, INC.

UNIVERSITY OF IDAHO

Linda Copple Trout, Chair

C. Scott Green, President

Date: _____

Date: _____

Acknowledgment by Loaned Employee:

Loaned Employee, by their signature below, acknowledges the terms of this Agreement between University and UIF and agrees that they are an employee of the University that is loaned to UIF pursuant to the terms of this Agreement. Loaned Employee further acknowledges that they are a 'loaned employee' pursuant to all state worker's compensation laws. Accordingly, Loaned Employee acknowledges and agrees that in the event of any work-related injury that is covered by worker's compensation insurance held for the benefit of Loaned Employee by University, Loaned Employee will be precluded from recovering damages from UIF for such injury in accordance with applicable state worker's compensation laws.

Name: **Christian Elsberry**

Date: _____

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

This amendment agreement ("Amendment to Operating Agreement") is entered into effective the ____ day of _____ 2023 by and between the University of Idaho ("University") and the University of Idaho Foundation, Inc. ("Foundation"), for the purpose of amending the Operating Agreement entered into effective the 21st day of October 2016 (Operating Agreement) solely for the purposes set forth herein.

The University and the Foundation are sometimes collectively referred to herein separately as a "Party" and collectively as the "Parties."

In consideration of the mutual covenants and conditions set forth in this Amendment to Operating Agreement, as well as the continuing mutual covenants and conditions of the underlying Operating Agreement, the Parties agree to, and do hereby, amend the Operating Agreement as hereinafter set forth.

Amendment:

Article III, Section A.3.a of the Operating Agreement is amended to read as follows, (with the amended language set out in red-line format).

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3. *Other University Employees.*

a. The University and the Foundation have entered into additional agreements for the loaning of additional employees to the Foundation by the University pursuant to terms substantially similar to the Loaned Employee Agreement attached as Exhibit "B." The additional loaned employees report to either the Foundation Board or the Executive Director of the Foundation, in either case as determined by the Foundation Board and as specified in the additional loaned employee agreements. Except as provided below, such loaned employees have no function at the University other than to act in their capacity as employees loaned to the Foundation. **Certain loaned employees, on a temporary basis, may maintain dual functions with both the Foundation and the University, where necessary to maintain consistency of operations for the Foundation during periods of employment transition. Such employees shall maintain clear separations of duties on behalf of the Foundation and the University respectively, and the duties of such employees shall not be in conflict with the separation of Foundation and University policy making, financial oversight, spending authority, as well as the independent Foundation investment decisions or transactions. The loaned employment agreement for each such employee will clearly articulate the separation of duties to ensure no conflicts of interest is created and the agreement shall not be effective until specifically approved by the Board.**

Continuation:

Except as herein amended, all covenants, terms, and conditions of the Operating Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the University and the Foundation have executed this Amendment to Operating Agreement as of the above specified date.

University of Idaho

By: _____
Its: President

University of Idaho Foundation, Inc.

By: _____
Its: Chairman