

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 13, 2023**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AMENDMENT TO BOARD POLICY – SECTION V.T. – FEE WAIVERS – FIRST READING</b>	Action Item
<b>2</b>	<b>BOISE STATE UNIVERSITY – NEW SCIENCE BUILDING – PLANNING AND DESIGN</b>	Action Item
<b>3</b>	<b>UNIVERSITY OF IDAHO - NEW OPERATING AGREEMENT BETWEEN THE UNIVERSITY AND THE UNIVERSITY OF IDAHO FOUNDATION, INC.</b>	Action Item

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**SUBJECT**

Board Policy V.T. – Fee Waivers – First Reading

**REFERENCE**

April 2015

Idaho State Board of Education (Board) approved the second reading to Policy V.T. - Fee Waivers

**APPLICABLE STATUTES, RULE OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Section V.T. Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113-146)

**BACKGROUND/DISCUSSION**

At the April 2015 Board Meeting, the Board approved changes to Policy V.T. Fee Waivers to comply with federal legislation known as the Veterans Access, Choice, and Accountability Act of 2014 (“Choice Act”). Section 702 of the Choice Act requires the Department of Veterans Affairs (VA) to disapprove programs of education under the Post-9/11 GI Bill and Montgomery GI Bill–Active Duty (“MGIB-AD”) at public institutions of higher learning if the institution charges qualifying veterans and dependents tuition and fees in excess of the rate for resident students for terms beginning after July 1, 2015. In other words, the VA must disapprove programs of education for everyone training under the Post-9/11 GI Bill and MGIB–AD, if resident charges are not offered to all “covered individuals.”

Board approval of these necessary changes to Board Policy V.T covered individuals attending Boise State University, Idaho State University, University of Idaho, Lewis-Clark State College and the former Eastern Idaho Technical College, The change allowed for an additional waiver type which can be used for non-Idaho residents who qualify for VA educational benefits in compliance with Section 3679(c) of Title 38, United States Code.

Institutions currently covered under this policy have identified situations in which some students lose eligibility for this waiver prior to degree completion, or due to gaps in their education due to medical events or other emergency circumstances.

The proposed modifications to the waiver policy as it applies to individuals initially covered by the Section 3679 (c) waiver provide institutions the opportunity to extend the duration of the waiver through the duration of a student’s program of study for up to three years for degree completion. If a student receiving a waiver under this section has an institution-approved gap in education for a medical or other emergency, the institution may exercise discretion to reinstate the waiver.

**IMPACT**

Institutions have reported situations in which eligible service members or dependents have exhausted their federal benefit or have had emergencies that have caused a gap in their education. By extending this waiver, students will be able to complete their degree. This policy change also streamlines the process

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for students eligible for this waiver. It is estimated that the extension of this waiver may benefit up to 10 students per year.

**ATTACHMENTS**

Attachment 1 – Section V.T. – First Reading

**STAFF COMMENTS AND RECOMMENDATIONS**

After consulting with veteran coordinators from covered institutions, they confirmed that this change would assist them in working with veterans and their dependent students to continue their education through degree completion.

Staff recommends approval.

**BOARD ACTION**

I move to approve the first reading of proposed amendments to Board Policy V.T. Fee Waivers, as presented.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**Idaho State Board of Education**  
**GOVERNING POLICIES AND PROCEDURES**  
**SECTION: V. FINANCIAL AFFAIRS**  
**SUBSECTION: T. Fee Waivers**

April 2015February 2024

1. Purpose and Authority for Fee/Tuition Waivers

a. Definition

A fee/tuition waiver shall mean a reduction of some or all of the approved fees/tuition specified in Section V, Subsection R, attributable to a particular student as the cost for attending an Idaho institution of higher education.

b. Purpose

The purpose in authorizing fee/tuition waivers includes but is not limited to the achievement of the following strategic objectives:

- i. The enhancement of education opportunities for Idaho residents;
- ii. To promote mutually beneficial cooperation and development of Idaho communities and nearby communities in neighboring states;
- iii. To contribute to the quality of educational programs;
- iv. To assist in maintaining the cost effectiveness of auxiliary operations in Idaho institutions of higher education; and
- v. To comply with Section 3679(c) of Title 38, United States Code, effective July 1, 2015, ("Section 3679(c)") which states that the Secretary of Veterans Affairs shall disapprove courses of education provided by public institutions if certain veterans and their dependents are charged non-resident tuition.

c. Authority

An institution shall not waive any of the applicable fees/tuition specified in Section V, Subsection R., unless specifically authorized in this subsection. Employee/Spouse/Dependent, Senior Citizen, In-Service Teacher Education, and Workforce Training Credit fees as authorized pursuant to Board policy V.R. do not constitute waivers.

2. Waiver of Nonresident Fees/Tuition

Nonresident fees/tuition may be waived for the following categories:

a. Graduate/Instructional Assistants

Waivers are authorized for students employed as graduate assistants appointed pursuant to Section III, Subsection P.11.c.

b. Students Participating in Intercollegiate Athletics

For the purpose of improving competitiveness in intercollegiate athletics, the universities are authorized up to two hundred twenty-five (225) waivers per semester and, Lewis-Clark State College is authorized up to one hundred ten (110) waivers per semester. The institutions are authorized to grant additional waivers, not to exceed ten percent (10%) of the above waivers, to be used exclusively for post-eligibility students.

**Idaho State Board of Education**  
**GOVERNING POLICIES AND PROCEDURES**

**SECTION: V. FINANCIAL AFFAIRS**

**SUBSECTION: T. Fee Waivers**

April 2015 February 2024

- c. Non-resident students who ~~can~~ prove to the institution that they meet the eligibility criteria set forth under Section 3679(c) of Title 38, United States Code.

If a Section 3679(c) waiver is granted and eligibility for veteran benefits concludes prior to completion of the degree sought and a student has completed at least one semester at the institution, at the election of the institution, Section 3679(c) waiver eligibility may be extended through the duration of a student's program of study for up to three additional years to allow for degree completion<sup>[DK1]</sup>. If a student receiving a waiver under this section has an institution--approved gap in education for a medical or other emergency, the institution may exercise discretion to reinstate the waiver.

- d. Waivers to Meet Other Strategic Objectives

The chief executive officer of each institution is authorized to waive nonresident fees/tuition for students, not to exceed the equivalent of six percent (6%) of the institution's total full-time equivalent enrollment. The criteria to be followed in granting such nonresident waivers shall be as follows:

- i. A waiver may be granted to place a nonresident student in an institutional program only when there is sufficient capacity in the program to meet the needs of Idaho resident students; and
  - ii. A waiver may be granted only when its use is fiscally responsible to place a nonresident student in an institutional program in order to meet a strategic state and/or institutional need, as identified by the chief executive officer of the institution.
- e. National Student Exchange Program - Domestic  
Waivers are authorized for nonresident students participating in this program.
- f. Western Interstate Commission for Higher Education  
Waivers are authorized for nonresident students participating in the Western Interstate Commission for Higher Education Professional Student Exchange Program and the Graduate Student Exchange Program. An institution may include a participating nonresident student in its enrollment workload adjustment calculation, provided the figure does not exceed the maximum approved for an institution by the Board.
- g. Institution Agreements  
An institution may request Board approval of agreements with other entities resulting in special fees if it is shown to meet a strategic or workforce need (e.g. reaching an underserved or isolated population) or to help facilitate collaboration between the public institutions as it relates to enrollment and course/degree completion. The discounted dollar value of these special fees shall be reported to the Board, for inclusion in the annual discounts and waivers report, in a format and time to be determined by the Executive Director.

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Planning and Design Budget Authorization, Science Research Building

**REFERENCE**

August 2023 Idaho State Board of Education (Board) approved  
Boise State University FY2025 Six-Year Capital  
Improvement Plan

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.K.4

**BACKGROUND/DISCUSSION**

Boise State University (BSU) continues to experience significant demand for additional laboratory-based instruction and research space. In FY2024, the university received \$17,936,000 in Permanent Building Funds (PBF) to help fund a new science research building to meet this growing demand.

The proposed new facility will have research, instructional and work space for those in interdisciplinary life sciences, with an emphasis on biological and biomedical research. Departments that will be partially or fully housed in the facility include Biology, Chemistry & Biochemistry, Physics, Biomolecular Sciences (BMOL), Neuroscience and other associated programs.

The new facility will include state-of-the-art laboratories, a mix of fixed and flexible faculty offices, graduate student and postdoc spaces, areas for collaboration, instruction and necessary support space. In addition, the building may provide some space for industry-university development and collaboration.

A university-led pre-design committee has identified two viable sites for the facility (Attachment 2). One is a prominent location along Capitol Boulevard, while the other is in the southeast portion of campus south of the Environmental Research Building. The Capitol Boulevard location, if selected, may require more infrastructure and a higher relocation investment.

**IMPACT**

The anticipated total budget reflects the cost of constructing a highly technical and flexible facility that supports state-of-the-art research and instruction as well as growth space to support the increasing demand for STEM courses and research.

Preliminary estimates for a 100,000 - 110,000 GSF facility are between \$120M-\$130M. The estimated cost of planning and design is \$13M; the source of funds is PBF.

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In addition to planning the new facility, the design services will also include high-level planning for the spaces that will be vacated in existing facilities when the new building is occupied.

**ATTACHMENTS**

- Attachment 1 – Project Budget
- Attachment 2 – Site Map
- Attachment 3 – Capital Project Tracking Sheet

**STAFF COMMENTS AND RECOMMENDATIONS**

BSU is requesting to proceed with planning and design for the university's New Science Research Building project. This phase of the project will be financially supported by funds awarded through the Permanent Building Fund in FY24 and use of BSU's local university funds:

<u>Source – Planning and Design Funds</u>	<u>Amount</u>
Permanent Building Fund FY24	\$11,875,000
<u>Local University Funds</u>	<u>\$ 1,125,000</u>
Total	\$13,000,000

BSU's New Science Research Building has been a Board priority project for FY 24 and FY25 capital requests. The project was awarded \$17,936,000 by the Permanent Building Fund Advisory Council (PBFAC) in FY24. The total project cost provided by BSU to complete this 100,000-110,000 GSF project is presently estimated to be approximately between \$120M-\$130M.

Adhering to Board Policy V.K.4, BSU is requesting the Board approve for a cost not to exceed \$13,000,000.

Staff recommends approval.

**BOARD ACTION**

I move to approve the request by Boise State University to proceed with planning and design for the new science research building for a cost not to exceed \$13M.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**Science Research Building  
Project Budget**

Project Number:	DPW TBD
Project Title:	Science Research Building
Date:	December 2023

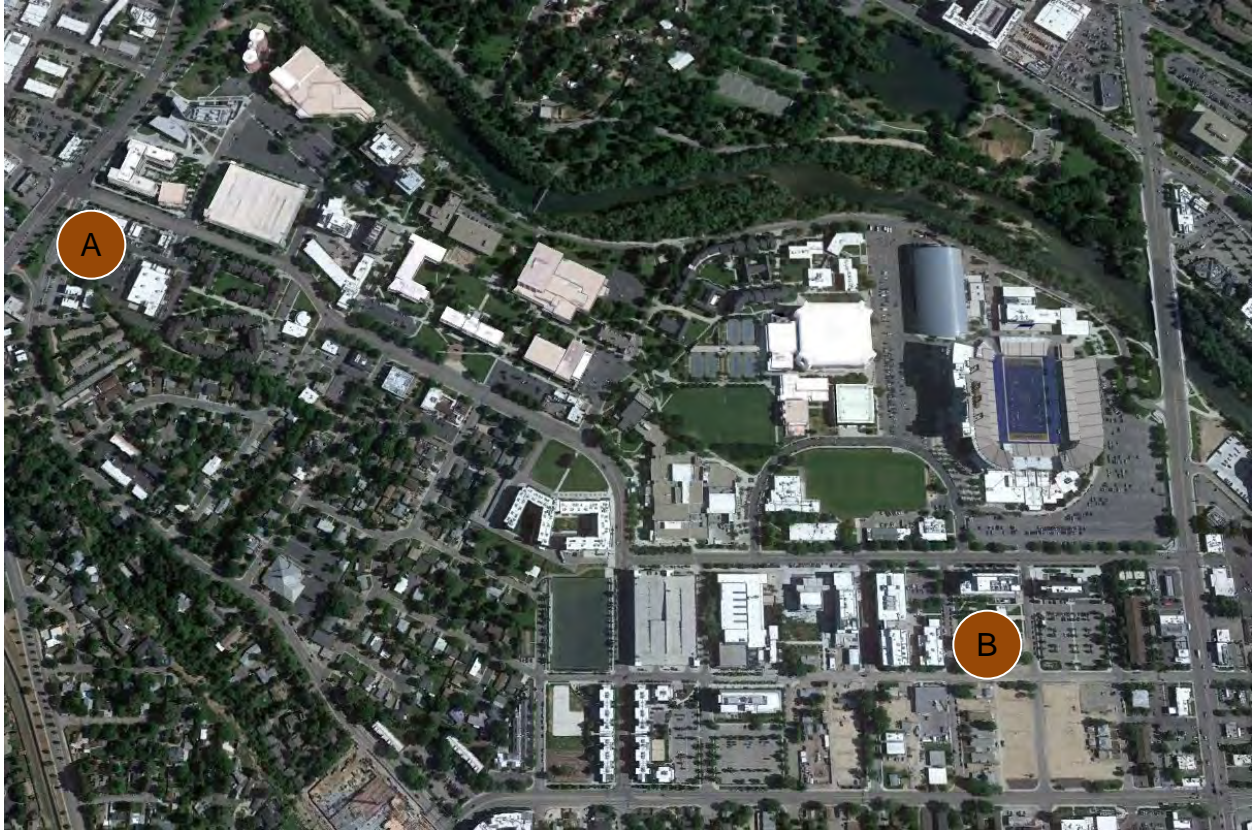
<b>Category</b>	<b>Project Budget</b>
Design	\$10,675,000
Construction	
Testing, Inspections and Misc.	\$163,750
Contingency	\$1,036,250
<b>Subtotal</b>	<b>\$11,875,000</b>

University Direct Costs (FFE, Utilities, IT, Signage, etc.)	\$607,500
University Contingency	\$517,500

<b>Total Project Budget</b>	<b>\$13,000,000</b>
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Science Research Building  
Sites and Vicinity Map



Site A Site B

**Capital Project Tracking Sheet**

13-Dec-23

**History Narrative**

**Institution/Agency:** Boise State University      **Project:** New Science Research Building  
**Project Description:** New Science Research Building  
**Project Use:** Research and computational Labs, instructional space including teaching labs and active learning classrooms, faculty offices and graduate student spaces, informal learning and collaboration spaces, and support spaces.  
**Project Size:** Approx. 100,000 - 110,000 GSF, \$120,000,000 total project cost

	Sources of Funds				Use of Funds			
	PBF	ISBA	Other *	Total Sources	Planning	Use of Funds Const	Other	Total Uses
<b>Initial Cost of Project (Planning)</b>	\$ 11,875,000	\$ -	\$ 1,125,000	\$ 13,000,000	\$10,675,000	\$ -	\$ 2,325,000	\$13,000,000
<b>Construction</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Project Costs</b>	\$ 11,875,000	\$ -	\$ 1,125,000	\$ 13,000,000	\$10,675,000	\$ -	\$ 2,325,000	\$13,000,000

History of Funding:	PBF	ISBA	* Other Sources of Funds			Total Other	Total Funding
			Institutional Funds	Student Revenue	Other		
Dec-23	\$ 11,875,000	\$ -	\$ 1,125,000			\$ 1,125,000	\$ 13,000,000
	\$ -	\$ -	\$ -			\$ -	\$ -
<b>Total</b>	\$ 11,875,000	\$ -	\$ 1,125,000	\$ -	\$ -	\$ 1,125,000	\$ 13,000,000

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Approval of 2024 Operating Agreement between University of Idaho Foundation, Inc. (“Foundation”) and University of Idaho (“University”) to transition to an integrated Advancement/Fundraising function within Foundation (“Transition”); and to extend authority for temporary loaned employment agreements.

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**REFERENCE**

- |                 |  |
|-----------------|--|
| August 10, 2016 | The Board of Regents approved the 2016 Operating Agreement between the University of Idaho Foundation, Inc., and the University of Idaho.            |
| August 23, 2023 | The Board of Regents approved the temporary exception request for University of Idaho Foundation, Inc. and University of Idaho Advancement Staffing. |

**BACKGROUND/DISCUSSION**

The University and the Foundation wish to integrate University’s Advancement and Fundraising activities into the Foundation to create a unified philanthropic enterprise that will improve fundraising and the donor experience, and also better maintain integrity of donor data. Accordingly, the University proposes a revised 2024 Operating Agreement (Attachment 1) that will expand the Foundation’s purposes to include fundraising, alumni relations, and donor data management, which have historically been provided by University Advancement. To support this expanded role, the University agrees to loan Advancement employees to the Foundation and provide support services as described in the agreement.

The Foundation operations will continue to be consistent with safeguards under Board Policy V.E. including:

- Maintaining the independent separateness of the Foundation from the University,
- Ensuring that all Loaned Employees (Including the Foundation CEO and CFO) answer directly to the Foundation or to supervisors who answer to the Foundation,
- Enhancing the ability of the Foundation operations to maintain internal controls including segregation of duties,
- Requiring Board review and approval every three years,
- Establishing that no University employee other than a Loaned Employee have any authority over material operations within the Foundation such as policy making, execution of contracts, budget, spending, or investment decisions,

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- Encouraging the Foundation to be open to reasonable public inquiries regarding non-confidential information, and
- Confirming that upon dissolution, Foundation assets and property will be transferred to the Board of Regents

The structure of the Foundation under the proposed agreement will create greater synergy between fundraising functions and donor relations through the integration of both functions within the Foundation and through greater depth of personnel. See Attachment 5 Organization Charts. The structure will also be budget neutral to both the University and the Foundation in that both will continue to contribute the amount of funding and personnel costs to the new integrated operation that each did separately in prior years.

More specifically, the proposed 2024 Operating Agreement provides:

- **Financial Fiduciary Controls:**

The Foundation will continue to manage and distribute private support for the University, and continue to invest in accordance with the Uniform Prudent Management of Institutional Funds Act.

- **Resources and Services:**

The University will continue to provide administrative and support services to the Foundation (collectively, “University Services”) including: administrative support in payroll processing, employee benefits, travel support, event support, accounts payable, human resource management, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services.

The Foundation will continue to provide asset management, investment services, and endowment management to the University as well as the new Advancement services of fundraising, alumni relations and donor data management (collectively, “Foundation Services”).

- **Insurance:**

Foundation will maintain liability insurance coverage for its operations, including the activities of its directors, officers, and Loaned Employees (as defined below). University will continue to maintain liability coverage through the state of Idaho Office of Risk Management.

- **Reconciliation of Charges:**

Under the 2024 Operating Agreement, the University and the Foundation will each charge the other party the value of the services that it provides. The 2024 Operating Agreement includes a formula for determining the value of the University Services and a formula for determining the value of the Foundation Services. The charges are reconciled annually and after the reconciliation process is complete, there will be a payment to the University

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in an amount equal to any excess of the University Service Charge over the Foundation Service Charge. There is a cap on the Foundation Service Charge such that in no event will the University be required to make a payment to the Foundation.

The Foundation CEO and the University President may agree to increase or decrease each of the OIT Costs, Payroll Support Costs, Accounts Payable Costs and Rent by an amount that is equal to or less than 5% of the prior fiscal year without the approval of Board of Regents or the Foundation Board of Directors to account for changing economic conditions, changes in employee compensation, and the like.

- **Loaned Employee Reporting:**

The Foundation CEO (a Loaned Employee) will report to and take direction from the Foundation Board of Directors. The Operating Agreement describes the Foundation CEO's duties. All other Loaned Employees will report to the Foundation CEO or those designated by the Foundation CEO.

- **Data Security/Access to Donor Records:**

Under the 2024 Operating Agreement, the Foundation will own and control the donor database and all other data, materials and information of Foundation pertaining to past, current or prospective donors. Confidentiality of donor information is maintained pursuant to confidentiality agreements and a newly created data security plan, as well as Foundation policies and procedures regarding the access, use, disclosure, retention, deletion, and processing of donor data.

- **Audits/Annual Reports:**

The Foundation will continue to be subject to an annual financial audit and will provide the President of University the annual financial audit report and, upon request, (i) an annual report of Foundation transfers to University, (ii) an annual report of unrestricted funds received by Foundation and (iii) other similar items set forth in the Operating Agreement and SBOE policies.

- **Right to Terminate:**

The 2024 Operating Agreement will terminate: (i) upon mutual written agreement, (ii) by a party wishing to terminate the Operating Agreement if such party provides the other party a written termination notice at least one year prior to the effective date of termination, or (iii) by a non-defaulting party if the defaulting party fails to cure the default within 30 days after receiving written notice of the default from the non-defaulting party.

- **Transfer of Advancement Contracts, Office Furnishings, and Equipment:**

Post-Transition, all operations of Advancement will occur within the Foundation. To support Advancement's operations within Foundation, effective July 1, 2024, (a) the contracts between the University and third parties for goods and services used by Advancement only will be assigned by University to Foundation and Foundation will assume the rights and obligations under these contracts and (b) the office furnishings and equipment, including personal laptops, used by Advancement personnel only will be transferred by University to Foundation.



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Proposed Motions

The University first seeks approval of the 2024 Operating Agreement and authority for the President to execute the final Operating Agreement in substantial conformance with Attachment 1, and authority to execute such other and further documents, including the ancillary documents described in the Operating Agreement (See exemplary forms in attachments 2, 3, and 4), as necessary to carry out the intention of the parties.

In addition, and as a separate motion, the University seeks an extension of the temporary exception to 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 granted by the Board in October 2023. That exception authorized the University to loan the Vice President for Advancement, the Associate Vice President for Advancement Solutions, and the Director of Stewardship to the Foundation for less than 100% of their time as a means to ensure continuity of Foundation operations as the Foundation experienced the loss of its Interim Executive Director (pending retirement), the Chief Financial Officer (resigned June 30, 2023), and the Director of Gift and Endowment Administration (pending retirement). Loaning of these employees to the Foundation was intended to stabilize the Foundation until implementation of the integration proposed under the 2024 Operating Agreement.

That approval, and the related Loaned Employee Agreements, are scheduled to terminate December 13, 2023. The 2024 Operating Agreement, if approved, will be effective July 1, 2024 with the implementation of the integration thereunder effective at that same time. Accordingly, the University seeks an extension of the temporary exception until the 2024 Operating Agreement is effective.

**IMPACT**

Integration of Advancement operations with the Foundation operations will result in a more positive donor experience and more secure donor data in keeping with industry standards. The financial model as implemented is cost neutral for the University and the Foundation, such that neither the Foundation nor the University will incur costs greater than those currently incurred.

**ATTACHMENTS**

- Attachment 1 – 2024 Operating Agreement
- Attachment 2 – 2024 Service Agreement exemplar
- Attachment 3 – 2024 Loaned Employee Agreement exemplar
- Attachment 4 – 2024 Lease Agreement exemplar
- Attachment 5 – Organization Charts
- Attachment 6 – Redline comparison of 2024 Operating Agreement and Sample Operating Agreement in Board Policy V.E.
- Attachment 7 – Redline comparison of 2024 Operating Agreement to current Operating Agreement

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Attachment 8 – Table comparison of 2024 Operating Agreement and Board Policy V.E. requirements

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

On October 20, 2023, representatives from the University of Idaho (UI) and University of Idaho Foundation (UIF) met with SBOE BAHHR Chair Bill Gilbert and OSBE staff to review the proposed UI Advancement and UIF Integration Plan and 2024 Operating Agreement.

UI and UIF highlighted the following information as fundamental components of their jointly proposed Integration Plan:

- UIF will remain fully independent and a separate organization
- Fiduciary controls for the UIF will reside with the UIF Board
- CEO for UIF will report to and be directed by the UIF Board
- All UIF staff will be loaned employees reporting to the UIF Board
- Annual planning will be done jointly between the UIF and UI aligning UIF goals with UI priorities including donor stewardship
- Fundraisers will maintain robust partnerships with colleges/units
- Integrating the UIF and UI Advancement does not incur additional costs
- Maintaining 501©3 status will help ensure donor privacy and sensitive data protection
- An updated and consolidated UI Foundation functional organizational chart
- Clearly defined roles, responsibilities, processes and expectations for the loaned employees and board members
- Continued adherence to all applicable laws, regulations and current SBOE policies
- Increases in effectiveness and efficiency in all areas of donor experience to maximize philanthropic investment and alumni engagement for UI

Staff recommends approval for the 1) 2024 Operating Agreement transition to an integrated Advancement/Fundraising function within Foundation and 2) extend authority for temporary loaned employment agreements that were approved at the SBOE August 2023 Board meeting.

**BOARD ACTION**

I move to approve the request by the University of Idaho to approve the 2024 Operating Agreement and to authorize the President of the University to execute the Operating Agreement in substantial conformance with Attachment 1, and to execute such other and further documents, including the ancillary documents as described in the Operating Agreement, as necessary to carry out the intention of the parties.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

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I move to approve the request by the University of Idaho to extend the temporary waiver of Board Policy Section V. E. subsections 2.b.i.1 and 2.b.iii.3 granted at the August 23, 2023 Board meeting so as to allow the University to extend the temporary loaning of certain University employees to the University of Idaho Foundation until the Effective Date of the 2024 Operating Agreement approved above.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_



**2024 OPERATING AGREEMENT**  
**THE UNIVERSITY OF IDAHO AND**  
**THE UNIVERSITY OF IDAHO FOUNDATION, INC.**

This 2024 Operating Agreement (“**Operating Agreement**”) is entered into effective the 1st day of July, 2024 (“**Effective Date**”) by and between the Board of Regents of the University of Idaho, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the University of Idaho Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”), and it is an amendment and restatement of the Operating Agreement entered into on October 21, 2016, as amended by the Amendment Agreement, dated October 1, 2023 (“**Prior Operating Agreement**”), which it fully replaces. The University and the Foundation are sometimes referred to herein separately as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, the Foundation is a nonprofit corporation incorporated on September 23, 1970, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the Foundation’s mission includes the solicitation, management and distribution of private support to enhance the growth and development of the University;

WHEREAS, the Foundation and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

WHEREAS, the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively “**State Board**”) have promulgated Governing Policies and Procedures regarding Financial Affairs and Gifts and Affiliated Foundations, effective as of June 2019, as amended from time to time (“**State Board’s Policies and Procedures**”);

WHEREAS, Section V.E.2.b. of the State Board’s Policies and Procedures requires the University to enter into a written operating agreement with the Foundation that sets forth their operating relationship; and

WHEREAS, the Foundation and the University intend for this Operating Agreement to be the written operating agreement required by Section V.E.2.b. of the State Board’s Policies and Procedures.

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein, the University and the Foundation hereby agree as follows:

## ARTICLE I

### FOUNDATION'S PURPOSES

The Foundation is the primary affiliated foundation responsible for assisting the University in inspiring, soliciting, 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: (a) 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); (b) manage and invest the money and property it receives for the benefit of the University; and (c) support and assist the University in donor relations. In carrying out its purposes, the Foundation shall not engage in activities that conflict with (i) federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding federal Treasury Regulations); (ii) applicable polices of the State Board; or (iii) the role and mission of the University.

## ARTICLE II

### FOUNDATION'S GOVERNING DOCUMENTS

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws ("**Governing Documents**") to the University. All amendments of the Governing Documents shall also be provided to the University. Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any amendments to the Governing Documents.

## ARTICLE III

### UNIVERSITY RESOURCES AND SERVICES

#### 3.1 **Liaisons.**

3.1.1 **University Liaison.** The University's President ("**University President**") shall serve as the University's liaison to the Foundation ("**University Liaison**"). The duties and responsibilities of the University Liaison, which may be delegated by the University Liaison to a designee, include the following:

3.1.1.1 The University Liaison shall be responsible for communicating with the Foundation regarding the Foundation's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

3.1.1.2 The University Liaison shall attend each meeting of the Foundation's Board of Directors ("**Foundation Board**") as a non-voting advisor. The University Liaison will provide regular reports to the Foundation Board about the University's financial position and activities, including its use of gifts. The University Liaison may also report other information to the Foundation Board that is pertinent to the common goals of the University and the Foundation.

3.1.1.3 The University Liaison will work with the Foundation to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

3.1.2 **Foundation Liaison.** The Chief Executive Officer of the Foundation ("Foundation CEO") will serve as the Foundation's liaison to the University ("Foundation Liaison"). The duties and responsibilities of the Foundation Liaison, which may be delegated by the Foundation Liaison to a designee, include the following:

3.1.2.1 The Foundation Liaison shall be responsible for communicating with the University regarding the Foundation's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

3.1.2.2 The Foundation Liaison may attend University leadership meetings as a non-policy making advisor. The Foundation Liaison will provide regular reports to the University about the Foundation's financial position and activities. The Foundation Liaison may also report other information to the University that is pertinent to the common goals of the University and the Foundation.

3.1.2.3 The Foundation Liaison will work with University leadership to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

## 3.2 **Loaned Employees.**

3.2.1 **Foundation CEO.** The Foundation CEO is an employee of the University who is loaned to the Foundation. The Foundation CEO's services shall be provided directly to the Foundation as follows and as set forth in the applicable Loaned Employee Agreement (as defined below in Section 3.2.2):

3.2.1.1 **Duties.** The Foundation CEO is responsible for the strategy and planning for and the supervision and control of the day-to-day operations of the Foundation.

3.2.1.2 **Reporting Structure.** The Foundation CEO reports to and takes direction from the Foundation Board. All other Loaned Employees (as defined below in Section 3.2.2) report to the Foundation CEO or another Loaned Employee designated by the Foundation CEO.

3.2.1.3 **Vacancy.** In the event the Foundation CEO resigns or is terminated by the University, the Foundation terminates the Foundation CEO's Loaned Employment Agreement or the Foundation CEO otherwise ceases to provide services to the Foundation, hiring of the subsequent Foundation CEO shall be done in accordance with Foundation and University policies and applicable law.

3.2.2 **Generally.** The University and the Foundation have entered and will enter into additional agreements (each such agreement, a "**Loaned Employee Agreement**") for the loaning of Loaned Employees (as defined below) to the Foundation by the University. The Loaned Employee Agreements shall set forth the relative rights and responsibilities of the Foundation and the University. The Loaned Employees have no function at the University other than to act in their Operating Agreement

capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation. The Foundation must provide the University with prior approval to: (a) post any position for hiring and (b) hire any employee that the Foundation and the University intend to be a Loaned Employee before the University employs such individual. Notwithstanding the provisions in this Section 3.2, no University personnel other than a Loaned Employee shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Loaned Employees. For purposes of this Operating Agreement, “**Loaned Employee**” means all positions for which the Foundation and the University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to the Foundation by the University for the entire 12 months of the fiscal year and the Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year. No University employee who functions in a key administrative or policy making capacity for the University (including any Vice-President or equivalent position) shall be a Loaned Employee with responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Foundation employees.

3.3 **University Services.** As set forth in greater detail in the Service Agreement by and between the Foundation and the University (“**Service Agreement**”), the University shall charge the Foundation (“**University Service Charge**”) to provide administrative support in payroll processing (including payment), employee benefits (including administration and payment), travel support, event support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services to the Foundation (collectively “**University Services**”). Except as specifically provided otherwise herein or in the Service Agreement, all University personnel who provide support services to the Foundation shall remain University personnel 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 Loaned Employee Agreement.

3.4 **University Service Charge.**

3.4.1 **University Service Charge Formula.** The University Service Charge shall be calculated as follows:

$$\begin{aligned} & \text{University Service Charge} \\ & = \\ & (80\% \times \text{Loaned Employee Payments}) + \text{Operating Expenses} + \text{OIT Costs} + \\ & \text{Operations Support Costs} + \text{Events Costs} + \text{Rent} \end{aligned}$$

3.4.2 **Components of University Service Charge.** Each of the components of the University Service Charge and the defined terms used in defining those components are defined as follows:

3.4.2.1 “**Loaned Employee Payments**” means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.

3.4.2.2 “**Operating Expenses**” means the portion of funds expended within the chart of accounts maintained by the University as part of the University’s financial services to the Foundation for the fiscal year related to contracts, programmatic support, marketing, communications, events, travel and office operations other than expenses that are a part of other components of the University Service Charge set forth in this Section 3.4.2.

3.4.2.3 “**OIT Costs**” means the Office of Information Technology (“**OIT**”) budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

3.4.2.4 “**Operations Support Costs**” means the sum of Payroll Support Costs, Accounts Payable Costs and HR Costs, which are defined as follows:

(a) “**Payroll Support Costs**” means the product of (a) \$2.25 (“**Payroll Support Amount**”), (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

(b) “**Accounts Payable Costs**” means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by \$7.00 (“**Accounts Payable Amount**”) and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

(c) “**HR Costs**” means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

3.4.2.5 “**Events Costs**” means the portion of the budget of the University’s Central Auxiliary Services comprised of the salaries and fringe benefits of University personnel dedicated to, and the expenses related to, the strategic events of the Foundation’s fundraising activities, which are Recognition Gala, Celebration of Scholarships, Shakespeare Festival and Red Carnation, for the fiscal year.

3.4.2.6 “**Rent**” means the square feet of the premises leased by the University to the Foundation multiplied by \$21.00 (“**Rental Rate**”) for the fiscal year.

### 3.4.3 **Changes to Components of University Service Charge.**

3.4.3.1 **Generally.** For the fiscal year commencing July 1, 2025 (“**FY25**”) or any fiscal year after FY25, each of the OIT Costs, Payroll Support Amount, Accounts Payable Amount and Rental Rate (each, a “**Component**”) may be adjusted as follows: (a) the Operating Agreement

Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

3.4.3.2 **Discontinuation of Services.** If all services provided by the University to the Foundation in connection with any of the terms defined in Section 3.4.2 are discontinued in their entirety, then the defined term associated with such services discontinued shall be removed from the formula for calculating the University Service Charge set forth in Section 3.4.1.

3.5 **Foundation Services.** As set forth in greater detail in the Service Agreement, the Foundation shall charge the University (“**Foundation Service Charge**”) to provide asset management, investment, fundraising, alumni relations and certain information technology services to the University (collectively, “**Foundation Services**”).

3.6 **Foundation Service Charge.**

3.6.1 **Foundation Service Charge Formula.** The Foundation Service Charge shall be calculated as follows:

$$\begin{array}{c} \text{Foundation Service Charge} \\ = \\ \text{Cost to Raise a Dollar} \times \text{Fundraising Goal} \end{array}$$

3.6.2 **Components of Foundation Service Charge.** For purposes of the formula set forth in Section 3.6, the cost associated with Foundation’s fundraising efforts to raise one dollar (“**Cost to Raise a Dollar**”) shall be \$0.20 (“**CRD Amount**”), which is based on current industry standards. The Foundation CEO and the University President shall collaboratively develop a list of vital goals (“**Vital Goals**”) that shall include a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year (“**Fundraising Goal**”).

3.6.3 **Changes to Components of Foundation Service Charge.**

3.6.3.1 **CRD Amount.** For FY25 or any fiscal year after FY25, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year’s CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year’s CRD Amount.

3.6.3.2 **Appropriations Holdback.** In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences, the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. The Foundation may modify the Foundation Services or reduce the number of Loaned Employees, in

the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge pursuant to the process set forth in the Service Agreement, which will include adequate notice to the Parties and documentation of the changes.

**3.7 Process For Reconciliation; Payment.** The process for reconciling the University Service Charge and the Foundation Service Charge will be set forth in the Service Agreement. Pursuant to the terms of the Service Agreement, the Foundation shall, after the reconciliation process is complete, make a payment to the University in an amount equal to the net of the University Service Charge and the Foundation Service Charge if the net amount is owed by the Foundation to the University. In no event will the University be required to make a payment to the Foundation. Pursuant to the terms of the Service Agreement, the Foundation shall make a payment to the University in an amount equal to 20% multiplied by the Loaned Employee Payments.

**3.8 University Facilities and Equipment.** The University shall provide the use of certain University office space to the Foundation upon terms of use set forth in the Lease Agreement by and between the Foundation and the University ("**Lease Agreement**"). The Rental Rate for the Foundation's use of facilities under the Lease Agreement shall be set forth in the Service Agreement.

## ARTICLE IV

### MANAGEMENT AND OPERATION OF FOUNDATION

#### 4.1 Gift Solicitation.

**4.1.1 Form of Solicitation.** All Foundation gift solicitations shall make clear to prospective donors that: (a) the Foundation is a tax-exempt entity, separate from the University, organized for the purpose of encouraging voluntary, private gifts, trusts, assets and bequests for the benefit of the University; and (b) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation Board.

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

#### 4.2 Acceptance of Gifts.

**4.2.1 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 University's prior written approval of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University. Prior to any approval by the University, the University shall obtain approval of the State Board where State Board policy requires such approval.

**4.2.2 Acceptance of Gifts of Real Estate.** The Foundation shall conduct due diligence on all gifts of real estate that it receives. All gifts of real estate that are intended solely by the donor to be developed for the University's use or to otherwise house facilities of any kind for the University's use shall be approved by the State Board in accordance with State Board policy

before such gifts are accepted by either the University or the Foundation. The University shall be responsible for obtaining this approval by the State Board. In cases where the real estate is intended to be used by the University in connection with carrying out its proper functions, the real estate 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.

4.2.3 **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.

4.3 **Fund Transfers.** The Foundation agrees to transfer funds, both current gifts and income from endowments, to the University on a regular basis as agreed by the Parties. The Foundation's Chief Financial Officer, Treasurer or other individual to whom such authority has been delegated by the Foundation Board shall be responsible for transferring funds as authorized by the Foundation Board. All transfers and expenditures noted in this Section 4.3 must comply with Section 501(c)(3) of the Internal Revenue Code and be consistent with the Foundation's sole mission to support the University.

4.3.1 **Restricted Gift Transfers.** The Foundation may transfer restricted gifts to the University. Any such transferred restricted gifts will only be expended by the University pursuant to the terms of such restrictions. The Foundation shall inform the University officials into whose program or department restricted gifts are transferred of all restrictions on the use of such gifts and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted gifts 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 gifts.

4.3.2 **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. The Foundation may make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with applicable law and University policies. If the Foundation elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as the Foundation Board may determine in the Foundation Board's sole discretion.

#### 4.4 **Foundation Expenditures and Financial Transactions.**

4.4.1 **Signature Authority.** With respect to transactions between the Parties, the Foundation hereby designates the Foundation CEO, Chief Financial Officer and Treasurer of the Foundation as the individuals with signature authority for the Foundation in all financial transactions. The Foundation CEO, Chief Financial Officer and Treasurer of the Foundation may also delegate signature authority on a temporary basis consistent with the Foundation's Bylaws to another Loaned Employee or a Foundation Board member. In no event may University personnel have authority to sign for the Foundation for financial transactions unless such individual is a Loaned Employee.



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

4.5 **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.

4.6 **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:

4.6.1 A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such gift shall be deposited in a University account and, except for transfers described in Sections 4.6.2 and 4.6.4, State Board approval will be required prior to the University's transfer of such funds to the Foundation.

4.6.2 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.

4.6.3 The University has raised scholarship funds through a University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship purposes for which the funds were raised.

4.6.4 The University transfers to the Foundation any gift received by the University from a donor that meets the following criteria: (a) the gift is less than \$10,000; and (b) the gift will be invested by the Foundation for scholarship or other general University support purposes.

4.7 **Separation of Funds.** All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using the Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database. The Foundation is responsible for monitoring and controlling access to the financial records and protecting the security of the financial records. Accordingly, in providing information technology and financial services pursuant to the Parties' Agreements (as defined in Section 9.15), including data security and incident management, to the Foundation, the University's personnel will comply with the Foundation's data security plan and the security principle of least privilege to ensure that the security architecture is designed such that each University personnel is granted the minimum system resources and authorizations needed to perform the information technology or financial services for the Foundation. For convenience, however, some Foundation expenses may be paid by the University on the Foundation's behalf as described in more detail in Sections 3.4.2.2 and 3.4.2.4(b) and the Service Agreement.

4.8 **Insurance.** The Foundation shall maintain insurance to cover its operations, including activities of its directors, officers and Loaned Employees. The Foundation shall also maintain general liability coverage.

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

4.10 **Organization Structure of the Foundation.** The organizational structure of the Foundation is set forth in the Governing Documents. The Foundation agrees to provide copies of any subsequent amendments to the Governing Documents to the University.

## ARTICLE V

### FOUNDATION RELATIONSHIP WITH THE UNIVERSITY

5.1 **Access to Records.** The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws and Foundation policies and guidelines. In addition, upon request of the Foundation, the University shall execute a proprietary and confidentiality agreement and instruct its employees and agents that all confidential information of the Foundation shall be protected from disclosure. Except as specifically authorized under this Operating Agreement or any applicable proprietary and confidentiality agreement between the University and the Foundation, the University's access to Foundation records shall not include the donor database and all other data, materials and information of the Foundation pertaining to past, current or prospective donors ("**Confidential Donor Information**"), which may be accessed only by Loaned Employees.

#### 5.2 **Records Management.**

5.2.1 **Protection of Confidential Donor Information.** The Parties recognize that the records of the Foundation relating to actual or potential donors contain Confidential Donor Information. The Foundation owns and controls the Confidential Donor Information. The Confidential Donor Information is proprietary to the Foundation and constitutes confidential information and trade secrets. The Foundation is responsible for monitoring and controlling access to the Confidential Donor Information and protecting the security of the Confidential Donor Information. Accordingly, in providing information technology services, including data security and incident management, to the Foundation, OIT will comply with (a) the Foundation's data security plan, (b) all Foundation policies and procedures regarding the access, use, disclosure, retention, deletion and processing of the Confidential Donor Information and (c) the security principle of least privilege to ensure that the security architecture is designed such that each OIT

personnel is granted the minimum system resources and authorizations needed to perform the information technology support services for the Foundation.

**5.2.2 Maintenance of Records.** The Foundation shall be responsible for maintaining all permanent records of the Foundation, including the Governing Documents, all necessary documents for compliance with Internal Revenue Service regulations, all gift instruments, Confidential Donor Information and all other Foundation records as required by applicable laws.

**5.3 Inapplicability of State Laws.** The Foundation Board shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The Parties understand that the Foundation is not a public agency or a governing body as defined in the Idaho Code, including the Idaho Open Meetings Law and Public Records Act. Nothing in this Operating Agreement shall be construed as a waiver of the Foundation's right to assert these statutes do not apply to the Foundation as a separate charitable entity. Although the Foundation is a private entity and is not subject to the Idaho Public Records Act, the Foundation, while protecting personal and private information related to private donors, will endeavor, 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.

**5.4 Name and Marks.** Each Party hereby is granted a general, non-exclusive, royalty-free license to use the name of the other Party, specifically: "The University of Idaho" and "The University of Idaho Foundation" and "The University of Idaho Foundation, Inc." in all activities conducted in association with or for the benefit of the other Party. Use of the other Party's name must be in a 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 names. Use of other marks must receive prior written approval.

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

**5.6 Establishing Foundation's Annual Budget.** After the Parties have completed the process described in the Service Agreement related to forecasting the Foundation Service Charge and the University Service Charge for the next fiscal year and prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation's proposed annual operating budget and capital expenditure plan (if any), as approved by the Foundation Board. Any of the University's funding requests to the Foundation shall be communicated in writing by the University President to the Foundation CEO by April 1 of each year.

**5.7 No Compensation of University Personnel by Foundation.** No University personnel shall receive direct payments, compensation or other benefits from the Foundation.

## ARTICLE VI

## AUDITS AND REPORTING REQUIREMENTS

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

6.2 **Annual Audit.** The Foundation shall have an annual financial audit conducted in accordance with Generally Accepted Auditing Standards. Accordingly, the University will provide financial data to the Foundation to support the Foundation's annual audit. The audit shall be conducted by an independent certified public accountant who is not a director or officer of the Foundation. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to the Foundation Board and the University President. Such audit reports shall contain the Foundation's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect Confidential Donor Information to the extent allowable by law.

6.3 **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, at its own expense, may, at reasonable times, inspect and audit the Foundation's financial books and accounting records in accordance with Article V.

6.4 **Annual Reports to University President.** Upon request, the Foundation shall provide a written report to the University President setting forth the following items:

6.4.1 the annual financial audit report;

6.4.2 an annual report of the investment performance of the Consolidated Investment Trust and summary of funds held;

6.4.3 an annual report of Foundation transfers made to the University, summarized by University department;

6.4.4 an annual report of unrestricted funds received by the Foundation;

6.4.5 an annual report of unrestricted funds available for use during the current fiscal year;

6.4.6 a list of all of the Foundation's officers, directors and Loaned Employees;

6.4.7 a list of all state and federal contracts and grants managed by the Foundation;

6.4.8 an annual report of the Foundation's major activities;

6.4.9 an annual report of each real estate purchase or material capital lease, investment or financing arrangement entered into during the preceding fiscal year for the benefit of the University; and

6.4.10 an annual report of any actual litigation involving the Foundation during its fiscal year, identification of legal counsel used by the Foundation for any purpose during such year and identification of any potential or threatened litigation involving the Foundation limited to the extent necessary to protect attorney-client privilege and litigation strategy.

**6.5 Reports to University Leadership.** The Foundation will provide regular reports to certain University leadership (including the University President and the Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. Foundation leadership, including the Foundation CEO and the Foundation's lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information, which will remain in the possession of the Foundation. At the end of the fiscal year, the Chair of the Foundation Board and the Foundation CEO will meet with the University President to assess the Foundation's successes and areas for improvement.

## ARTICLE VII

### CONFLICT OF INTEREST AND CODE OF ETHICS AND CONDUCT

**7.1 Conflict of Interest Policy.** The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's conflict of interest policy is attached hereto as Exhibit B and incorporated herein. The Foundation shall provide to the University any updates to the Foundation's conflict of interest policy, and upon such notice, Exhibit B shall be replaced with the updated conflict of interest policy.

**7.2 Dual Representation.** Under no circumstances may University personnel represent both the University and the Foundation in any negotiation or sign for both Parties in any transaction. For any transaction between the University and the Foundation, a Loaned Employee may not direct University personnel not loaned to the Foundation to sign for the University, and University personnel not loaned to the Foundation may not direct a Loaned Employee to sign for the Foundation. This shall not, however, prohibit University personnel from drafting transactional documents that are subsequently provided to the Foundation for the Foundation's independent review, approval and use.

**7.3 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 the State Board's approval of University contracts.

**7.4 Acquisition or Development of Real Estate.** The Foundation shall not acquire or develop real estate for the University's use or otherwise build facilities for the University's use unless the University first obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore,

any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification by the University to the State Board required pursuant to this Section 7.4 may be made through the State Board's chief executive officer in executive session pursuant to Idaho law.

## ARTICLE VIII

### TERM, TERMINATION AND DISPUTE RESOLUTION

8.1 **Term.** The initial term of this Operating Agreement shall commence on the Effective Date and end on June 30, 2027, and thereafter, must be re-submitted to the State Board for re-approval every three years, or as otherwise requested by the State Board.

8.2 **Terminate.** This Operating Agreement shall terminate upon the earlier of: (a) mutual written agreement of the Parties; (b) one year prior written notice by either Party to the other Party to terminate this Operating Agreement for any reason or no reason; or (c) a breach by a Party of any material provision of this Operating Agreement and such breach is not cured within 30 days after notice from the non-breaching Party specifying the nature of the default (or if the breach is of a nature that it cannot be completely cured within the 30-day period, if the non-breaching Party does not commence such curing within the 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the breach). The Parties agree that in the event this Operating Agreement terminates under this Section 8.2, they shall cooperate with one another in good faith to negotiate a new agreement within six months. In the event negotiations fail, the Parties will initiate the dispute resolution mechanism described in Section 8.3 to further attempt to negotiate a new agreement.

8.3 **Dispute Resolution.** The Parties agree that in the event of any dispute arising from the Parties' Agreements, the Parties shall first attempt to resolve the dispute by working together with the appropriate personnel of each of the Parties. If the personnel cannot resolve the dispute within 30 days after the dispute arises, then the Foundation CEO and the University President have 30 days to resolve the dispute. If the Foundation CEO and the University President cannot resolve the dispute within 30 days, then the Chair of the Foundation Board and the State Board have 30 days to resolve the dispute. If the dispute is not resolved by the Chair of the Foundation Board and State Board within 30 days, 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 the Parties' Agreements. 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, if awarded by a court of competent jurisdiction.

8.4 **Effect of Termination.** Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation. For the avoidance of doubt, for so long as the University uses, retains, has access to or otherwise processes the Foundation's information, including Confidential Donor Information, the University shall continue to undertake those obligations set forth in the data security plan as well as any policies and procedures related to the processing of the Foundation's information. Should the University choose to terminate this

Operating Agreement by providing one year prior written notice or in the event of a default by the Foundation that is not cured within the time frame set forth in Section 8.2, 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. Should the Foundation choose to terminate this Operating Agreement by providing one year prior written notice or in the event of a default by the University that is not cured within the time frame set forth in Section 8.2, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner.

## ARTICLE IX

### GENERAL TERMS

9.1 **Dissolution of Foundation.** The Foundation's Articles of Incorporation include a clause stating that upon dissolution of the Foundation, it shall transfer the balance of all property and assets of the Foundation to the State Board or the University.

9.2 **State 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 as required by the then applicable State Board's Policies and Procedures (currently, Section V.E.) and as requested by the State Board. If this Operating Agreement or any subsequent modification or restatement of this Operating Agreement is not submitted to the State Board pursuant to the State Board's Policies and Procedures, this Operating Agreement will continue to govern the relationship between the University and the Foundation until this Operating Agreement is replaced or terminated in accordance with the terms of this Operating Agreement.

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

9.4 **Providing Documents to and Obtaining Approval from the Foundation.** Unless otherwise stated herein, whenever documents are to be provided to the Foundation or whenever the Foundation's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the Foundation CEO or an individual to whom such authority has been properly delegated by the Foundation CEO.

9.5 **Articles, Sections, Subsections and Subparagraphs.** This Operating Agreement consists of text divided into Articles that are identified by roman numerals (for example, I, II and III), Sections that are identified by a number corresponding to the number of the Article of which the particular Section is a part followed by the number of the Section (for example, 1.1), subsections that are identified by numbers based on the order in which the subsections appear (for example, 1.1.1, 1.1.2 and 1.1.3) and subparagraphs that are identified by numbers based on the order in which the subparagraphs appear (for example, 1.1.1.1, 1.1.1.2 and 1.1.1.3). The organization is hierarchical, meaning that a reference to a division of this Operating Agreement

includes all of its Sections, subsections and subparagraphs (for example, a reference to a Section includes the Section and all of its subsections and subparagraphs).

9.6 **Interpretation.** In this Operating Agreement: (a) the words “including”, “include” and similar words are to be construed as being followed by the phrase “without limitation”; (b) the word “may” is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase “as amended from time to time.”

9.7 **Notices.** Any notices required under this Operating Agreement must be in writing and may be delivered: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the University:

University of Idaho  
Office of the President  
875 Perimeter Drive MS 3151  
Moscow, Idaho 83844-3151

cc: counsel@uidaho.edu

To the Foundation:

University of Idaho Foundation, Inc.  
Chief Executive Officer  
875 Perimeter Drive MS 3143  
Moscow, Idaho 83844-3143

9.8 **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Operating Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. 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. As independent entities, the University and the Foundation shall not be liable for any of the other Party’s contracts, torts or other acts or omissions, or those of the other Party’s trustees, directors, officers, employees or agents.

9.9 **Parties’ Liability.** The Parties agree that each is responsible for any wrongful acts committed by them or their employees or agents arising out of their respective performance of this Operating Agreement and that each Party may be found individually liable to persons injured by any such individual wrongful act, including liability of one Party to the other for injuries or liability



arising out of such wrongful act. The University's liability for wrongful acts is governed by the Idaho Tort Claims Act ("Act"), Idaho Code, §§ 6-901 – 6-929, including limitations of liability to no more than \$500,000 for any one occurrence or accident, as set forth in the Act. The University's liability coverage is self-funded by the State of Idaho and administered by the State of Idaho Risk Management Program pursuant to the terms of the Act. In no event shall the Foundation's aggregate liability to the University arising out of or related to this Operating Agreement exceed \$500,000 for any one occurrence or accident.

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

9.11 **Modification.** Any modification to this Operating Agreement other than the Exhibits shall be in writing and signed by both Parties. Modifications to the Exhibits shall be pursuant to Sections 4.9 and 7.1.

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

9.13 **Waiver.** Waiver by either Party of any breach of any term, covenant or condition contained in this Operating Agreement 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 contained in this Operating Agreement.

9.14 **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.

9.15 **Entire Agreement.** This Operating Agreement and the agreements contemplated to be entered into by the Parties under this Operating Agreement, which are (a) the Service Agreement, (b) Lease Agreement and (c) Loaned Employee Agreements (collectively with this Operating Agreement, "**Parties' Agreements**"), constitute the entire agreement among the Parties pertaining to the Parties' Agreements. In the event of any inconsistency between the provisions of the Parties' Agreements, the provisions of this Operating Agreement shall control. This Operating Agreement amends, restates and replaces the Prior Operating Agreement and supersedes any prior written or oral statements related to the terms of this Operating Agreement or the terms of the Prior Operating Agreement.

9.16 **Execution.** This Operating Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the University and the Foundation have executed this Operating Agreement on the date set forth below the Party's signature to be effective on the Effective Date.

**THE BOARD OF REGENTS OF THE  
UNIVERSITY OF IDAHO**

By: \_\_\_\_\_

Name: C. Scott Green

Its: President

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

**UNIVERSITY OF IDAHO FOUNDATION,  
INC.**

By: \_\_\_\_\_

Name: Linda Copple Trout

Its: Chair of the Board of Directors

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

**EXHIBIT A**  
**INVESTMENT POLICY**



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Policy: Investment

Recording Date: First Adopted November 18, 1995, Amended March 8, 1996, October 25, 1997, March 13, 1998, September 30, 2000, April 20, 2001, October 17, 2003, September 16, 2005, January 25, 2008, May 31, 2013, September 12, 2014, March 11, 2016, October 27, 2017, June 17, 2022

Committee: Investment Committee

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**Policy: Investment**

**Section: Investment**

**Number: 1**

**BACKGROUND:**

On September 17, 1970, The University of Idaho Foundation, Inc. (Foundation) was incorporated under the laws of the State of Idaho as a non-profit organization exempt from Federal tax under section 501(c) (3) of the Internal Revenue Code. The Foundation is governed by a Board of Directors. The Foundation's sole purpose is to support the University of Idaho (University) by the means at its disposal with an emphasis on soliciting financial support for the University and managing and investing the securities, monies and real and personal property it receives from such sources, and to expend its resources, beyond that required to cover the costs of its operation, to and for the benefit of the University.

The University is governed by the Regents of The University of Idaho (Regents) and is a constitutional corporation organized and existing under and by virtue of the Constitution of the State of Idaho. The University is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, as an educational organization.

The Consolidated Investment Trust (CIT) was established by the Regents in July 1959, when the assets of 25 individual endowments having a combined market value of \$441,460 were pooled for investment purposes only and in return were issued unit participation shares in an investment account called the CIT. The purpose for creating the CIT was to provide a well-managed, diversified investment vehicle owned entirely by endowments.

Effective July 1, 1975, the Regents transferred the assets of the CIT to the Foundation. Upon accepting the CIT, the Foundation Board of Directors established an Investment Committee and charged it with the responsibility of monitoring and guiding the CIT's investment policy.

### **Article I. University of Idaho Foundation, Inc. Investment Policy**

**INTRODUCTION:** The Foundation Investment Committee developed this policy through careful study and consideration of the returns and risks associated with alternative investment strategies in relation to the current and projected income needs of University and Foundation activities which are supported by the endowments. The policy provides a structure within which the funds may be managed to achieve the long-term investment and financial objectives of all pooled endowment funds. The Foundation is committed to ensuring the assets of the pooled endowment funds are fully diversified and are managed efficiently and prudently by qualified investment personnel.

Because of the perpetual nature of endowments, decisions regarding investment management and performance of all pooled endowment funds must focus on longer-term goals and objectives which safeguard the purchasing power of the endowment principal and provide a relatively predictable and growing stream of annual distributions which support the education, research, and service missions of the University.

**OBJECTIVES:** The specific objectives of all pooled endowment fund investments are to:

1. Provide a regular and reliable source of funding to support the programs, scholarship and faculty of the University of Idaho as designated by each individual endowment.,
2. Optimize the investment return on the donor's gifts (and subsequent distributions to the University) subject at all times to the constraints of risk and prudence discussed in the Investment Philosophy document.
3. Maintain, over the long term, the real value of the Endowment corpus and protect the corpus from undue loss of principal.

**SPENDING POLICY:** An endowment spending policy determines how the endowment payout amount will be calculated, including how much of the total return will be distributed to support the purposes of the endowment and how much will be reinvested. It is the intent of the Investment Committee to achieve a balance between the endowment growth objectives and stability in distribution. The Investment Committee will review spending assumptions annually for the purpose of determining changes, if any, and may consider past spending and asset allocation into its current spending decision. The current spending policy is attached hereto as Appendix A.

**ASSET ALLOCATION POLICY:** The Committee recognizes that the strategic allocation of Portfolio assets across broadly defined financial categories and subcategories with varying degrees of risk, return, and return correlation will be the most significant determinant of long-term investment returns and Portfolio asset value stability.

1. The Committee expects that actual returns and return volatility will vary from expectations and return objectives across shorter periods of time. The Investment Committee retains flexibility to make periodic changes to the asset allocation. At least annually the Investment Committee will review the target allocations and allowable ranges. The Investment Committee expects to make major changes only in the event of material changes to the CIT, to the assumptions underlying CIT spending policies, and/or to the capital markets and asset classes in which the Portfolio invests.
2. The asset allocation will start with four major categories: 1) Equity (including public equity and private investments), 2) Debt, 3) Alternatives (e.g., macroeconomic hedges, real assets (including real estate), lesser correlated strategies, ) and 4) Cash. The expected role of equity and alternative investments will be to reflect the longer-term real growth of Portfolio assets, while the role of debt and cash investments will be to reduce volatility at the total portfolio level, and provide relatively stable or appreciating asset values to support near-term liquidity needs in the event of sudden or protracted declines in equity and alternative investments.

The longer-term strategic asset allocation guidelines will be determined by the Investment Committee including: 1) the selection of asset categories, i.e., domestic and international debt and equity, real estate, private equity, other alternative investments and cash and/or cash equivalents; and 2) the target allocation percentage of the total portfolio and an allowable range for each asset category. Once the asset allocation has been determined by the Investment Committee, the selection of individual investments within each class is the responsibility of the investment managers. The asset allocation will be reviewed at least annually by the Investment Committee and reported to the Foundation Board. The current asset allocation policy is attached hereto as Appendix B.

## **Article II. Investment Management**

Foundation Board of Directors: the board is responsible for approving investment policies and asset allocations based on recommendations by the Investment Committee and for establishing the duties of the Investment Committee.

Investment Committee: The Investment Committee is responsible for managing the investment process in a fiscally responsible and prudent manner while implementing strategies designed to achieve the investment objectives listed above. The Investment Committee shall establish strategies to implement the approved Investment Policy including selection of acceptable asset classes, definition of target allocations and allowable ranges in each asset class and by individual investment managers and investment performance expectations.

The Investment Committee is a standing committee of the Foundation. It generally meets three or four times a year. Membership of the Investment Committee shall be structured to assure investment acumen, continuity and opportunities for service.

The Investment Committee shall consist of a minimum of seven voting members including the Chairman and Vice Chairman of the Foundation. The Director of Finance of the Foundation, the Executive Director of the Foundation, and a University of Idaho College Dean shall be included as non-voting members. Additional committee members shall be appointed by the Foundation's Chairman and approved by the Foundation Board of Directors. The chairman of the committee shall be appointed by the Foundation's Chairman and approved by the Foundation Board of Directors.

The primary responsibility of the Investment Committee is to oversee and provide guidance for the investment of Foundation assets. Its major responsibilities are:

1. Recommending investment goals and objectives to the Board of Directors.
2. Establishing investment policy (asset allocation, spending policy, and level of risk).
3. Selecting and hiring investment managers and reviewing their performance.
4. Establishing performance measurement criteria for investment managers and the overall portfolio.
5. Terminating investment managers.
6. Selecting, hiring and terminating investment advisory consultants.

The Investment Committee may choose to appoint a subcommittee. The composition of the subcommittee will be approved by the full committee. At a minimum, the subcommittee will consist of: Investment Committee Chair, Investment Committee Vice Chair, at least one Investment Committee member at-large, and others deemed appropriate

The Chair of the Investment Committee may periodically convene Subcommittee calls in advance of full Committee meetings to set agenda priorities and vet investment advisor recommendations before they are presented to the full Committee at regular meetings.

Subcommittee meetings can also be called to review major market and portfolio changes between Committee meetings, as appropriate.

The University of Idaho Foundation staff are responsible for the day-to-day stewardship of all funds and/or finances of the Foundation.

The Foundation has the responsibility to comply with: applicable state and federal laws and regulations; donor requirement; Regents' regulations and requirements; University of Idaho policies and procedures; generally accepted accounting and financial management principles; the Foundation's Articles of Incorporation and the Foundation's by-laws.

Specifically, with regard to the investment responsibilities, the Foundation's Director of Finance will oversee the administration and support of those functions essential to sound financial management of all Foundation funds, including pooled endowment funds, such as fiscal planning, budgeting, receipting and disbursing of funds, and investing/managing assets to include custodial and accounting functions. Further, the Investment committee delegates authority to the Director of Finance, without a Committee vote, for rebalancing transactions among existing CIT managers, as follows:

1. Should market movements cause any asset class to fall outside the allowable range listed in the Asset Allocation Policy (Appendix B) as of any quarter-end, the Director of Finance shall instruct the Foundation's Financial team to implement such rebalancing transactions among existing CIT managers to bring said asset class back into compliance with the allowable range within one month following quarter-end.
2. New contributions to the CIT should be applied to, and payments by the CIT withdrawn from, asset classes in such a way as to bring the CIT asset allocation closer to the policy targets set forth in Appendix B. Sourcing of cash for spending distributions may be effected by either foregoing the reinvestment of interest/dividends or by partial redemptions from funds.
3. No advance written notice to the Committee shall be required for the rebalancing transactions enumerated above, but the Foundation's financial team shall report such rebalancing transactions to the Committee on at least a quarterly basis.
4. The Committee reserves the right to amend this protocol or rescind this authority delegated to the Director of Finance at any time for any reason.

The Foundation Board of Directors shall authorize specific individual(s) to endorse securities/stock or bond powers for sale, transfer, merger or other lawful purposes and to open or close brokerage accounts and accounts with commercial banks, as necessary to implement investment decisions and transact business in the name of and on behalf of the Foundation.



The Foundation's Financial team will, under the direction of the Investment Committee, provide and/or arrange for the following services: implementing manager transactions approved by the Investment Committee in an expeditious manner; conducting selection processes for investment management; review, assess, and present to the Investment Committee information about investment performance; analyze and present discussion agendas regarding modifications to the investment policy, especially the asset allocation policy, spending policy; Foundation management fee, portfolio structure; and provide desired accounting and reporting to the Investment Committee and Foundation Board of Directors.

**Investment Managers:** The pooled endowment funds will be managed by qualified investment management personnel/investment management organizations. The investment managers have discretion, within the guidelines set forth in this investment policy statement and any additional guidelines provided each manager, to manage the assets in each portfolio to best achieve the investment objectives established by the Investment Committee. The investment managers shall be responsible for implementing security selection and the timing of purchases and sales within the customized investment guidelines set forth in their Investment Management Agreement or Fund Documents.

**Investment Managers – General Guidelines:** These guidelines shall apply to all investments and investment managers, unless addressed otherwise by the Investment Committee in Investment Management Agreement (IMA) or Fund Documents.

1. All managers shall have discretion to invest in cash reserves; however, managers will be evaluated on total funds investment performance.
2. Mutual funds and other pooled asset portfolios are acceptable investment vehicles provided they conform to all other requirements and restrictions.
3. Public equity holdings shall be limited to readily marketable securities of corporations that are constituents of the ACWI All Country World Investable Market Index. Preferred and convertible preferred stocks may be held as allowed in the respective IMA or Fund prospectus. Publicly traded Real Estate Investment Trust (REIT) shares may be held and are considered part of the allocation to stocks.
4. Equity and debt managers holding non-U.S. dollar denominated securities are permitted to employ currency hedging strategies.
5. Debt investments shall be marketable securities which may include, but not necessarily be limited to U.S. Treasury, federal agencies and U.S. Government guaranteed obligations, sovereign debt, and domestic and foreign corporate issues, mortgage pass-through and collateralized debt obligations (ABS). Debt investment credit quality will be determined by the

- asset allocation guidelines, but generally consist of a majority of investment grade securities with a lesser allocation to below investment grade securities.
6. Cash equivalent reserves shall consist of cash instruments having a quality rating by at least one rating agency of A-2, P-2 or higher, maturing in 360 days or less.
  7. Financial options and futures, currency forwards and contracts and other derivative securities may be employed in defensive and hedge strategies undertaken to preserve principal.
  8. Unless specifically authorized in the IMA or Fund documents an investment manager shall not use derivatives to increase portfolio risk above the level that could be achieved in the portfolio using only traditional investment securities. Moreover, an investment manager will not use derivatives to acquire exposure to changes in the value of assets or indexes that, by themselves, would not be purchased for the portfolio.

**DIVERSIFICATION:** Diversification across and between assets classes is the primary means the Investment Committee expects to create an investment portfolio that can withstand the expected capital market volatility. Consistent with the desire for reduced volatility, the diversification policy is based on the assumption that the volatility of the combined equity portfolios will be similar to that of the overall equity market. Debt portfolio durations may vary from the larger debt market as the Investment Committee makes the determination to increase or reduce the level of interest rate exposure. Consequently, the total portfolio will be constructed and maintained to provide prudent diversification with regard to the concentration of holding in individual issue, investment manager and asset class as outlined in the following guidelines.

1. Not more than 5% of the total equity portfolio valued at market may be invested in the common stock of any one corporation.
2. Debt securities of any one issuer shall not exceed 5% of the market value of the total bond portfolio at the time of the purchase (except U.S. Treasury or other federal agency issues).
3. With the exception of passively managed portfolios, not more than 20% of the total portfolio may be invested in any one investment fund or pool or one strategy pursued by an investment manager.
4. With the exception of passively managed portfolios, not more than 30% of the total portfolio may be invested with any one investment manager regardless of the number of funds with that manager.

Voting of Proxies: The Investment Managers shall vote shareholder proxy ballots.

Execution of Security Trades: The Investment Committee expects the purchase and sale of securities by investment managers to be made in a manner designed to receive the combination of best price and execution.

**Article III. Monitoring and Evaluation:**

Overall Portfolio: This will entail a review of the investment objectives. Investment performance will be reviewed annually to determine the continued feasibility of achieving the investment objectives and the appropriateness of the investment policy for achieving these objectives.

It is not expected that the investment policy will change frequently. In particular, short-term changes in the financial markets should not require any adjustment in the investment policy.

Managers: The Foundation's Director of Finance will provide monthly investment activity reports to the Investment Committee, including a breakdown by each investment manager. The Investment Committee shall meet on a periodic basis with the Foundation's investment advisory consultant (if applicable) and Foundation staff to review total assets and individual manager performance. Performance reviews will focus on:

1. Comparison of managers' results to funds using similar policies (in terms of diversification, volatility, style, etc.).
2. Adherence to asset allocation and diversification policy guidelines.
3. Material changes in the manager organizations, such as investment philosophy, personnel changes, acquisitions or losses of major accounts, etc.
4. Evaluation of manager, asset class and portfolio performance on a three-, five- and ten-year investment horizon (along with monitoring of performance for quarterly and annual periods).
5. Evaluate performance relative to an appropriate performance benchmark that reflects the investment objective of each investment portfolio.

Performance Expectations: The most important performance expectation is the achievement of long-term investment results that are consistent with this Investment Policy Statement. The CIT will be compared to a blended benchmark that represents the target asset classes. The CIT is expected to meet or exceed the passive policy benchmark over a majority of rolling three, five and ten-year horizons. Implementation of the policy will be directed toward achieving this return and not toward maximizing return without considering the risk.

**Article IV. Accounting and Reporting**

In addition to retaining competent investment managers, essential elements of a successful portfolio include proper accounting, investment activity reporting, performance reporting and internal activity reporting.

**Annual Audit:**

1. The accounting records for the pooled endowment funds will be maintained in conformity with generally accepted accounting principles and reporting standards, and will be audited annually by the same independent external auditors who audit the Foundation's financial statements.
2. The annual audited financial statements and auditor's letter to management will be presented at the Foundation's annual meeting.
3. The internal controls utilized by the Foundation will be adapted to meet the needs of all pooled endowment funds and will be routinely reviewed by external auditors for appropriateness.

**Investment Pool:**

1. Endowments which own pooled endowment fund unit participation shares will be separately accounted for -- each will have their own separate fund identification and subaccounts which detail uninvested cash, fund balance invested in a pooled endowment fund, and total fund balance.
2. Endowments which have cash available for investing in a pooled endowment fund will be allowed to purchase unit participation shares at their fair market value on the first day of each month.
3. The fair market value of a unit participation share will be determined as of the close of business on the last working day of each month. The share value will be determined by valuing the pooled endowment fund's portfolio at market and dividing that market value by the number of permanent unit participation shares outstanding.
4. The pooled endowment fund's annual spending distributions will be made based on the number of distribution unit participation shares owned by each endowment.
5. The Foundation's Director of Finance and Financial Staff will ensure idle cash is fully invested until needed for distributions at year end, and for transfer to a pooled endowment from individual endowments to purchase unit participation shares.

6. The Foundation will receive all broker/custodial confirmations for purchases and sales of securities and ensure that (1) purchases are paid in a timely manner, (2) sales proceeds are received and immediately deposited in a Foundation brokerage/custodial or bank account and invested, (3) the financial records properly reflect all purchases and sales, and (4) sales and purchase commissions are reasonable.

Investment Management:

1. The Foundation will monitor investment activity and determine whether or not current established portfolio investment parameters are being followed.
2. The Foundation will reconcile monthly broker/custodial statements to the financial and investment records.
3. The Foundation will record all investment activity in the financial and investment records.
4. The Foundation will maintain a detailed schedule of investments including the location of all investments.
5. The Foundation will ensure accurate and timely investment data is submitted to an independent funds evaluation firm so that firm can prepare investment performance reports.
6. The Foundation will ensure that accurate and timely Investment Activity Reports are prepared for use by Investment Managers, Investment Committee and others.
7. The Foundation will prepare accurate and timely monthly valuations of the pooled endowment fund portfolios and calculate the value of a unit participation share.
8. The Foundation will ensure that endowments which have cash available for the purchase of pooled endowment fund unit participation shares have that cash transferred to the appropriate pooled endowment fund in a timely manner, and that the investment manager is aware of the amount of new money available for investment.
9. The Foundation will approve all operating expenses associated with the operation of all pooled endowment funds and initiate action to ensure said expenses are paid in a timely manner and properly recorded on the financial records.

Appendix A  
**Spending Policy**

Spending Policy:

The CIT distribution to the University of Idaho for expenditure in support of students through scholarships, academic programs and other objectives as specified by each endowment's guidelines is calculated in accordance with the spending rate approved annually by the Foundation's Board of Directors at the fall meeting for the upcoming fiscal year end using the 36-month rolling average for the prior three fiscal years.

Appendix B  
**Asset Allocation Policy**

Recording Date: Asset Allocation Policy approved on 6/17/2022, effective retroactively to 10/8/2021 for transition to new allocation

Asset Class	Policy Target	Allowable Ranges		Policy Benchmark
		Min	Max	
<b>Equity</b>	80%	75%	85%	
U.S. Equity	37%	32%	47%	Russell 3000
Developed International	11%	6%	20%	MSCI EAFE (net)
Emerging Markets	7%	5%	12%	MSCI EM (net)
Inflation-Sensitive Equity	5%	0%	10%	Blend of relevant market indices used by underlying managers (e.g., NAREIT, MSCI World Core Infrastructure etc.)
Private Investments	20%	10%	30%	MSCI ACWI (net)
<b>Fixed Income and Cash</b>	20%	15%	35%	
Core Fixed Income & Credit	7%	5%	12%	Bloomberg Barclays Aggregate
Treasuries	3%	2%	7%	Bloomberg Barclays 35-10 yr Treasury Bond Index
Inflation-Linked Bonds	5%	3%	7%	Bloomberg Barclays US TIPS
Cash	5%	2%	8%	Citi ICE BofAMI 3-month Treasury Bill

**Macroeconomic Hedges**

Inflation-Sensitive (Inflation-Sensitive Equity, Inflation-Linked Bonds & Cash) min. 10% (no max.)

Deflation-Sensitive (Treasuries & Cash) min. 10% (no max.)

**Indexed Investments** (as % of asset class composite)

U.S. Equity	50-60%
Developed International	30-50%
Emerging Markets	33%

**Policy Index**

A blend of Policy Benchmark returns weighted at the Policy Target percentages

**Marketable Assets Policy Index**

**Simple Risk-Equivalent Index**

Over full market cycles, this Policy Portfolio is expected to exhibit volatility similar to or less than that of a Simple Index of 80% global stocks (MSCI ACWI, net) / 20% bonds (Barclays Aggregate).

**Liquidity Guidelines**

No new Private Investment commitments while:

- (1) Private Investment NAV > 30% of total assets
- (2) (2) Private investment NAV + unfunded commitments > 40% of total assets

\*No more than 30% of the Fixed Income and Cash allocation shall be in securities whose credit rating is less than Baa- or BBB-.



**EXHIBIT B**  
**CONFLICT OF INTEREST POLICY**



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Policy: Conflict of Interest

Section: Human Resources Number: 4

Recording Date: January 25, 2007, Amended January 25, 2008

Committee: Executive Committee

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### **Article I. Purpose**

The purpose of this conflict of interest policy is to protect the University of Idaho Foundation, Inc.'s (the "Foundation") interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer or employee 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 policy is to set forth a Code of Conduct and Ethics to guide the directors, principal officers and employees of the Foundation in the performance of their duties and the operation of the Foundation.

### **Article II. Definitions**

1. **Interested Person.** Any director, principal officer, member of a committee with governing board delegated powers, or employee of the Foundation who has a direct or indirect financial interest, as defined below, is an interested person.
2. **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family (including such person's spouse, ancestors, lineal descendants and spouses of lineal descendants):
  - a. An ownership or investment in any entity with which the Foundation has a transaction or arrangement,
  - b. A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement, or
  - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as material gifts or gratuities in excess of fifty dollars (\$50).

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

### **Article III. Procedures**

1. Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
2. 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 governing 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.
3. Procedures for Addressing the Conflict of Interest.
  - a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction involving the possible conflict of interest.
  - b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
  - c. After exercising due diligence, the governing board or committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
  - d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the 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 transaction or arrangement.
4. Violations of the Conflict of Interest Policy.
  - a. If the governing board or committee has reasonable cause to believe a director, principal officer or employee has failed to disclose an actual or possible conflict of interest, it shall inform the director, principal officer or employee of the basis for such belief and afford such person an opportunity to explain the alleged failure to disclose.
  - b. If, after hearing such person's response and after make further investigation as warranted by the circumstances, the governing board or committee determines the director, principal officer or employee has failed to disclose an

actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Article IV. Records of Proceedings**

The minutes of the governing 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 governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

**Article V. Compensation**

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

- a. A voting member of any committee who 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.
- b. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, director of indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Article VI. Code of Ethics and Conduct**

Each director, principal officer, member of a committee with governing board delegated powers and employee of the Foundation shall be provided with and abide by the Code of Ethics and Conduct attached hereto as Exhibit "A" (hereinafter referred to as the "Code").

**Article VII. Annual Statements**

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

- a. Has received a copy of the conflict of interest policy and the Code,
- b. Has read and understands the conflict of interest policy and the Code,
- c. Has agreed to comply with the conflict of interest policy and the Code, and

- d. Understands the Foundation is charitable and in order to maintain its federal tax exemption it must engage in activities which accomplish one or more of its tax-exempt purposes.

**Article VIII. Periodic Reviews**

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

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

**Article IV. Use of Outside Experts**

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

**CERTIFICATION OF ADOPTION**

The foregoing was duly adopted as the Conflict of Interest Policy of the Foundation by the Board of Directors effective as of the 25<sup>th</sup> day of January, 2008.

**CODE OF CONDUCT AND ETHICS OF  
THE UNIVERSITY OF IDAHO FOUNDATION, INC.**

**Article I. Purpose**

This Code of Conduct and Ethics ("Code") is designed to guide the directors, principal officers and employees of the University of Idaho Foundation, Inc. ("Foundation") in the performance of their duties and the operation of the Foundation. The tax-exempt status of the Foundation includes an obligation to maintain the public trust. The Foundation takes this obligation very seriously. Accordingly, it is incumbent upon directors, principal officers, and employees of the Foundation to conduct the affairs of the Foundation with a commitment to the highest standards of integrity. This includes acting at all times in an honest and ethical manner, in compliance with all laws and regulations and avoiding actual, potential or apparent conflicts of interest.

**Article II. General Rules**

This Code is applicable, unless otherwise indicated, to the conduct of all directors, principal officers and employees of the Foundation ("Foundation Personnel"). All Foundation Personnel owe the Foundation a duty of loyalty, and a duty to the Foundation to avoid conflicts, whether real, potential or apparent, between the interests of the Foundation and their personal financial interests. All Foundation Personnel must remain conscious of the potential for such conflicts, and act with candor and care in such situations. The Foundation's activities must be conducted according to the highest standards of objectivity and integrity and exclusively in furtherance of the Foundation's charitable purposes.

**Conflict of Interest.** The Foundation has developed a Conflict of Interest Policy. The purpose of the Conflict of Interest Policy is to protect the Foundation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer or employee of the Foundation or may result in providing any such person with an improper benefit. The Conflict of Interest Policy defines those situations or circumstances which could create a real or perceived conflict of interest. Further, the policy establishes a method for ensuring disclosure and accountability. Foundation Personnel shall comply with the Foundation's Conflict of Interest Policy.

**Gifts and Gratuities.** Foundation Personnel shall not accept from any source any material gift or gratuity (including but not limited to gifts, payments, commissions, entertainment, services, loans, or promises of future benefits) in excess of fifty dollars (\$50) that is offered, or reasonably appears to be offered, because of such person's position held with the Foundation; nor shall an offer of a prohibited gift or gratuity be extended by Foundation Personnel on a similar basis.

**Confidentiality.** Foundation Personnel are expected to exercise the utmost discretion in regard to all matters of Foundation business. They may not communicate any information known to them by reason of their position that has not been made public, except as may be necessary in the course of their duties or by authorization of the Board of Directors of the Foundation. Nor shall Foundation Personnel at any time use such information to private advantage. These obligations do not cease upon separation from the Foundation.

## **2024 SERVICE AGREEMENT**

This 2024 Service Agreement (“**Agreement**”) is entered into effective the 1st day of July, 2024 (“**Effective Date**”) by and between the Board of Regents of the University of Idaho, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the University of Idaho Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”). The University and the Foundation are sometimes referred to herein separately as a “**Party**” and collectively as the “**Parties.**”

### **ARTICLE I**

#### **BACKGROUND**

1.1 **Background.** The Foundation is the primary affiliated foundation responsible for assisting the University in inspiring, soliciting, managing and distributing private support for the University. The University and the Foundation are parties to the Services Agreement, dated March 21, 2011 (“**Prior Service Agreement**”). The Parties desire to amend and restate the Prior Service Agreement to document the services provided by each Party to the other Party and the corresponding charges for such services.

1.2 **Loaned Employees.** The University and the Foundation have entered and will enter into additional agreements (each such agreement, a “**Loaned Employee Agreement**”) for the loaning of Loaned Employees (as defined in Exhibit A) to the Foundation by the University. The Loaned Employee Agreements shall set forth the relative rights and responsibilities of the Foundation and the University with respect to the Loaned Employees. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation.

### **ARTICLE II**

#### **SERVICES**

2.1 **University Services.** The University shall provide the following services to the Foundation in accordance with the terms of this Agreement: administrative support in payroll processing (including payment), employee benefits (including administration and payment), travel support, event support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services to the Foundation (collectively, “**University Services**”).

2.2 **Foundation Services.** The Foundation shall provide the following services to the University in accordance with the terms of this Agreement: asset management, investment, fundraising, alumni relations and certain information technology services (collectively, “**Foundation Services**” and, together with the University Services, “**Services**”).

ARTICLE III

SERVICE CHARGES

3.1 **University Service Charge.** The University will charge the Foundation for the University Services (“**University Service Charge**”) provided by the University each fiscal year. The University Service Charge shall be calculated as follows:

$$\begin{aligned} & \text{University Service Charge} \\ & = \\ & (80\% \times \text{Loaned Employee Payments}) + \text{Operating Expenses} + \text{OIT Costs} + \\ & \text{Operations Support Costs} + \text{Events Costs} + \text{Rent} \end{aligned}$$

3.1.1 **Components of University Service Charge.** Each of the components of the University Service Charge and the defined terms used in defining those components are defined on Exhibit A hereto, which is incorporated herein by this reference.

3.1.2 **Changes to Components of University Service Charge.** Certain components of the University Service Charge may be adjusted pursuant to the terms of this Section 3.1.2 prior to the beginning of each fiscal year. Any adjustment to the following components of the University Service Charge shall be evidenced by an amendment to Exhibit A, which shall be executed by the Chief Executive Officer of the Foundation (“**Foundation CEO**”) and President of the University (“**University President**”).

3.1.2.1 **Generally.** For the fiscal year commencing July 1, 2025 (“**FY25**”) or any fiscal year after FY25, each of the OIT Costs, Payroll Support Amount, Accounts Payable Amount and Rental Rate (each, a “**Component**”) may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively “**State Board**”) or the Foundation’s Board of Directors (“**Foundation Board**”); and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

3.1.2.2 **Discontinuation of Services.** If any of the Services provided by the University to the Foundation are discontinued in their entirety and such discontinued Services comprise all Services described in a term defined on Exhibit A, then the defined term associated with such discontinued Services shall be removed from the formula for calculating the University Service Charge set forth in Section 3.1.

3.2 **Foundation Service Charge.** The Foundation will charge the University for the Foundation Services (“**Foundation Service Charge**” and, together with the University Service Charge, the “**Service Charges**”) provided by Foundation each fiscal year. The Foundation Service Charge shall be calculated as follows:



$$\begin{array}{c} \text{Foundation Service Charge} \\ = \\ \text{Cost to Raise a Dollar x Fundraising Goal} \end{array}$$

**3.2.1 Components of Foundation Service Charge.** Each of the components of the Foundation Service Charge and the defined terms used in defining those components are defined on Exhibit A hereto.

**3.2.2 Changes to Components of Foundation Service Charge.** The following component of the Foundation Service Charge may be adjusted pursuant to the terms of this Section 3.2.2 prior to the beginning of each fiscal year. Any adjustment to the following component of the Foundation Service Charge shall be evidenced by an amendment to Exhibit A, which shall be executed by the Foundation CEO and the University President.

**3.2.2.1 CRD Amount.** For FY25 or any fiscal year after FY25, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year's CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year's CRD Amount.

**3.2.3 Appropriations Holdback.** In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences (“**Appropriation Holdback**”), the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. Upon the occurrence of an Appropriation Holdback, the University will provide prompt written notice to the Foundation of the amount of the Appropriation Holdback and the Foundation will, within 30 days of receipt of such written notice, modify the Foundation Services or reduce the number of Loaned Employees, in the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge and will promptly provide written notice to the University of such modification or reduction.

**3.3 Charges for Services.** The Party providing the applicable Services shall charge the other Party for such Services in the amounts calculated pursuant to this Article III and payment for the Services shall be pursuant to Section 3.4. The Service Charges shall constitute full compensation to each Party for all charges, costs and expenses incurred by the other Party in providing the applicable Services, unless otherwise specifically agreed to in writing between the Parties.

**3.4 Reconciliation of Service Charges.**

**3.4.1 Net Service Charge.** Each Party shall charge the other Party for the Services rendered by the providing Party under this Agreement. At least 30 days prior to the end of each fiscal year, each Party shall aggregate all Service Charges owed to such Party by the other Party for all Services performed or to be performed during the current fiscal year and shall provide documentation, which may be maintained in electronic form, to the other Party of the same that is sufficient to specifically identify the Services and adequately support the Service Charges. Once the Parties have received documentation of the Service Charges owed, the Parties shall work

together in good faith to aggregate both Party’s Service Charges (“**Net Service Charge**”). If the Parties are unable to agree on the Net Service Charge, the procedures set forth in Section 5.3 shall apply.

3.4.2 **Payment.** On or prior to June 30th of each year, the Foundation shall make (a) a single cash payment to the University that is in an amount equal to the Net Service Charge if the Net Service Charge is an amount owed by the Foundation to the University and (b) a payment to the University in an amount equal to 20% multiplied by the Loaned Employee Payments.

### 3.5 **Meetings and Reports.**

3.5.1 **Reports.** The Foundation will provide regular reports to certain University leadership (including the University President and the Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. The Foundation leadership, including the Foundation CEO and the Foundation’s lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation’s proposed annual operating budget and capital expenditure plan (if any), as approved by the Foundation Board. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information (as defined in the Operating Agreement), which is owned, controlled and possessed by the Foundation.

3.5.2 **Forecasting Services Charges for Foundation’s Annual Budget.** Beginning on April 1 of each year, Foundation leadership and University leadership will review the quarterly reports to forecast the Service Charges for the next fiscal year. The Parties shall mutually agree on the estimated Service Charges for the next fiscal year by no later than the regularly schedule spring/summer meeting of the Foundation Board.

3.5.3 **Historical Data.** In the last year of the Initial Term and each Renewal Term (as each term is defined in Section 5.1), the Foundation CEO and the University President shall meet to discuss the components of the formulas set forth in Sections 3.1 and 3.2 to determine if such components should be updated based on historical data, such as a rolling average of the data used in a particular component over at least the prior three years, to more accurately calculate the Service Charges. If the Parties determine such components should be updated based on the historical data, the Parties will modify that certain Operating Agreement, dated effective July 1, 2024, by and between the Parties (“**Operating Agreement**”) to reflect the agreed-upon changes along with any related updates to the description of the scope of the Services provided by each Party to the other Party and present the modified Operating Agreement to the State Board and the Foundation Board for approval.

## **ARTICLE IV**

### **RECORDS; PROTECTION OF CONFIDENTIAL INFORMATION**

4.1 **Retention and Access.** Each Party shall maintain accurate and complete records with respect to Services performed and Service Charges owed. Such records shall be kept at each respective Party's principal place of business, may be maintained in electronic form and shall be available for inspection and use by the other Party or its representatives during normal business hours. In addition, upon written request of either Party, the other Party shall execute a proprietary and confidentiality agreement.

4.2 **Definition. "Confidential Information"** means (a) any information disclosed by one Party to the other Party, either directly or indirectly, in writing, orally, electronically, digitally, via the internet or in any other form or manner or acquired by inspection, observation or otherwise, that is not generally known outside of the disclosing Party unless as a result of a breach of any of the receiving Party's obligations imposed by this Agreement, that the disclosing Party marks or identifies as confidential or with a similar legend, or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential, including Confidential Donor Information, and (b) any information otherwise obtained, directly or indirectly, by the receiving Party through inspection, observation, review or analysis of information described in clause (a) of this Section 4.2.

4.3 **Exclusions.** Notwithstanding Section 4.2, Confidential Information does not include information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party to the receiving Party; (b) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no breach of any confidentiality obligations of any Party or a third party; (c) is in the possession of the receiving Party without an obligation of confidentiality at the time of disclosure by the disclosing Party as shown by the receiving Party's files and records immediately prior to the time of disclosure; (d) is obtained by the receiving Party from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information, as shown by documents and other competent evidence in the receiving Party's possession.

4.4 **Restrictions on Disclosure and Use.** The receiving Party shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. The receiving Party shall use the same care and discretion to avoid disclosure of the disclosing Party's Confidential Information as it uses with its own similar confidential information, and in no event with less than reasonable care. Without limiting the foregoing, the receiving Party shall: (a) limit access to any Confidential Information to receiving Party's affiliates and the employees, contractors, agents and other representatives of the receiving Party and its affiliates (collectively, "**Representatives**") who have a need to know in connection with the performance of the obligations under Parties' Agreements (as defined in Section 6.11); and (b) require all Representatives having access to Confidential Information (excluding Representatives who are bound by duties of confidentiality with respect to the Confidential Information under applicable rules of professional conduct) to enter into a written agreement with the receiving Party containing restrictions with respect to the Confidential Information at least as restrictive as the restrictions set forth in this Agreement. The receiving Party shall, and shall cause its Representatives to, not use the Confidential Information of the disclosing Party except and solely in connection with the performance of the receiving Party's obligations under the Parties' Agreements. The receiving

Party shall be liable to the disclosing Party for any act or omission by any of its Representatives that would constitute a breach of this Agreement by the receiving Party if the receiving Party engaged in such act or omission. The receiving Party shall immediately notify the disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information.

**4.5 Confidential Donor Information.** Section 3.5.1 of this Agreement and the Operating Agreement set forth additional restrictions on disclosure and use of the Confidential Donor Information, and such restrictions shall be strictly complied with by the University and its Representatives.

**4.6 Legally Compelled Disclosure.** If the receiving Party or any of its Representatives becomes legally compelled (or requested by a regulatory body) to disclose any Confidential Information, the receiving Party will provide the disclosing Party with prompt written notice prior to disclosure, unless providing such notice would violate applicable law or regulation, so that the disclosing Party may seek a protective order or other appropriate remedy (and if the disclosing Party seeks such an order, the receiving Party will, and will cause its Representatives to, provide such cooperation as the disclosing Party reasonably requests, at the expense of the disclosing Party) or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained or if the receiving Party's compliance with the provisions of this Agreement is waived by the disclosing Party, the receiving Party will furnish, and shall allow any Representative to furnish, only that portion of the Confidential Information that is legally required (in the opinion of its legal counsel).

**4.7 Return or Destruction.** All documents and other tangible objects containing or representing Confidential Information of the disclosing Party shall remain the property of the disclosing Party. Promptly upon the disclosing Party's request or termination of this Agreement, the receiving Party shall, and shall cause its Representatives to, either return or destroy and certify to the destruction of (at the disclosing Party's election) all documents, including electronic copies, and other tangible objects containing or representing the disclosing Party's Confidential Information; provided, however, Confidential Information of the disclosing Party that is retained in compliance with the Party's document retention policies or contained in an archived computer system backup in accordance with applicable security or disaster recovery procedures is not required to be erased provided that (a) access to such copies shall be limited to personnel who need access in compliance with applicable record retention policies or security or disaster recovery procedures and (b) such copies shall continue to be subject to the confidentiality and nonuse obligations in this Article IV.

**4.8 Survival.** The obligations of this Article IV shall survive the termination of this Agreement for a period of five years, except with respect to any trade secrets of either Party, in which case the obligations of this Article IV shall survive as long as such Confidential Information remains a trade secret of the disclosing Party as provided by applicable law.

## **ARTICLE V**

### **TERM, TERMINATION AND DISPUTE RESOLUTION**

5.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and end on June 30, 2027 (“**Initial Term**”), and thereafter, this Agreement shall automatically renew for successive three-year terms (each a “**Renewal Term**” and, together with the Initial Term, “**Term**”), unless and until terminated in accordance with the terms and conditions contained in this Agreement.

5.2 **Terminate.** This Agreement shall terminate upon the earlier of: (a) mutual written agreement of the Parties; (b) one year prior written notice by either Party to the other Party to terminate this Agreement for any reason or no reason; (c) a breach by a Party of any material provision of this Agreement and such breach is not cured within 30 days after notice from the non-breaching Party specifying the nature of the default (or if the breach is of a nature that it cannot be completely cured within the 30-day period, if the non-breaching Party does not commence such curing within such 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the breach); or (d) termination of the Operating Agreement. The Parties agree that in the event this Agreement terminates under this Section 5.2, they shall cooperate with one another in good faith to negotiate a new agreement within six months. In the event negotiations fail, the Parties will initiate the dispute resolution mechanism described in Section 5.3 to further attempt to negotiate a new agreement.

5.3 **Dispute Resolution.** The Parties agree that in the event of any dispute arising from the Parties’ Agreements, the Parties shall first attempt to resolve the dispute by working together with the appropriate personnel of each of the Parties. If the personnel cannot resolve the dispute within 30 days after the dispute arises, then the Foundation CEO and the University President have 30 days to resolve the dispute. If the Foundation CEO and the University President cannot resolve the dispute within 30 days, then the Chair of the Foundation Board and the State Board have 30 days to resolve the dispute. If the dispute is not resolved by the Chair of the Foundation Board and State Board within 30 days, 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 the Parties’ Agreements. 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, if awarded by a court of competent jurisdiction.

5.4 **Effect of Termination.** Upon termination of this Agreement, each Party shall cooperate in order to effect an orderly transition of the applicable Services to the other Party, and all Service Charges shall be prorated to the extent appropriate based on the date of termination.

## **ARTICLE VI**

### **GENERAL TERMS**

6.1 **Articles, Sections, Subsections and Subparagraphs.** This Agreement consists of text divided into Articles that are identified by roman numerals (for example, I, II and III), Sections that are identified by a number corresponding to the number of the Article of which the particular Section is a part followed by the number of the Section (for example, 1.1), subsections that are identified by numbers based on the order in which the subsections appear (for example, 1.1.1, 1.1.2

and 1.1.3) and subparagraphs that are identified by numbers based on the order in which the subparagraphs appear (for example, 1.1.1.1, 1.1.1.2 and 1.1.1.3). The organization is hierarchical, meaning that a reference to a division of this Agreement includes all of its Sections, subsections and subparagraphs (for example, a reference to a Section includes the Section and all of its subsections and subparagraphs).

**6.2 Interpretation.** In this Agreement: (a) the words “including”, “include” and similar words are to be construed as being followed by the phrase “without limitation”; (b) the word “may” is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase “as amended from time to time.”

**6.3 Notices.** Any notices required under this Agreement must be in writing and may be delivered: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the University:

University of Idaho  
Office of the President  
875 Perimeter Drive MS 3151  
Moscow, Idaho 83844-3151

cc: [counsel@uidaho.edu](mailto:counsel@uidaho.edu)

To the Foundation:

University of Idaho Foundation, Inc.  
Chief Executive Officer  
875 Perimeter Drive MS 3143  
Moscow, Idaho 83844-3143

**6.4 Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. 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. As independent entities, the University and the Foundation shall not be liable for any of the other Party’s contracts, torts or other acts or omissions, or those of the other Party’s trustees, directors, officers, employees or agents.

6.5 **Parties' Liability.** The Parties agree that each is responsible for any wrongful acts committed by them or their employees or agents arising out of their respective performance of this Agreement and that each Party may be found individually liable to persons injured by any such individual wrongful act, including liability of one Party to the other for injuries or liability arising out of such wrongful act. The University's liability for wrongful acts is governed by the Idaho Tort Claims Act ("Act"), Idaho Code, §§ 6-901 – 6-929, including limitations of liability to no more than \$500,000 for any one occurrence or accident, as set forth in the Act. The University's liability coverage is self-funded by the State of Idaho and administered by the State of Idaho Risk Management Program pursuant to the terms of the Act. In no event shall the Foundation's aggregate liability to the University arising out of or related to this Agreement exceed \$500,000 for any one occurrence or accident.

6.6 **Assignment.** This Agreement is not assignable by either Party, in whole or in part.

6.7 **Modification.** Any modification to this Agreement other than the Exhibits shall be in writing and signed by both Parties. Modifications to the Exhibits shall be pursuant to Sections 3.1.2 and 3.2.2.

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

6.9 **Waiver.** Waiver by either Party of any breach of any term, covenant or condition contained in this Agreement 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 contained in this Agreement.

6.10 **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.

6.11 **Entire Agreement.** This Agreement, the Operating Agreement and the agreements contemplated to be entered into by the Parties under the Operating Agreement, which are (a) the Lease Agreement by and between the Foundation and the University ("**Lease Agreement**") and (b) the Loaned Employee Agreements (collectively with this Agreement and the Operating Agreement, "**Parties' Agreements**"), constitute the entire agreement among the Parties pertaining to the Parties' Agreements. In the event of any inconsistency between the provisions of the Parties' Agreements and the provisions of the Operating Agreement, the provisions of the Operating Agreement shall control. If the Operating Agreement is amended at any time during the Initial Term or a Renewal Term, to the extent such amendments cause inconsistencies between this Agreement and the Operating Agreement, this Agreement shall be amended to cure such inconsistencies. This Agreement amends, restates and replaces the Prior Service Agreement and supersedes any prior written or oral statements related to the terms of this Agreement or the terms of the Prior Service Agreement.

6.12 **Execution.** This Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the University and the Foundation have executed this Agreement on the date set forth below the Party's signature to be effective on the Effective Date.

**THE BOARD OF REGENTS OF THE  
UNIVERSITY OF IDAHO**

By: \_\_\_\_\_  
Name: C. Scott Green  
Its: President

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

**UNIVERSITY OF IDAHO FOUNDATION,  
INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Chief Executive Officer

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



**EXHIBIT A**

**COMPONENTS OF SERVICE CHARGES**

**“Accounts Payable Amount”** means \$7.00.

**“Accounts Payable Costs”** means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by the Accounts Payable Amount and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

**“Cost to Raise a Dollar”** means the cost associated with the Foundation’s fundraising efforts to raise one dollar, which shall initially be the CRD Amount.

**“CRD Amount”** means \$0.20, which is based on current industry standards.

**“Events Costs”** means the portion of the budget of the University’s Central Auxiliary Services comprised of the salaries and fringe benefits of University personnel dedicated to, and the expenses related to, the strategic events of the Foundation’s fundraising activities, which are Recognition Gala, Celebration of Scholarships, Shakespeare Festival and Red Carnation, for the fiscal year.

**“Fundraising Goal”** means a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year.

**“HR Costs”** means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

**“Loaned Employees”** means all positions for which the Foundation and the University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to Foundation by University for the entire 12 months of the fiscal year, and Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year.

**“Loaned Employee Payments”** means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.

**“OIT”** means the University’s Office of Information Technology.

**“OIT Costs”** means the OIT budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

**“Operating Expenses”** means the portion of funds expended within the chart of accounts maintained by the University as part of the University’s financial services to the Foundation for the fiscal year related to contracts, programmatic support, marketing, communications, events, travel and office operations other than expenses that are a part of other components of the University Service Charge set forth in Section 3.1.

**“Operations Support Costs”** means the sum of Payroll Support Costs, Accounts Payable Costs and HR Costs.

**“Payroll Support Amount”** means \$2.25.

**“Payroll Support Costs”** means the product of (a) the Payroll Support Amount, (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

**“Rent”** means the square feet of the premises leased by the University to the Foundation pursuant to the terms of that Lease Agreement multiplied by \$21.00 (**“Rental Rate”**) for the fiscal year.

**“Vital Goals”** means the list of vital goals collaboratively developed by the Foundation CEO and the University President prior to the beginning of each fiscal year that shall include the Fundraising Goal.

Effective Date of this Exhibit A: \_\_\_\_\_

**UNIVERSITY PRESIDENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**FOUNDATION CEO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

This Agreement for Loaned Employee (“**Agreement**”) is entered into effective the [day] of [month], [year] (“**Effective Date**”) by and between the Board of Regents of the University of Idaho, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the University of Idaho Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”). The University and the Foundation are sometimes referred to herein separately as a “**Party**” and collectively as the “**Parties**.”

**BACKGROUND**

A. The Foundation is a nonprofit corporation formed to solicit, manage and distribute private support to enhance the growth and development of the University. The Foundation has asked the University to make certain staff members available to fulfill various staffing requirements for the Foundation’s day-to-day operations.

B. The University has agreed to loan its employee, [full legal name] (“**Loaned Employee**”), to the Foundation pursuant to the terms of this Agreement.

**AGREEMENT**

The Parties agree as follows:

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

1.1 **Employment with the University.** At all times under this Agreement, Loaned Employee shall be an employee of the University. Loaned Employee may be categorized as either an exempt employee of the University or a classified employee of the University, subject to all applicable policies and procedures of the Board of Regents of the University of Idaho and the University (“**University Policies**”). Loaned Employee shall devote 100% of Loaned Employee’s working time to performing services for the Foundation. This Agreement in no way changes the nature of Loaned Employee’s employment with the University and in no way changes the applicable terms of the individual Loaned Employee’s employment with the University, including Loaned Employee’s employment categorization (classified or exempt, whichever the case may be). Loaned Employee remains subject to University Policies applicable to Loaned Employee’s employment with the University. Loaned Employee will be considered a loaned employee under the worker’s compensation law of the state of Idaho.

1.2 **Compensation.** Loaned Employee will be paid compensation consistent with the terms applicable to Loaned Employee’s employment with the University (“**Salary**”). This Agreement shall have no effect on Loaned Employee’s eligibility for University benefits (“**Benefits**”). The University shall be responsible for the payment of all Salary and Benefits to Loaned Employee. The Foundation shall reimburse the University for 100% of the University’s total cost of the Salary and Benefits pursuant to the terms of that certain Service Agreement by and between the University and the Foundation (“**Service Agreement**”).

1.3 **Travel Expenses.** The University shall reimburse directly to Loaned Employee costs incurred by Loaned Employee for travel that is approved in accordance with Foundation policies, University Policies and applicable law (“**Travel Costs**”). The Foundation shall reimburse the University for the Travel Costs pursuant to the terms of the Service Agreement.

1.4 **Performance Evaluations.** Loaned Employee’s performance will be reviewed at least annually and will be consistent with applicable University Policies. Foundation personnel, including members of the Foundation Board and employees loaned by the University to the Foundation who supervise other Foundation personnel, are responsible for evaluating employees loaned by the University to the Foundation in accordance with University Policies.

## 2. **Relationship Between Loaned Employee and Foundation.**

2.1 **Supervision.** Loaned Employee will work under the supervision and direction of the Chief Executive Officer of the Foundation (“**Foundation CEO**”) and will report to the Foundation CEO or Foundation CEO’s designee, who shall determine Loaned Employee’s services for the Foundation.<sup>1</sup>

2.2 **Foundation Policies.** The Foundation may, from time to time, establish certain policies regarding the conduct of Foundation business that may apply to the services performed by Loaned Employee for the Foundation.

## 3. **Relationship Between Foundation and the University.**

3.1 **Lease of Loaned Employee.** During the term of this Agreement, the University shall make available to the Foundation 100% of Loaned Employee’s working time. The furnishing of Loaned Employee shall not be considered a professional service of the University to the Foundation, nor shall the University be considered a contractor of the Foundation.

3.2 **University to Provide Salary and Benefits.** As set forth above in Section 1.2, the University shall provide Loaned Employee with Salary and Benefits. The University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including withholding and payment of payroll taxes, unemployment compensation, reimbursable expenses, worker’s compensation coverage, social security and providing any fringe and welfare benefit programs for Loaned Employee. The University is responsible for the payment of all items set forth in this Section 3.2 and any claims or losses resulting from the administration of compensation and employee benefits pursuant to any applicable law, including the Fair Labor Standards Act, the Employee Retirement Income Security Act, the Idaho Wage Claim Act and the Internal Revenue Code.

3.3 **No Prohibition on Leasing Employee to Foundation.** The University represents and warrants to the Foundation that there is no agreement with Loaned Employee nor any the University Policies that prohibits the University from leasing Loaned Employee to the Foundation pursuant to the terms of this Agreement. The University further represents and warrants that this

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<sup>1</sup> **Note for Using this Form:** For the loaned employee agreement for the Chief Executive Officer, change this Section to be consistent with Section 3.2.1.2 of the Operating Agreement.

Agreement does not affect Loaned Employee's eligibility for Benefits under the terms of all applicable University benefit plans.

**3.4 Foundation's Liability for Acts of Loaned Employee.** The University shall have no liability to the Foundation for loss or damage directly resulting from the fault, negligence, misconduct or other acts of Loaned Employee while Loaned Employee is performing activities on behalf of or at the direction of the Foundation. The Foundation therefore agrees that it is responsible for 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 the Foundation or others) arising out of or in connection with the activities of Loaned Employee performed on behalf of or at the direction of the Foundation. In no event shall the Foundation's aggregate liability to the University arising out of or related to this Agreement exceed \$500,000 for any one occurrence or accident. 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.

### **3.5 Compliance With Employment Discrimination Laws.**

**3.5.1 Compliance by University.** With respect to Loaned Employee, the University agrees to comply with all laws regarding employment discrimination, including 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. The University shall notify the Foundation within five business days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. The University shall be responsible for any claims or losses resulting from the University's failure to comply with any applicable employment discrimination laws.

**3.5.2 Compliance by Loaned Employee.** Loaned Employee remains subject to the rights and obligations established by applicable law and University Policies regarding employment discrimination. Nothing in this Agreement shall affect Loaned Employee's obligation to comply with applicable employment discrimination laws and University Policies.

**3.5.3 Compliance by Foundation Board.** The Foundation's Board of Directors ("**Foundation Board**") acknowledges the University and Loaned Employee's respective obligations to comply with applicable employment discrimination laws and University Policies and will not take any action to interfere with the University's or Loaned Employee's compliance with the same.

## **4. General Terms.**

**4.1 Term; Termination.** The term of this Agreement is congruent with the applicable term of employment between Loaned Employee and the University and will terminate on the same day that Loaned Employee's employment with the University is specified to end, unless terminated earlier upon the occurrence of any of the following:

**4.1.1 Termination by Foundation.** Foundation may terminate this Agreement and the services of Loaned Employee at any time by providing 14 days' notice to the University. Termination of this Agreement will not result in an automatic termination of Loaned Employee's Agreement for Loaned Employee ([last name of Loaned Employee])

employment with the University, which decision may be made by the University in its sole discretion and consistent with University Policies.

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

4.1.3 **Termination of Operating Agreement.** This Agreement terminates if the Operating Agreement, dated effective July 1, 2024, by and between the Parties ("**Operating Agreement**") terminates, effective the date on which the Operating Agreement terminates.

4.1.4 **Discontinued Employment of Loaned Employee by University.** The lease of Loaned Employee to the Foundation shall automatically terminate if Loaned Employee is no longer an employee of the University for any reason.

4.2 **Dispute Resolution.** The Parties agree that in the event of any dispute arising from the Parties' Agreements (as defined in Section 4.13), the Parties shall first attempt to resolve the dispute by working together with the appropriate personnel of each of the Parties. If the personnel cannot resolve the dispute within 30 days after the dispute arises, then the Foundation CEO and the University President ("**University President**") have 30 days to resolve the dispute. If the Foundation CEO and the University President cannot resolve the dispute within 30 days, then the Chair of the Foundation Board and the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively "**State Board**") have 30 days to resolve the dispute. If the dispute is not resolved by the Chair of the Foundation Board and State Board within 30 days, 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 the Parties' Agreements. 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, if awarded by a court of competent jurisdiction.

4.3 **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 University Policies, including policies regarding nonrenewal of fixed term appointments and termination or discipline.

4.4 **Interpretation.** In this Agreement: (a) the words "including", "include" and similar words are to be construed as being followed by the phrase "without limitation"; (b) the word "may" is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase "as amended from time to time."

4.5 **Notices.** Any notices required under this Agreement must be in writing and may be delivered: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the University:

University of Idaho  
Office of the President  
875 Perimeter Drive MS 3151  
Moscow, Idaho 83844-3151

cc: counsel@uidaho.edu

To the Foundation:

University of Idaho Foundation, Inc.  
[Chief Executive Officer / Chair of the Board of Directors]<sup>2</sup>  
875 Perimeter Drive MS 3143  
Moscow, Idaho 83844-3143

4.6 **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. 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. As independent entities, the University and the Foundation shall not be liable for any of the other Party's contracts, torts or other acts or omissions, or those of the other Party's trustees, directors, officers, employees or agents.

4.7 **Parties' Liability.** The Parties agree that each is responsible for any wrongful acts committed by them or their employees or agents arising out of their respective performance of this Agreement and that each Party may be found individually liable to persons injured by any such individual wrongful act, including liability of one Party to the other for injuries or liability arising out of such wrongful act. The University's liability for wrongful acts is governed by the Idaho Tort Claims Act ("Act"), Idaho Code, §§ 6-901 – 6-929, including limitations of liability to no more than \$500,000 for any one occurrence or accident, as set forth in the Act. The University's liability coverage is self-funded by the State of Idaho and administered by the State of Idaho Risk Management Program pursuant to the terms of the Act. In no event shall the Foundation's

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<sup>2</sup> **Note for Using this Form:** Use the position of Chief Executive Officer in all agreements except for the loaned employee agreement for the Chief Executive Officer.



aggregate liability to the University arising out of or related to this Agreement exceed \$500,000 for any one occurrence or accident.

4.8 **Assignment.** This Agreement is not assignable by either Party, in whole or in part.

4.9 **Modification.** Any modification to this Agreement shall be in writing, signed by both Parties and acknowledged by Loaned Employee.

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

4.11 **Waiver.** Waiver by either Party of any breach of any term, covenant or condition contained in this Agreement 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 contained in this Agreement.

4.12 **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.

4.13 **Entire Agreement.** This Agreement, the Operating Agreement and the agreements contemplated to be entered into by the Parties under the Operating Agreement, which are (a) the Lease Agreement by and between the Foundation and the University and (b) the Service Agreement (collectively with this Agreement and the Operating Agreement, “**Parties’ Agreements**”), constitute the entire agreement among the Parties pertaining to the Parties’ Agreements. In the event of any inconsistency between the provisions of the Parties’ Agreements and the provisions of the Operating Agreement, the provisions of the Operating Agreement shall control. If the Operating Agreement is amended at any time during the term of this Agreement, to the extent such amendments cause inconsistencies between this Agreement and the Operating Agreement, this Agreement shall be amended to cure such inconsistencies. This Agreement supersedes any prior written or oral statements related to the terms of this Agreement.

4.14 **Execution.** This Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

4.15 **Acknowledgment by Employee.** This Agreement shall be effective as of the Effective Date upon execution of this Agreement by the University and the Foundation and acknowledged by Loaned Employee pursuant to the signature blocks below.

(Signature page follows.)



The University and the Foundation have executed this Agreement on the date set forth below the Party's signature to be effective on the Effective Date.

**UNIVERSITY OF IDAHO**

**UNIVERSITY OF IDAHO  
FOUNDATION, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: [Chief Executive Officer / Chair of the  
Board of Directors]<sup>3</sup>

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

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

**Acknowledgment by Loaned Employee:**

Loaned Employee, by Loaned Employee's signature below, acknowledges the terms of this Agreement between the University and the Foundation and agrees that Loaned Employee is an employee of the University that is loaned to the Foundation pursuant to the terms of this Agreement. Loaned Employee further acknowledges that Loaned Employee is a loaned employee under the worker's compensation law of the state of Idaho. 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 the University, Loaned Employee will be precluded from recovering damages from the Foundation for such injury in accordance with the applicable state worker's compensation laws.

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

<sup>3</sup> **Note for Using this Form:** Use the position of Chief Executive Officer in all agreements except for the loaned employee agreement for the Chief Executive Officer.

**LEASE AGREEMENT**

This Lease Agreement (“**Lease**”) is entered into effective the 1st day of July, 2024 (“**Effective Date**”) by and between the Board of Regents of the University of Idaho, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the University of Idaho Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”). The University and the Foundation are sometimes referred to herein separately as a “**Party**” and collectively as the “**Parties.**”

1. **Grant.** University hereby leases to the Foundation and the Foundation hereby leases from the University the premises described in Exhibit A attached and all improvements thereon (the “**Premises**”) on the terms and conditions in this Lease.

2. **Term; Renewal.** The University demises the Premises for a three-year term (“**Initial Term**”) commencing on the Effective Date, and ending on June 30, 2027, and thereafter, this Lease shall automatically renew for three years terms (each a “**Renewal Term**” and, together with the Initial Term, “**Term**”), unless and until terminated in accordance with the terms and conditions contained in this Lease.

3. **Termination.** This Lease shall terminate upon the earlier of: (a) mutual written agreement of the University and the Foundation; (b) termination pursuant to the terms of this Lease; or (c) termination of that certain Operating Agreement, dated effective July 1, 2024, by and between the Parties (“**Operating Agreement**”).

4. **Rent.** The rent and payment terms for the Term of this Lease are set forth in that certain Service Agreement by and between the Parties dated effective July 1, 2024 (“**Service Agreement**”), and such terms on rent and payment are incorporated into this Lease by this reference.

5. **Use.** The Foundation will use the Premises to conduct activities set forth on the Operating Agreement. The Foundation will not use the Premises for any unlawful purpose.

6. **Condition of Premises.** The Premises are being leased in “as is” condition, and the University will have no obligation to perform any work to prepare the Premises for the Foundation’s use or occupancy. The Foundation’s taking occupancy of the Premises will be conclusive evidence of the Foundation’s acceptance of the Premises in their condition on the date of occupancy.

7. **Alterations.** The Foundation will not make any alterations, additions or improvements, in, to, on or about the Premises without first obtaining the written consent of the University’s real estate officer, which consent may be withheld, delayed or conditioned as determined by the University to be in the best interests of the University.

8. **Compliance with Laws.** The Foundation will comply with all statutes, ordinances, regulations, codes and other requirements of all governmental authorities now in force, or which may hereafter be in force, pertaining to the Premises or the use or occupancy thereof by the Foundation.

9. **Assignment and Subletting.** The Foundation will not assign this Lease or sublet or grant any right to use the Premises or any part thereof to any other person without the prior written consent of the University, which consent may be withheld, delayed or conditioned as may be determined by the University to be in the best interests of the University. Any assignment or subletting without the University's consent will be void. Any transfer of any legal or beneficial interest in the Foundation, including by merger, consolidation or liquidation, will constitute an assignment of this Lease under this Section 9.

10. **Utilities; Custodial Services; Maintenance.** All applications and connections for sewer, water, gas, electricity, telephone, telecommunication and other utility services for use of the Premises will be made by the University, and the University will be solely liable for such charges as they become due. The University agrees to provide custodial services, building and grounds maintenance and repairs on the Premises in the same fashion as provided for similar facilities owned by the University.

11. **Taxes and Assessments.** University is exempt from local property taxes. The Foundation will pay when due all taxes and assessments payable with respect to any personal property located on the Premises and any business conducted thereon.

12. **Entry and Inspection.** The Foundation will permit the University or the University's agents to enter upon the Premises, at reasonable times and upon reasonable notice, for the purpose of inspecting the same, performing any obligations or exercising rights of the University as contemplated in this Lease.

13. **Indemnification of the University.** The University will not be liable for any injury (including death) to the Foundation, its directors, officers, employees, agents, contractors or invitees (each a "**Foundation Party**"), or damage to or destruction of any property, occurring on the Premises or any part thereof or arising out of the use or occupancy of the Premises by the Foundation or any Foundation Party. The Foundation will indemnify and hold the University and its officers, employees and agents harmless from any action, cause of action, loss, cost, claim or expense, including reasonable attorneys' fees (collectively, "**Losses**"), arising out of the use or occupancy of the Premises by the Foundation or any Foundation Party or any breach by the Foundation of any provisions of this Lease, except to the extent caused by the gross negligence or willful misconduct of the University or its agents. Notwithstanding the foregoing, the maximum amount of indemnifiable Losses that may be recovered from the Foundation under this Section 13 shall be \$500,000. The provisions of this Section 13 will survive the expiration or termination of this Lease.

14. **Insurance.** The Foundation shall maintain insurance to cover the Premises, including activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

15. **Covenants.** The Foundation will, throughout the Term, keep the Premises in a good, safe and sanitary condition, ordinary wear and tear excepted.

16. **Eminent Domain.** If the Premises or any part thereof is taken by eminent domain so that that the Foundation's use or occupancy thereof is materially adversely affected, this Lease will,

at the option of either the Foundation or the University, terminate on the date when title vests pursuant to such taking. The rent will be apportioned as of the termination date, and any rent paid for any period beyond that date will be repaid to the Foundation. The Foundation will not be entitled to any part of the award for such taking or any payment in lieu thereof, but the Foundation may file a claim for any taking of fixtures and improvements owned by the Foundation and for moving expenses. If neither the Foundation nor the University elects to terminate this Lease, this Lease will remain unmodified and in full force and effect as to the remainder of the Premises.

17. **Destruction of Premises.** In the event of damage or destruction of the Premises or any improvements thereon during the Term, from any cause, the University will, within 30 days following the date of the damage or destruction, give notice to the Foundation of University's decision to either repair the Premises to a reasonably equivalent condition within 180 days or not repair the Premises. In the event University decides not to repair the Premises, the Foundation may, in its sole discretion, elect to terminate this Lease. If this Lease is not so terminated, the University will proceed diligently to make such repairs and reasonably restore the Premises or such improvements to their condition prior to the casualty, and with the amount of the proceeds of property insurance available therefor (plus any amounts the Foundation agrees to pay for such repairs) in accordance with then existing laws. Foundation will be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs will interfere with the business and activities conducted by the Foundation on the Premises and the Foundation will make the proceeds of insurance attributable to the Premises available to the University for such purpose.

18. **Event of Default.** An "Event of Default" will occur if (a) the Foundation fails to pay any rent on the date due, as set forth in the Service Agreement, and such failure is not cured within 10 days after notice from the University of such failure, or (b) the Foundation defaults in the performance of any of the other covenants or conditions of this Lease and the Foundation does not cure such default within 30 days after notice from the University specifying the nature of such default (or if the default is of a nature that it cannot be completely cured within the 30-day period, if the Foundation does not commence such curing within the 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the default).

19. **University's Remedies on Default.** Upon an Event of Default, the University will have the following remedies:

19.1 University may terminate this Lease upon notice to Foundation. On the date specified in such notice the Term of this Lease will terminate, and the Foundation will then quit and surrender the Premises to the University, but the Foundation will remain liable for any amounts due the University under the terms of this Lease less the reasonable rental value of the Premises. If this Lease will have been so terminated by the University, the University may at any time thereafter take possession of the Premises by any lawful means and remove the Foundation or other occupants and their effects from the Premises.

19.2 The University will be entitled to (a) unpaid past-due rent as of the date of the termination, plus interest at the rate of 5% per annum, but not in excess of the maximum rate allowed by applicable law ("**Default Interest**") and (b) unpaid rent as of the date of entry of

judgment, less any rent actually paid by a replacement tenant, plus Default Interest. University shall have no obligation to seek or secure a replacement tenant.

19.3 Should the Foundation at any time fail to do the acts required to be done by the Foundation under this Lease, the University, at its option and in addition to any other rights and remedies which the University may have, may (but will not be required to) do such act or cause the same to be done, and all sums expended by the University in connection with the performance thereof will be additional rent due and payable from the Foundation to the University upon demand, together with Default Interest.

The remedies of the University hereunder are cumulative and in addition to all other remedies the University may have in law or equity on account of any breach of this Lease.

20. **Surrender.** Upon the expiration of the Term or earlier termination of this Lease, the Foundation will surrender possession of the Premises to the University, broom clean and in the same condition as when the Foundation first occupied the Premises, ordinary wear and tear, casualty and condemnation excepted.

21. **Holding Over.** If the Foundation holds over after the expiration of the Term, without written agreement providing otherwise, the Foundation will be deemed to be a tenant from month to month, with rent, payable in advance, equal to 125% multiplied by the monthly rent last payable by the Foundation under this Lease.

22. **Equal Opportunity.** Each Party agrees not to discriminate against any employee or applicant for employment in the performance of this Lease with respect to tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, sex, color, religion, national origin, disability, ancestry, or status as a war veteran. Breach of this covenant may be regarded as a material breach of this Lease.

23. **Subordination; Nondisturbance; Quiet Enjoyment.** This Lease is and will be subordinated to all existing and future liens and encumbrances against the Premises; provided, however, that the Foundation's use and occupancy of the Premises will not be disturbed by the University or any person claiming through or under the University during the Term of this Lease so long as the Foundation is not in default hereunder. So long as the Foundation faithfully performs all of its obligations under this Lease, the Foundation will have the right to peacefully and quietly enjoy the Premises for the Term, subject to the terms and conditions of this Lease, such liens and encumbrances and all matters of record.

24. **Dispute Resolution.** The Parties agree that in the event of any dispute arising from the Parties' Agreements (as defined in Section 33), the Parties shall first attempt to resolve the dispute by working together with the appropriate personnel of each of the Parties. If the personnel cannot resolve the dispute within 30 days after the dispute arises, then the Chief Executive Officer of the Foundation ("**Foundation CEO**") and the University's President ("**University President**") have 30 days to resolve the dispute. If the Foundation CEO and the University President cannot resolve the dispute within 30 days, then the Chair of the Board of Directors of the Foundation ("**Foundation Board**") and the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively, "**State Board**") have 30 days to

resolve the dispute. If the dispute is not resolved by the Chair of the Foundation Board and State Board within 30 days, 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 the Parties' Agreements. 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, if awarded by a court of competent jurisdiction.

25. **Interpretation.** In this Lease: (a) the words "including", "include" and similar words are to be construed as being followed by the phrase "without limitation"; (b) the word "may" is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase "as amended from time to time."

26. **Notices.** Any notices required under this Lease must be in writing and may be delivered: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the University:

University of Idaho  
Office of the President  
875 Perimeter Drive MS 3151  
Moscow, Idaho 83844-3151

cc: counsel@uidaho.edu

To the Foundation:

University of Idaho Foundation, Inc.  
Chief Executive Officer  
875 Perimeter Drive MS 3143  
Moscow, Idaho 83844-3143

27. **No Third Party Beneficiaries.** The Parties acknowledge that there are no intended third-party beneficiaries of this Lease.

28. **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Lease, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. At all times and for all purposes of this Lease, the University and the Foundation shall act in an independent

capacity and not as an agent or representative of the other Party. As independent entities, the University and the Foundation shall not be liable for any of the other Party's contracts, torts or other acts or omissions, or those of the other Party's trustees, directors, officers, employees or agents.

29. **Modification.** Any modification to this Lease shall be in writing and signed by both Parties.

30. **Governing Law.** This Lease shall be governed by the laws of the State of Idaho.

31. **Waiver.** Waiver by either Party of any breach of any term, covenant or condition contained in this Lease 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 contained in this Lease.

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

33. **Entire Agreement.** This Lease, the Operating Agreement and the agreements contemplated to be entered into by the Parties under the Operating Agreement, which are (a) the Service Agreement and (b) the Agreements for Loaned Employee (collectively with this Lease and the Operating Agreement, "**Parties' Agreements**"), constitute the entire agreement among the Parties pertaining to the Parties' Agreements. In the event of any inconsistency between the provisions of the Parties' Agreements and the provisions of the Operating Agreement, the provisions of the Operating Agreement shall control. If the Operating Agreement is amended at any time during the Initial Term or a Renewal Term, to the extent such amendments cause inconsistencies between this Lease and the Operating Agreement, this Lease shall be amended to cure such inconsistencies.

34. **Execution.** This Lease may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the University and the Foundation have executed this Lease on the date set forth below the Party's signature to be effective on the Effective Date.

**THE BOARD OF REGENTS OF THE  
UNIVERSITY OF IDAHO**

By: \_\_\_\_\_  
Name: C. Scott Green  
Its: President

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

**UNIVERSITY OF IDAHO FOUNDATION,  
INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Chief Executive Officer

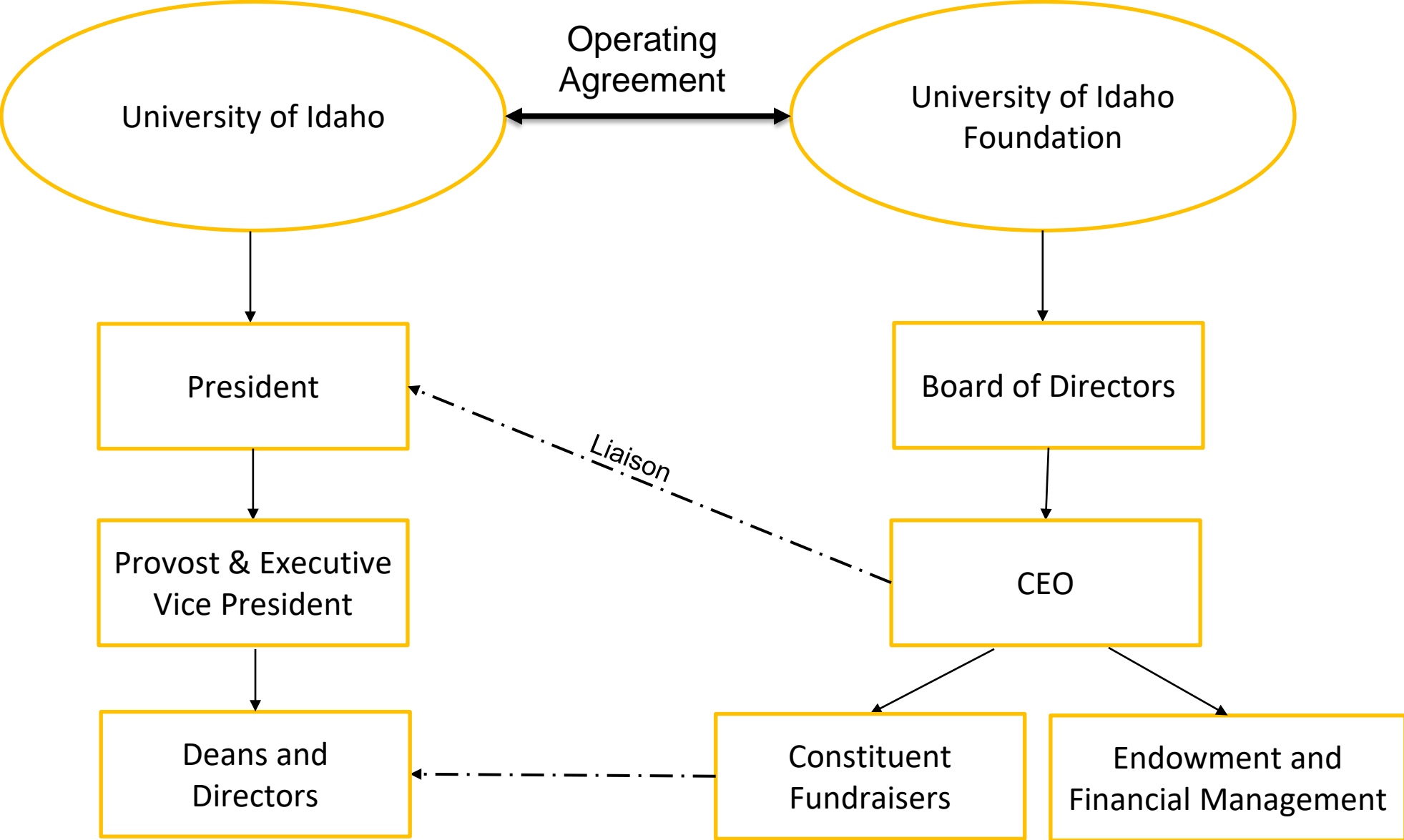
Date: \_\_\_\_\_



**EXHIBIT A**

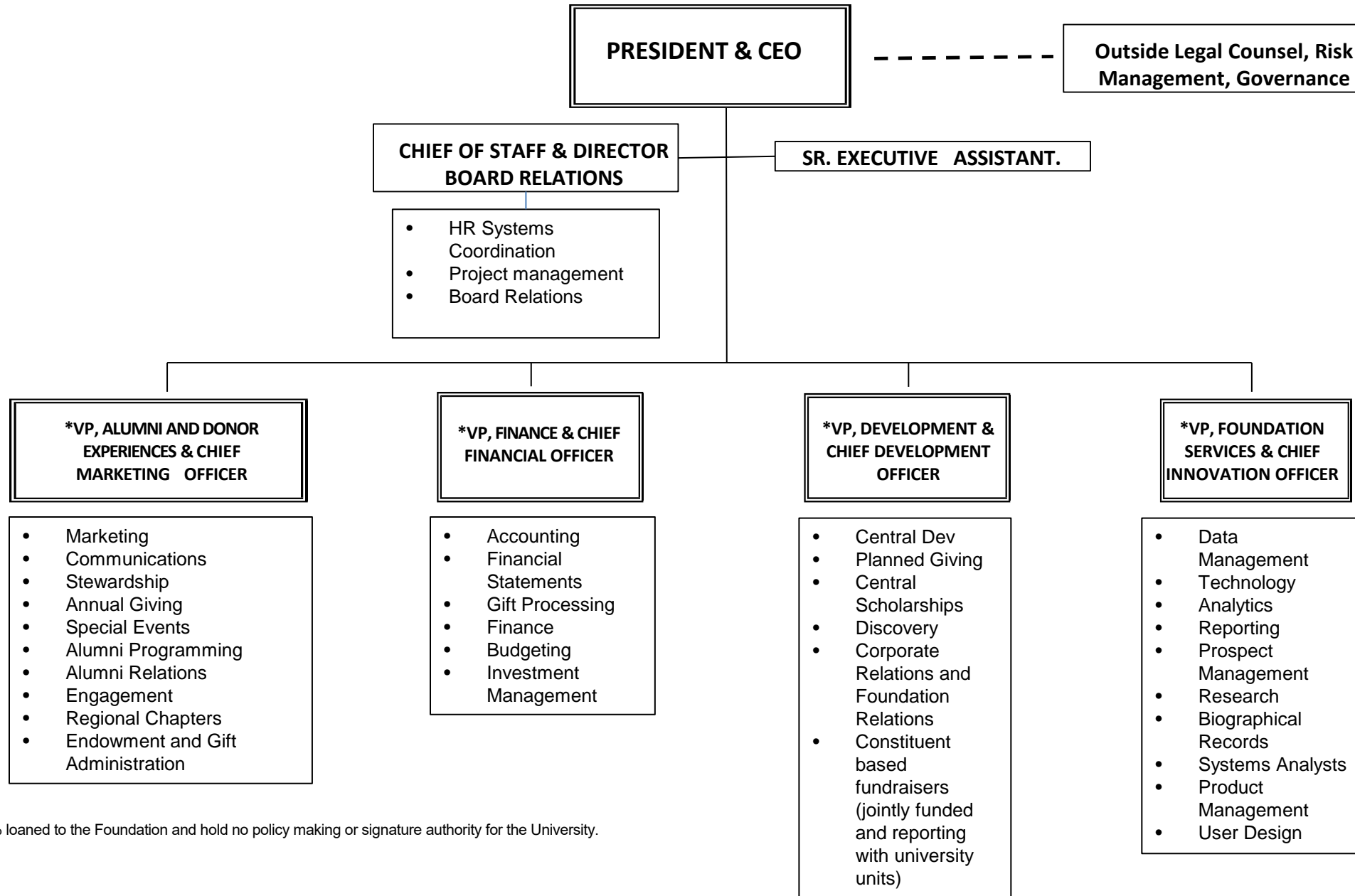
**DESCRIPTION OF PREMISES**

As of the Effective Date, the Premises consist of approximately 14,150 square feet leased by the University to the Foundation and are located: (a) on floor 1 and 2 of Hayes Hall, Moscow, Idaho; (b) on floor 1 Forney Hall, Moscow, Idaho; (c) on Floor 3 Water Center, Boise, Idaho; and (d) at the Coeur D'Alene Center, Coeur D'Alene, Idaho.



**Proposed: University of Idaho and Integrated University of Idaho Foundation Reporting Relationships**

# Proposed: UI Foundation-Advancement Integrated Functional Organization Chart



**\*Note:** VPs are 100% loaned to the Foundation and hold no policy making or signature authority for the University.

2024 OPERATING AGREEMENT

**BETWEEN**

THE UNIVERSITY OF IDAHO AND  
THE UNIVERSITY OF IDAHO FOUNDATION, INC.

**AND**

**INSTITUTION/AGENCY**

This 2024 Operating Agreement ~~between Foundation, Inc. and Institution/Agency~~ (“Operating Agreement”) is entered into ~~as of this~~ effective the 1st day of ~~\_\_\_\_\_, 20\_\_\_\_,~~ July, 2024 (“Effective Date”) by and between ~~Institution, herein known as “Institution/Agency”~~ the Board of Regents of the University of Idaho, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“University”), and the University of Idaho Foundation, Inc., an Idaho non-profit corporation (“Foundation”), and it is an amendment and restatement of the Operating Agreement entered into on October 21, 2016, as amended by the Amendment Agreement, dated October 1, 2023 (“Prior Operating Agreement”), which it fully replaces. The University and the Foundation are sometimes referred to herein ~~known~~ separately as a “Foundation” Party” and collectively as the “Parties.”

~~\_\_\_\_\_ WHEREAS, the Foundation was organized and incorporated in \_\_\_\_\_ for the purpose of generating voluntary private support from \_\_\_\_\_, \_\_\_\_\_, friends, corporations, foundations, and others for the benefit of the Institution/Agency.~~

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

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

~~\_\_\_\_\_ 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, soliciting cash, securities, real and intellectual property, and other private resources for the support of the Institution/Agency, and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.~~

a nonprofit corporation incorporated on September 23, 1970, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

~~WHEREAS, 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's mission of~~includes ~~the Foundation is to secure, manage and distribute~~solicitation, management and distribution of private ~~contributions and support to~~enhance the growth and development of the ~~Institution/Agency.~~University;

WHEREAS, the ~~Institution/Agency and~~ Foundation and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

~~WHEREAS, the Parties hereby acknowledge that they will at all times conform to and abide by the~~ Idaho State Board of Education's and the Board of Regents of the University of Idaho (collectively "State Board") have promulgated Governing Policies and Procedures; ~~regarding Financial Affairs and 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,~~ effective as of June 2019, as amended from time to time ("State Board's Policies and Procedures");

~~WHEREAS, Section V.E.2.b. of the State Board, for review's~~ Policies and re-approval. Procedures requires the University to enter into a written operating agreement with the Foundation that sets forth their operating relationship; and

WHEREAS, the Foundation and the ~~Institution/Agency~~University intend for this Operating Agreement to be the written operating agreement required by ~~State Board Policy~~Section V.E.2.b. of the State Board's Policies and Procedures.

NOW THEREFORE, in consideration of the mutual ~~commitments herein contained, and other good and valuable consideration, receipt of which is~~ covenants and undertakings herein, the University and the Foundation hereby ~~acknowledged, the Parties~~ agree as follows:

## **ARTICLE I**

### **Foundation's Purposes**

ARTICLE IFOUNDATION'S PURPOSES

The Foundation is the primary affiliated foundation responsible for ~~securing~~assisting the University in inspiring, soliciting, 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: (~~1a~~) 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); (~~2b~~) manage and invest the money and property it receives for the benefit of the Institution/AgencyUniversity; and (~~3c~~) support and assist the Institution/Agency in fundraising and University in donor relations. In carrying out its purposes, the Foundation shall not engage in activities that:— conflict with (~~1i~~) ~~conflict with~~ federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding ~~Federal~~federal Treasury Regulations); (~~2ii~~) ~~cause the Institution to be in violation of~~ applicable polices of the State Board; or (~~3iii~~) ~~conflict with~~ the role and mission of the Institution/AgencyUniversity.

**ARTICLE II****Foundation's Organizational Documents**ARTICLE IIFOUNDATION'S GOVERNING DOCUMENTS

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws ("Governing Documents") to the Institution/Agency—TheUniversity. All amendments of the Governing Documents shall also be provided to the University. Furthermore, the Foundation shall, 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/Agency shall provide all such documents to the State Board~~. Governing Documents.

**ARTICLE III****Institution/Agency Resources and Services**

~~1. Institution/Agency Employees.~~

### ARTICLE III

## UNIVERSITY RESOURCES AND SERVICES

### 3.1 Liaisons.

~~3.1.1 a. Institution/Agency/Foundation~~ University Liaison: ~~\_\_\_\_\_.~~ The Institution/Agency's Vice ~~University's President ("University President for Institution/Agency Advancement")~~ shall serve as the Institution/Agency ~~University's~~ Liaison ~~liaison~~ to the Foundation. ~~("University Liaison").~~ The duties and responsibilities of the University Liaison, which may be delegated by the University Liaison to a designee, include the following:

~~3.1.1.1 i. The Institution/Agency's Vice President for Institution/Agency Advancement~~ University Liaison shall be responsible for ~~coordinating the Institution/Agency's and~~ communicating with the Foundation regarding the Foundation's fundraising efforts and for ~~supervising and~~ coordinating ~~the~~ any administrative support provided by the ~~Institution/Agency~~ University to the Foundation.

~~3.1.1.2 ii. The Vice President for Institution/Agency Advancement or designee~~ University Liaison shall attend each meeting of the Foundation's Board of Directors ~~and shall report on behalf of the Institution/Agency ("Foundation Board")~~ as a non-voting advisor. The University Liaison will provide regular reports to the Foundation Board about the University's financial position and activities, including its use of gifts. The University Liaison may also report other information to the Foundation's Board of Directors that is pertinent to the common goals of the University and the Foundation.

~~3.1.1.3~~ The University Liaison will work with the Foundation to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

~~3.1.2~~ Foundation Liaison. The Chief Executive Officer of the Foundation ("Foundation CEO") will serve as the Foundation's liaison to the University ("Foundation Liaison"). The duties and responsibilities of the Foundation Liaison, which may be delegated by the Foundation Liaison to a designee, include the following:

~~3.1.2.1~~ The Foundation Liaison shall be responsible for communicating with the University regarding the Institution/Agency's coordination with the ~~Foundation's~~ fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

~~3.1.2.2~~ The Foundation Liaison may attend University leadership meetings as a non-policy making advisor. The Foundation Liaison will provide regular reports to the University about the Foundation's financial position and activities. The Foundation Liaison

may also report other information to the University that is pertinent to the common goals of the University and the Foundation.

3.1.2.3 The Foundation Liaison will work with University leadership to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

## 3.2 **Loaned Employees.**

3.2.1 ~~b. Managing Director-~~ **Foundation CEO.** The ~~Managing Director of the~~ Foundation CEO is an employee of the ~~Institution/Agency~~ University who is loaned to the Foundation. ~~All of the Managing Director~~ The Foundation CEO's services shall be provided directly to the Foundation as follows and as set forth in the applicable Loaned Employee Agreement (as defined below in Section 3.2.2):

3.2.1.1 ~~i. Duties.~~ The ~~Managing Director shall be~~ Foundation CEO is responsible for the strategy and planning for and the supervision and control of the day-to-day operations of the Foundation. ~~More specific duties of the Managing Director may be set forth in a written job description prepared by the~~

3.2.1.2 **Reporting Structure.** The Foundation CEO reports to and ~~attached to the Loaned Employee Agreement described in paragraph (iii) below. The Managing Director shall be subject to the control and~~ takes direction ~~of~~ from the Foundation Board. All other Loaned Employees (as defined below in Section 3.2.2) report to the Foundation CEO or another Loaned Employee designated by the Foundation CEO.

~~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 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.~~

3.2.1.3 **Vacancy.** In the event the Foundation CEO resigns or is terminated by the University, the Foundation terminates the Foundation CEO's Loaned Employment Agreement or the Foundation CEO otherwise ceases to provide services to the Foundation, hiring of the subsequent Foundation CEO shall be done in accordance with Foundation and University policies and applicable law.

3.2.2 ~~iii. Generally.~~ The University and the Foundation have entered and ~~the Institution/Agency shall~~ will enter into ~~a written~~ additional agreements (each such agreement, in the form of Exhibit "A" hereto, establishing that the Managing Director is an employee of the Institution/Agency but subject a **"Loaned Employee Agreement"**) for the loaning of Loaned Employees (as defined below) to the ~~direction and control of the~~ Foundation (generally a "Loaned Employee Agreement") by the University. The Loaned Employee Agreement Agreements shall ~~also~~ set forth the relative rights and responsibilities of the Operating Agreement



Foundation and the ~~Institution/Agency with respect to the Managing Director, including the following:~~

~~1. The Foundation shall have the right to choose~~ University. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned 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~~ subject to the exclusive day-to-day direction, control and supervision of the Foundation. The Foundation must provide the University with prior approval to: (a) post any position for hiring and (b) hire any employee that 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 the University intend to employ the be a 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. Other~~ before the University employs such individual. Notwithstanding the provisions in this Section 3.2, no University personnel other than a Loaned Employee shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Loaned Employees. ~~Other loaned employees providing services pursuant to~~ For purposes of this Operating Agreement shall also serve pursuant to a, “Loaned Employee Agreement” means all positions for which shall set forth their particular responsibilities and duties.

~~d. Other Institution/Agency Employees Holding Key Foundation or Administrative or Policy Positions: In the event the Institution/Agency and the Foundation determine it is appropriate for one or more additional Institution/Agency employees who function in a key administrative or policy making capacity for the Institution/Agency (including, but not limited to, any Institution/Agency Vice-President or equivalent position) to serve both the Institution/Agency 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/Agency employee.~~

~~e. Limited Authority of Institution/Agency Employees.~~ Notwithstanding the foregoing provisions, no Institution/Agency the Foundation and the University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to the Foundation by the University for the entire

12 months of the fiscal year and the Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year. No University employee who functions in a key administrative or policy making capacity for the Institution/Agency University (including, but not limited to, any Institution/Agency Vice-President or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, shall be a Loaned Employee with responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Foundation employees.

3.3 2. Support University Services. —The Institution/Agency shall provide administrative, financial, accounting, investment, and development As set forth in greater detail in the Service Agreement by and between the Foundation and the University (“Service Agreement”), the University shall charge the Foundation (“University Service Charge”) to provide administrative support in payroll processing (including payment), employee benefits (including administration and payment), travel support, event support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services to the Foundation, ~~as set forth~~ (collectively “University Services”). Except as specifically provided otherwise herein or in the Service Agreement ~~attached hereto as Exhibit "B" ("Service Agreement"). All Institution/Agency employees, all University personnel~~ who provide support services to the Foundation shall remain ~~Institution/Agency employees~~ University personnel under the direction and control of the ~~Institution/Agency~~ University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a ~~written~~ Loaned Employee Agreement. ~~The Foundation will pay directly to the Institution/Agency the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.~~

### 3.4 University Service Charge.

3.4.1 University Service Charge Formula. The University Service Charge shall be calculated as follows:

$$\frac{\text{University Service Charge}}{(80\% \times \text{Loaned Employee Payments}) + \text{Operating Expenses} + \text{OIT Costs} + \text{Operations Support Costs} + \text{Events Costs} + \text{Rent}}$$

3.4.2 Components of University Service Charge. Each of the components of the University Service Charge and the defined terms used in defining those components are defined as follows:

3.4.2.1 “Loaned Employee Payments” means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.

3.4.2.2 “Operating Expenses” means the portion of funds expended within the chart of accounts maintained by the University as part of the University’s financial services to the Foundation for the fiscal year related to contracts, programmatic support, marketing, communications, events, travel and office operations other than expenses that are a part of other components of the University Service Charge set forth in this Section 3.4.2.

3.4.2.3 “OIT Costs” means the Office of Information Technology (“OIT”) budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

3.4.2.4 “Operations Support Costs” means the sum of Payroll Support Costs, Accounts Payable Costs and HR Costs, which are defined as follows:

(a) “Payroll Support Costs” means the product of (a) \$2.25 (“Payroll Support Amount”), (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

(b) “Accounts Payable Costs” means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by \$7.00 (“Accounts Payable Amount”) and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

(c) “HR Costs” means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

3.4.2.5 “Events Costs” means the portion of the budget of the University’s Central Auxiliary Services comprised of the salaries and fringe benefits of University personnel dedicated to, and the expenses related to, the strategic events of the Foundation’s fundraising activities, which are Recognition Gala, Celebration of Scholarships, Shakespeare Festival and Red Carnation, for the fiscal year.

3.4.2.6 “Rent” means the square feet of the premises leased by the University to the Foundation multiplied by \$21.00 (“Rental Rate”) for the fiscal year.

### 3.4.3 Changes to Components of University Service Charge.

3.4.3.1 Generally. For the fiscal year commencing July 1, 2025 (“FY25”) or any fiscal year after FY25, each of the OIT Costs, Payroll Support Amount, Accounts Payable Amount and Rental Rate (each, a “Component”) may be adjusted as follows:

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(a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

3.4.3.2 **Discontinuation of Services.** If all services provided by the University to the Foundation in connection with any of the terms defined in Section 3.4.2 are discontinued in their entirety, then the defined term associated with such services discontinued shall be removed from the formula for calculating the University Service Charge set forth in Section 3.4.1.

3.5 **Foundation Services.** As set forth in greater detail in the Service Agreement, the Foundation shall charge the University (“**Foundation Service Charge**”) to provide asset management, investment, fundraising, alumni relations and certain information technology services to the University (collectively, “**Foundation Services**”).

### 3.6 **Foundation Service Charge.**

3.6.1 **Foundation Service Charge Formula.** The Foundation Service Charge shall be calculated as follows:

$$\frac{\text{Foundation Service Charge}}{\text{Cost to Raise a Dollar} \times \text{Fundraising Goal}} =$$

3.6.2 **Components of Foundation Service Charge.** For purposes of the formula set forth in Section 3.6, the cost associated with Foundation’s fundraising efforts to raise one dollar (“**Cost to Raise a Dollar**”) shall be \$0.20 (“**CRD Amount**”), which is based on current industry standards. The Foundation CEO and the University President shall collaboratively develop a list of vital goals (“**Vital Goals**”) that shall include a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year (“**Fundraising Goal**”).

### 3.6.3 **Changes to Components of Foundation Service Charge.**

3.6.3.1 **CRD Amount.** For FY25 or any fiscal year after FY25, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year’s CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year’s CRD Amount.

3.6.3.2 **Appropriations Holdback.** In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences, the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. The Foundation may modify the Foundation Services or reduce the number of Loaned Employees, in  
Operating Agreement

the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge pursuant to the process set forth in the Service Agreement, which will include adequate notice to the Parties and documentation of the changes.

3.7 **Process For Reconciliation; Payment.** The process for reconciling the University Service Charge and the Foundation Service Charge will be set forth in the Service Agreement. Pursuant to the terms of the Service Agreement, the Foundation shall, after the reconciliation process is complete, make a payment to the University in an amount equal to the net of the University Service Charge and the Foundation Service Charge if the net amount is owed by the Foundation to the University. In no event will the University be required to make a payment to the Foundation. Pursuant to the terms of the Service Agreement, the Foundation shall make a payment to the University in an amount equal to 20% multiplied by the Loaned Employee Payments.

3.8 ~~3.—Institution/Agency~~**University Facilities and Equipment.** The ~~Institution/Agency~~University shall provide the use of ~~the Institution/Agency's~~certain University office space ~~and equipment~~ to the Foundation upon ~~the terms agreed to by the Institution/Agency~~of use set forth in the Lease Agreement by and between the Foundation and the University ("Lease Agreement"). The ~~terms of use (including amount of rent) of the Institution/Agency's office space and equipment~~Rental Rate for the Foundation's use of facilities under the Lease Agreement shall be ~~as~~set forth in the Service Agreement.

~~4.—No Foundation Payments to Institution/Agency Employees. Notwithstanding any provision of this Operating Agreement to the contrary, the Foundation shall not make any payments directly to an Institution/Agency 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.~~

#### ARTICLE IV

#### MANAGEMENT AND OPERATION OF FOUNDATION

#### 4.1 ~~1.~~ Gift Solicitation.

4.1.1 ~~Authority~~**Form of Vice President for Institution/Agency Advancement Solicitation.** All Foundation gift solicitations shall ~~be subject to the direction and control of the Vice President for Institution/Agency Advancement.~~

a.—~~Form of Solicitation.~~ Any and all Foundation gift solicitations shall make clear to prospective donors that: (1a) the Foundation is a ~~separate legal and tax-exempt~~ entity, separate from the University, organized for the purpose of encouraging voluntary, private gifts,

trusts, assets and bequests for the benefit of the Institution/AgencyUniversity; and (2b) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board-of-Directors.

4.1.2 ~~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.

## 4.2 ~~2.~~ **Acceptance of Gifts.**

4.2.1 ~~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 University's prior written approval of the Institution/Agency of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the Institution/AgencyUniversity. Prior to any approval by the University, the University shall obtain approval of the State Board where State Board policy requires such approval.

4.2.2 ~~B.~~ **Acceptance of Gifts of Real PropertyEstate.** The Foundation shall conduct ~~adequate~~ due diligence on all gifts of real propertyestate that it receives. All gifts of real propertyestate that are intended ~~to be held and used solely~~ by the Institution/Agencydonor to be developed for the University's use or to otherwise house facilities of any kind for the University's use shall be approved by the State Board in accordance with State Board policy before ~~acceptance~~ such gifts are accepted by either the Institution/Agency and University or the Foundation. The University shall be responsible for obtaining this approval by the State Board. In cases where the real propertyestate is intended to be used by the Institution/AgencyUniversity in connection with carrying out its proper functions, the real propertyestate 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.

4.2.3 ~~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.

4.3 ~~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 Chief Financial Officer, Treasurer or other individual to whom such authority has been delegated by the Foundation's Board-of-Directors shall be responsible for transferring funds as authorized by the Foundation's Board-of-Directors. All transfers and expenditures noted in this Section 4.3 must comply with Section 501(c)(3) of the Internal Revenue Code and be consistent with the Foundation's sole mission to support the University.



4.3.1 ~~a~~-**Restricted Gift Transfers.** The Foundation may transfer restricted gifts to the University. Any such transferred restricted gifts will only be expended by the University pursuant to the terms of such restrictions. The Foundation shall inform the ~~Institution/Agency~~University officials into whose program or department ~~funds~~restricted gifts are transferred of ~~any~~all restrictions on the use of such ~~funds~~gifts and provide such officials with access to any relevant documentation concerning such restrictions. Such ~~Institution/Agency~~University officials shall account for such restricted ~~funds~~gifts separate from other program and department funds in accordance with applicable ~~Institution/Agency~~University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted ~~funds~~gifts.

4.3.2 ~~b~~-**Unrestricted Gift Transfers.** The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I ~~of this Operating Agreement.~~ The Foundation may make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with applicable law and University policies. If the Foundation elects to use unrestricted gifts to make grants to the ~~Institution/Agency~~University, such grants shall be made at such times and in such amounts as the Foundation's Board ~~of Directors~~ may determine in the Foundation Board's sole discretion.

#### 4.4 ~~4~~-**Foundation Expenditures and Financial Transactions.**

4.4.1 ~~a~~-**Signature Authority.** ~~The~~With respect to transactions between the Parties, the Foundation hereby designates the Foundation CEO, Chief Financial Officer and Treasurer of the Foundation as the ~~individual~~individuals with signature authority for the Foundation in all financial transactions. The Foundation ~~may supplement or change this designation with written notice to the Institution/Agency; provided, however, in~~CEO, Chief Financial Officer and Treasurer of the Foundation may also delegate signature authority on a temporary basis consistent with the Foundation's Bylaws to another Loaned Employee or a Foundation Board member. In no event may University personnel have authority to sign for the person with Foundation ~~signature authority~~ for financial transactions ~~be an Institution/Agency employee~~unless such individual is a Loaned Employee.

4.4.2 ~~b~~-**Expenditures.** All expenditures of the Foundation shall be ~~(4a)~~ consistent with ~~the charitable~~ purposes of the Foundation, and ~~(2b)~~ not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

4.5 ~~5~~-**~~Institution/Agency~~University Report on Distributed Funds.** On a regular basis, which shall not be less than annually, the ~~Institution/Agency~~University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the ~~Institution/Agency~~University. This report shall specify the restrictions on any restricted funds and the uses of such funds.

4.6 ~~6~~-**Transfer of ~~Institution/Agency~~University Assets to the Foundation.** No ~~Institution/Agency~~University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:

4.6.1 a.—A donor inadvertently directs a contribution to the Institution/Agency/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/gift shall be deposited in ~~an institutional~~ a University account and, except for transfers described in Sections 4.6.2 and 4.6.4, State Board approval will be required prior to the Institution/Agency/University's transfer of such funds to the Foundation.

4.6.2 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.

4.6.3 The University has raised scholarship funds through a University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship purposes for which the funds were raised.

4.6.4 c. ~~Transfers of a *de minimis* amount not to exceed \$10,000 from the Institution~~ The University transfers to the Foundation ~~provided such funds are for investment~~ any gift received by the University from a donor that meets the following criteria: (a) the gift is less than \$10,000; and (b) the gift will be invested by the Foundation for scholarship or other general Institution/Agency/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 Institution 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.~~

4.7 **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 the Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database. The Foundation is responsible for monitoring and controlling access to the financial records and protecting the security of the financial records. Accordingly, in providing information technology and financial services pursuant to the Parties' Agreements (as defined in Section 9.15), including data security and incident management, to the Foundation, the University's personnel will comply with the Foundation's data security plan and the security principle of least privilege to ensure that the security architecture is designed such that each University personnel is granted the minimum system resources and authorizations needed to perform the information technology or financial services for the Foundation. For convenience ~~purposes, however,~~ some Foundation expenses may be paid ~~through the Institution/Agency 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~~ by the University on the Foundation's behalf as described in more detail in Sections 3.4.2.2 and 3.4.2.4(b) and the Service Agreement.



4.8 ~~8.~~ **Insurance.** The Foundation shall maintain insurance to cover ~~theits~~ operations ~~and, including~~ activities of its directors, officers and ~~employees~~ Loaned Employees. The Foundation shall also maintain general liability coverage.

4.9 ~~9.~~ **Investment Policies.** All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy, which is attached hereto as Exhibit "~~C~~" A and incorporated herein; 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 University any updates to suchits investment policy ~~which updates, and upon such notice, Exhibit A~~ shall ~~also be attached hereto as Exhibit "C"~~ replaced with the updated investment policy.

4.10 ~~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~~ Governing Documents. The Foundation agrees to provide copies of ~~such Articles and Bylaws as well as~~ any subsequent amendments to ~~such documents~~ the Governing Documents to ~~both the Institution/Agency and the State Board. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and "E", respectively~~ University.

## ~~ARTICLE V~~

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

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

## ARTICLE V

### FOUNDATION RELATIONSHIP WITH THE UNIVERSITY

5.1 Access to Records. The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws and Foundation policies and guidelines. In addition, upon request of the Foundation, the University shall execute a proprietary and confidentiality agreement and instruct its employees and agents that all confidential information of the

Foundation shall be protected from disclosure. Except as specifically authorized under this Operating Agreement or any applicable proprietary and confidentiality agreement between the University and the Foundation, the University's access to Foundation records shall not include the donor database and all other data, materials and information of the Foundation pertaining to past, current or prospective donors ("**Confidential Donor Information**"), which may be accessed only by Loaned Employees.

## 5.2 ~~2. Record~~ **Records Management.**

### ~~A.~~

5.2.1 **Protection of Confidential Donor Information.** 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 shall be limited to the Institution/Agency's President and any designee of the Institution/Agency's President~~ Confidential Donor Information. The Foundation owns and controls the Confidential Donor Information. The Confidential Donor Information is proprietary to the Foundation and constitutes confidential information and trade secrets. The Foundation is responsible for monitoring and controlling access to the Confidential Donor Information and protecting the security of the Confidential Donor Information. Accordingly, in providing information technology services, including data security and incident management, to the Foundation, OIT will comply with (a) the Foundation's data security plan, (b) all Foundation policies and procedures regarding the access, use, disclosure, retention, deletion and processing of the Confidential Donor Information and (c) the security principle of least privilege to ensure that the security architecture is designed such that each OIT personnel is granted the minimum system resources and authorizations needed to perform the information technology support services for the Foundation.

5.2.2 ~~B.~~ **Maintenance of Records.** 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~~ Governing Documents, all necessary documents for compliance with ~~IRS~~ Internal Revenue Service regulations, all gift instruments, Confidential Donor Information and all other Foundation records as required by applicable laws.

5.3 ~~C.~~ **Inapplicability of State Laws.** The Foundation Board shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The Parties understand that the Foundation is not a public agency or a governing body as defined in the Idaho Code, including the Idaho Open Meetings Law and Public Records Act. Nothing in this Operating Agreement shall be construed as a waiver of the Foundation's right to assert these statutes do not apply to the Foundation as a separate charitable entity. Although the Foundation is a private entity and is not subject to the Idaho Public Records ~~Law~~ Act, the Foundation, while protecting personal and private information related to private ~~individuals, is encouraged~~ donors,

will endeavor, 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, the Institution grants the Association the limited, non-exclusive use of the name Institution, for use in its support of the Institution. The Association shall operate under the Institution's logotype in support of its organizational business and activities. Any use by the Association of the Institution's logotypes or other trademarks must be with prior approval of the Institution through the Office of Trademark Licensing and Enforcement.~~

5.4 Name and Marks. Each Party hereby is granted a general, non-exclusive, royalty-free license to use the name of the other Party, specifically: "The University of Idaho" and "The University of Idaho Foundation" and "The University of Idaho Foundation, Inc." in all activities conducted in association with or for the benefit of the other Party. Use of the other Party's name must be in a 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 names. Use of other marks must receive prior written approval.

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

5.6 ~~5.~~ **Establishing the Foundation's Annual Budget.** ~~The~~ After the Parties have completed the process described in the Service Agreement related to forecasting the Foundation Service Charge and the University Service Charge for the next fiscal year and prior to the start of such next fiscal year, the Foundation shall provide the ~~Institution/Agency~~ University President with the Foundation's proposed annual operating budget and capital expenditure plan (if any) ~~prior to the date, as approved by~~ 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~~ University's funding requests to the Foundation shall be communicated in writing by the University President to the Foundation's ~~Treasurer and Assistant Treasurer~~ CEO by April 1 of each year.

~~6. — Attendance of Institution/Agency's President at Foundation's Board of Director Meetings. — The Institution/Agency'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.~~

5.7 ~~7.~~ **Supplemental No Compensation of Institution/Agency Employees.** — Any supplemental compensation of ~~Institution/Agency~~ University Personnel 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/Agency~~, and the ~~Institution/Agency~~ shall then pay compensation to the employee in accordance with the ~~Institution/Agency's~~ normal

practice. No ~~Institution/Agency employee~~ University personnel shall receive ~~any~~ direct payments, compensation or other benefits ~~directly~~ from the Foundation.

**ARTICLE VI**  
**Audits and Reporting Requirements**

ARTICLE VI

AUDITS AND REPORTING REQUIREMENTS

6.1 ~~1.~~ **Fiscal Year.** The Foundation and the ~~Institution/Agency~~ University shall have the same fiscal year.

6.2 ~~2.~~ **Annual Audit.** ~~On an annual basis, the~~ The Foundation shall have an annual financial audit conducted in accordance with Generally Accepted Auditing Standards. Accordingly, the University will provide financial data to the Foundation to support the Foundation's annual audit. The audit shall be conducted by a qualified, an independent certified public accountant who is not a director or officer of the Foundation. ~~The annual~~ Such audit ~~will~~ shall be ~~provided on a timely basis to the Institution/Agency'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/Agency as defined by the Government Accounting Standards Board (GASB). Accordingly, the Institution/Agency 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, schedules reconciling the FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including~~ conducted at the same or similar time as the University audit and shall be reported to the Foundation Board and the University President. Such audit reports shall contain the Foundation's financial statements and the auditor's independent opinion regarding such financial ~~statements, and schedules shall be submitted to the Institution/Agency Office of Finance and Administration in sufficient time to incorporate the same into the Institution/Agency's statements.~~ All such reports and any accompanying documentation shall protect ~~donor privacy~~ Confidential Donor Information to the extent allowable by law.

6.3 ~~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~~ University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the ~~Institution/Agency and the State Board~~ University, at its own expense, may, at reasonable times, inspect and audit the Foundation's financial books and accounting records in accordance with Article V.

6.4 ~~4. Annual Reports to Institution/Agency~~ University President. ~~On a regular basis, which shall not be less than annually~~ Upon request, the Foundation shall provide a written report to the ~~Institution/Agency~~ University President setting forth the following items:

6.4.1 ~~a.~~ the annual financial audit report;

6.4.2 an annual report of the investment performance of the Consolidated Investment Trust and summary of funds held;

6.4.3 ~~b.~~—an annual report of Foundation transfers made to the ~~Institution/Agency~~ University, summarized by ~~Institution/Agency~~ University department;

6.4.4 ~~e.~~ an annual report of unrestricted funds received by the Foundation;

6.4.5 ~~d.~~ an annual report of unrestricted funds available for use during the current fiscal year;

6.4.6 ~~e.~~ a list of all of the Foundation's officers, directors, and ~~employees;~~

~~f. —a list of Institution/Agency employees for whom the Foundation made payments to the Institution/Agency for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment~~ Loaned Employees;

6.4.7 ~~g.~~ a list of all state and federal contracts and grants managed by the Foundation;

6.4.8 ~~h.~~ an annual report of the Foundation's major activities;

6.4.9 ~~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

6.4.10 ~~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 limited to the extent necessary to protect attorney-client privilege and litigation strategy.

## ~~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~~  
6.5 Reports to University Leadership. The Foundation will provide regular reports to certain University leadership (including the University President and the Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. Foundation

leadership, including the Foundation CEO and the Foundation’s lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information, which will remain in the possession of the Foundation. At the end of the fiscal year, the Chair of the Foundation Board and the Foundation CEO will meet with the University President to assess the Foundation’s successes and areas for improvement.

## ARTICLE VII

### CONFLICT OF INTEREST AND CODE OF ETHICS AND CONDUCT

7.1 Conflict of Interest Policy. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation’s conflict of interest policy is attached hereto as Exhibit “F”, ~~and its Code of Ethical Conduct is set forth as Exhibit “G”~~ and incorporated herein. The Foundation shall provide to the University any updates to the Foundation’s conflict of interest policy, and upon such notice, Exhibit B shall be replaced with the updated conflict of interest policy.

7.2 ~~2-~~Dual Representation. Under no circumstances may ~~an Institution/Agency~~ University personnel represent both the ~~Institution/Agency~~ University and the Foundation in any negotiation, ~~or~~ sign for both ~~entities~~ Parties in ~~transactions, or direct any other institution employee under their immediate supervision to sign for the related Party in a transaction between the~~ any transaction between the ~~Institution/Agency and~~ University and the Foundation, a Loaned Employee may not direct University personnel not loaned to the Foundation to sign for the University, and University personnel not loaned to the Foundation may not direct a Loaned Employee to sign for the Foundation. This shall not, ~~however,~~ prohibit ~~Institution/Agency employees~~ University personnel from drafting transactional documents that are subsequently provided to the Foundation for ~~its~~ the Foundation’s independent review, approval and use.

7.3 ~~3-~~Contractual Obligation of ~~Institution/Agency~~ University. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the ~~Institution/Agency~~ University without first obtaining the prior written approval of the ~~Institution/Agency~~ University. University approval of any such contract shall comply with policies of the State Board with respect to the State Board’s approval of ~~Institution/Agency~~ University contracts.

7.4 ~~4-~~Acquisition or Development ~~or~~ of Real Estate. The Foundation shall not acquire or develop real estate for the University’s use or otherwise build facilities for the ~~Institution/Agency~~ University’s use ~~without~~ unless the University first ~~obtaining~~ obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation ~~for the Institution/Agency~~, the ~~Institution/Agency~~ University shall notify the State Board, at the earliest possible date. ~~Any, of such proposed purchase for such purposes.~~ Furthermore, any such proposed purchase of real estate for the ~~Institution/Agency~~ University’s

use shall be a coordinated effort of the ~~Institution/Agency~~ University and the Foundation. Any notification by the University to the State Board required pursuant to this ~~paragraph~~ Section 7.4 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~~ law.

## ~~ARTICLE VIII~~ ~~General Terms~~

~~1. Effective Date. This~~

## ARTICLE VIII

### TERM, TERMINATION AND DISPUTE RESOLUTION

8.1 **Term.** The initial term of this Operating Agreement shall ~~be effective on the date set forth above~~ commence on the Effective Date and end on June 30, 2027, and thereafter, must be re-submitted to the State Board for re-approval every three years, or as otherwise requested by the State Board.

8.2 ~~2. Right to Terminate.~~ This Operating Agreement shall terminate upon the earlier of: (a) mutual written agreement of ~~both the~~ Parties. ~~In addition, either Party may, upon 90 days; (b) one year~~ prior written notice ~~to the other, terminate this Operating Agreement, and by either Party may to the other Party to~~ terminate this Operating Agreement ~~in the event the other~~ for any reason or no reason; or (c) a breach by a Party ~~defaults in the performance of its obligations and fails to cure the default~~ of any material provision of this Operating Agreement and such breach is not cured within 30 days after ~~receiving written~~ notice from the ~~non-defaulting~~ breaching Party specifying the nature of the default. ~~Should the Institution/Agency choose to terminate this Operating Agreement by providing 90 days written notice (or in if the event breach is of a default by the Foundation nature that is not it cannot be completely cured within the time frame set forth above, the Foundation may require the Institution/Agency to pay, within 180 days of written notice, all debt incurred by the Foundation on the Institution/Agency'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 that is not cured within the time frame set forth above, the Institution/Agency may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner~~ 30-day period, if the non-breaching Party does not commence such curing within the 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the breach). The Parties agree that in the event this Operating Agreement ~~shall terminate~~ terminates under this Section 8.2, 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)~~ in Section 8.3 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.~~

**8.3 3-Dispute Resolution.** The Parties agree that in the event of any dispute arising from ~~this Operating Agreement, they~~ the Parties' Agreements, the Parties shall first attempt to resolve the dispute by working together with the appropriate ~~staff members~~ personnel of each of the Parties. If the ~~staff~~ personnel cannot resolve the dispute within 30 days after the dispute arises, then the ~~dispute will be referred to the Chair of the Board of the~~ Foundation CEO and the Institution/Agency/University President have 30 days to resolve the dispute. If the ~~Foundation Board Chair~~ CEO and Institution/Agency/University President cannot resolve the dispute within 30 days, then the ~~dispute will be referred to~~ Chair of the Foundation ~~Chair~~ Board and the State Board ~~for resolution. If they are unable~~ have 30 days to resolve the dispute. ~~If the dispute is not resolved by the Chair of the Foundation Board and State Board within 30 days, the~~ Parties shall submit the dispute to mediation by an impartial third Party ~~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~~ the Parties' Agreements. 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, if awarded by a court of competent jurisdiction.

**8.4 Effect of Termination.** ~~Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.~~ For the avoidance of doubt, for so long as the University uses, retains, has access to or otherwise processes the Foundation's information, including Confidential Donor Information, the University shall continue to undertake those obligations set forth in the data security plan as well as any policies and procedures related to the processing of the Foundation's information. Should the University choose to terminate this Operating Agreement by providing one year prior written notice or in the event of a default by the Foundation that is not cured within the time frame set forth in Section 8.2, 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. Should the Foundation choose to terminate this Operating Agreement by providing one year prior written notice or in the event of a default by the University that is not cured within the time frame set forth in Section 8.2, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner.

## ARTICLE IX

### GENERAL TERMS

**9.1 4-Dissolution of Foundation.** ~~Consistent with provisions appearing in the~~ The Foundation's Bylaws and Articles of Incorporation, should include a clause stating that upon dissolution of the Foundation ~~cease to exist or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation, it shall transfer to the State Board (or Institution, 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 into the State Board in trust for~~ the use and benefit of the Institution/Agency/University.



9.2 ~~5.~~ State 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~~ as required by the then applicable State Board's Policies and Procedures (currently, Section V.E.) and as requested by the State Board.

~~6. — Modification. Any~~ If this Operating Agreement or any subsequent modification to the Operating Agreement or Exhibits hereto shall be in writing and signed by both Parties or restatement of this Operating Agreement is not submitted to the State Board pursuant to the State Board's Policies and Procedures, this Operating Agreement will continue to govern the relationship between the University and the Foundation until this Operating Agreement is replaced or terminated in accordance with the terms of this Operating Agreement.

9.3 ~~7.~~ Providing Document Documents to and Obtaining Approval from the Institution/Agency University. Unless otherwise ~~indicated~~ stated herein, ~~any time whenever~~ documents are to be provided to the ~~Institution/Agency University~~ or ~~any time whenever~~ the ~~Institution/Agency 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~~ President or an individual to whom such authority has been properly delegated by the ~~Institution/Agency's University~~ President.

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

9.5 Articles, Sections, Subsections and Subparagraphs. This Operating Agreement consists of text divided into Articles that are identified by roman numerals (for example, I, II and III), Sections that are identified by a number corresponding to the number of the Article of which the particular Section is a part followed by the number of the Section (for example, 1.1), subsections that are identified by numbers based on the order in which the subsections appear (for example, 1.1.1, 1.1.2 and 1.1.3) and subparagraphs that are identified by numbers based on the order in which the subparagraphs appear (for example, 1.1.1.1, 1.1.1.2 and 1.1.1.3). The organization is hierarchical, meaning that a reference to a division of this Operating Agreement includes all of its Sections, subsections and subparagraphs (for example, a reference to a Section includes the Section and all of its subsections and subparagraphs).

9.6 Interpretation. In this Operating Agreement: (a) the words "including", "include" and similar words are to be construed as being followed by the phrase "without limitation"; (b) the word "may" is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute,

regulation or any other document are to be construed as followed by the phrase “as amended from time to time.”

9.7 ~~9.~~ **Notices.** Any notices required under this Operating Agreement must be in writing and may be ~~mailed or delivered as follows:~~ (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the ~~Institution/Agency~~ University:

University of Idaho  
Office of the President

~~— Institution/Agency~~  
~~— Street Address~~  
~~— City, State and Zip~~

875 Perimeter Drive MS 3151  
Moscow, Idaho 83844-3151

cc: counsel@uidaho.edu

To the Foundation:

~~— Managing Director~~

University of Idaho Foundation, Inc.

~~— Street Address~~  
~~— City, State and Zip~~

Chief Executive Officer  
875 Perimeter Drive MS 3143  
Moscow, Idaho 83844-3143

9.8 ~~10.~~ **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Operating Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. At all times and for all purposes of this Memorandum of Understanding Operating Agreement, 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 and Foundation are~~ As independent entities, the University and neither the Foundation shall not be liable for any of the other Party's contracts,

torts, or other acts or omissions, or those of the other Party's trustees, directors, officers, ~~members or employees~~ or agents.

~~12. Indemnification. To the extent allowed by law, the Institution/Agency 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 liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §§ 6-901 et seq.~~

9.9 **Parties' Liability**. The Parties agree that each is responsible for any wrongful acts committed by them or their employees or agents arising out of their respective performance of this Operating Agreement and that each Party may be found individually liable to persons injured by any such individual wrongful act, including liability of one Party to the other for injuries or liability arising out of such wrongful act. The University's liability for wrongful acts is governed by the Idaho Tort Claims Act ("Act"), Idaho Code, §§ 6-901 – 6-929, including limitations of liability to no more than \$500,000 for any one occurrence or accident, as set forth in the Act. The University's liability coverage is self-funded by the State of Idaho and administered by the State of Idaho Risk Management Program pursuant to the terms of the Act. In no event shall the Foundation's aggregate liability to the University arising out of or related to this Operating Agreement exceed \$500,000 for any one occurrence or accident.

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

9.11 **Modification**. Any modification to this Operating Agreement other than the Exhibits shall be in writing and signed by both Parties. Modifications to the Exhibits shall be pursuant to Sections 4.9 and 7.1.

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

9.13 **Waiver**. Waiver by either Party of any breach of any term, covenant or condition contained in this Operating Agreement 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 contained in this Operating Agreement.

9.14 **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.

9.15 **16. Entire Agreement**. This Operating Agreement ~~constitutes~~ and the agreements contemplated to be entered into by the Parties under this Operating Agreement, which are (a) the Operating Agreement

Service Agreement, (b) Lease Agreement and (c) Loaned Employee Agreements (collectively with this Operating Agreement, “Parties’ Agreements”), constitute the entire agreement among the Parties pertaining to the ~~subject matter hereof,~~ Parties’ Agreements. In the event of any inconsistency between the provisions of the Parties’ Agreements, the provisions of this Operating Agreement shall control. This Operating Agreement amends, restates and replaces the Prior Operating Agreement and supersedes ~~all any~~ prior ~~agreements and understandings pertaining thereto~~ written or oral statements related to the terms of this Operating Agreement or the terms of the Prior Operating Agreement.

9.16 Execution. This Operating Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the ~~Institution/Agency~~ University and the Foundation have executed this Operating Agreement on the ~~above specified~~ date set forth below the Party's signature to be effective on the Effective Date.

THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO

By: \_\_\_\_\_  
Name: C. Scott Green  
Its: President

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

UNIVERSITY OF IDAHO FOUNDATION, INC.

\_\_\_\_\_  
~~Institution/Agency~~

By: \_\_\_\_\_  
Name: Linda Copple Trout  
Its: ~~President~~ Chair of the Board of Directors

\_\_\_\_\_  
~~Institution/Agency Foundation, Inc.~~

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Chairman

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

EXHIBIT "A"

INVESTMENT POLICY

~~Loaned Employee Agreement~~





EXHIBIT "B"

CONFLICT OF INTEREST POLICY

Service Agreement

**EXHIBIT "C"**

**Investment Policy**

**EXHIBIT "D"**

**Articles of Incorporation**

~~EXHIBIT "E"~~

Bylaws

**EXHIBIT "F"**

**Conflict of Interest Policy**

~~EXHIBIT "G"~~

~~Code of Ethical Conduct~~

Document comparison by Workshare Compare on Monday, December 4, 2023  
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Description	University of Idaho Foundation, Inc. - Operating Agreement with The University of Idaho (For SBOE Approval)(30322534.19)
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**2024 OPERATING AGREEMENT  
THE UNIVERSITY OF IDAHO AND  
THE UNIVERSITY OF IDAHO FOUNDATION, INC.**

This ~~agreement~~2024 Operating Agreement (“**Operating Agreement**”) is entered into effective the ~~21<sup>st</sup>~~ day of ~~October 2016~~July, 2024 (“**Effective Date**”) by and between the Board of Regents of the University of Idaho, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the University of Idaho Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”), and it is an amendment and restatement of the Operating Agreement entered into on ~~August 31, 2009~~October 21, 2016, as amended by the Amendment Agreement, dated October 1, 2023 (“**Prior Operating Agreement**”), which it fully replaces. The University and the Foundation are sometimes ~~collectively~~ referred to herein separately as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, the Foundation is a nonprofit corporation incorporated on September 23, 1970, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the Foundation’s mission includes the solicitation, management and distribution of private support to enhance the growth and development of the University;

WHEREAS, the Foundation and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

WHEREAS, the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively ~~the~~ “**State Board**”) have promulgated Governing Policies and Procedures regarding Financial Affairs and Gifts and Affiliated Foundations, effective as of ~~July 2008, and modified in October 2014~~June 2019, as amended from time to time (“**State Board’s Policies and Procedures**”), ~~which are attached hereto as Exhibit “A”;~~

WHEREAS, Section V.E.2.eb. of the State Board’s Policies and Procedures requires the University to enter into a written operating agreement with the Foundation that sets forth their operating relationship; and

WHEREAS, the Foundation and the University intend for this ~~agreement~~Operating Agreement to be the written operating agreement required by Section V.E.2.eb. of the State Board’s Policies and Procedures.

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein, the University and the Foundation hereby agree as follows:

~~ARTICLE I~~~~FOUNDATION'S PURPOSES~~ARTICLE IFOUNDATION'S PURPOSES

The Foundation is the primary affiliated foundation responsible for assisting the University in inspiring, soliciting, managing and distributing private support for the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and By-Laws, laws and the State Board's Policies and Procedures, the Foundation shall: (1a) ~~assist in the solicitation of~~ 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); (2b) manage and invest the money and property it receives for the benefit of the University; and (3c) 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 (1i) federal or state laws, rules and regulations (including, ~~but not limited to~~ all applicable provisions of the Internal Revenue Code and corresponding ~~Federal~~ federal Treasury Regulations); (2ii) applicable polices of the State Board; or (3iii) the role and mission of the University.

~~ARTICLE II~~~~FOUNDATION'S ORGANIZATIONAL DOCUMENTS~~ARTICLE IIFOUNDATION'S GOVERNING DOCUMENTS

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws ("Governing Documents") to the University. All amendments of ~~such documents~~ the Governing Documents shall also be provided to the University. Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any amendments to the ~~Foundation's Articles of Incorporation and Bylaws~~ Governing Documents.

**ARTICLE III****UNIVERSITY RESOURCES AND SERVICES**

~~A. University Employees.~~

**ARTICLE III****UNIVERSITY RESOURCES AND SERVICES****3.1 Liaisons.**

3.1.1 ~~1-University Liaison:~~ The University's ~~Vice~~ President ~~for~~ ("**University Advancement President**") shall serve as the University's liaison to the Foundation (~~the~~ "**University Liaison**"). The duties and responsibilities of the ~~Liaison are as follows~~ University Liaison, which may be delegated by the University Liaison to a designee, include the following:

3.1.1.1 a.—The University Liaison shall be responsible for communicating with the Foundation regarding the University Foundation's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

3.1.1.2 b.—The ~~Liaison or the~~ University Liaison's designee shall attend each meeting of the Foundation's Board of Directors ~~and shall report on behalf of the University~~ ("**Foundation Board**") as a non-voting advisor. The University Liaison will provide regular reports to the Foundation Board about the University's financial position and activities, including its use of gifts. The University Liaison may also report other information to the Foundation's Board of Directors that is pertinent to the common goals of the University and the Foundation.

3.1.1.3 The University Liaison will work with the Foundation to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

3.1.2 **Foundation Liaison.** The Chief Executive Officer of the Foundation ("**Foundation CEO**") will serve as the Foundation's liaison to the University ("**Foundation Liaison**"). The duties and responsibilities of the Foundation Liaison, which may be delegated by the Foundation Liaison to a designee, include the following:

3.1.2.1 The Foundation Liaison shall be responsible for communicating with the University regarding the University Foundation's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

3.1.2.2 The Foundation Liaison may attend University leadership meetings as a non-policy making advisor. The Foundation Liaison will provide regular reports to the University about the Foundation's financial position and activities. The Foundation Liaison may also report other information to the Foundation's Board of Directors University that is pertinent to the common goals of the University and the Foundation.

~~2. — Executive Director: The Executive Director of the Foundation~~

3.1.2.3 The Foundation Liaison will work with University leadership to set the Foundation’s goals relating to fundraising and engagement in support of the University’s priorities.

3.2 Loaned Employees.

3.2.1 Foundation CEO. The Foundation CEO is an employee of the University who is loaned to the Foundation. ~~All of the Executive Director~~The Foundation CEO’s services shall be provided directly to the Foundation as follows and as set forth in the applicable Loaned Employee Agreement (as defined below in Section 3.2.2):

3.2.1.1 a. Duties. The ~~Executive Director shall be~~Foundation CEO is responsible for the strategy and planning for and the supervision and control of the day-to-day operations of the Foundation. ~~More specific duties of the Executive Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in subparagraph c below. The Executive Director shall be subject to the control and direction of the Foundation.~~

~~b. — The Executive Director shall be an employee of the University and entitled to University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the Executive Director. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University’s employment of the Executive Director including such expenses as salary, payroll taxes, and benefits.~~

~~c. — The Foundation and the University shall enter into a written agreement, substantially in the form of Exhibit “B” hereto, establishing that the Executive Director is an employee of the University but subject to the direction and control of the Foundation (generally a “Loaned Employee Agreement”). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the Executive Director.~~

3.2.1.2 Reporting Structure. The Foundation CEO reports to and takes direction from the Foundation Board. All other Loaned Employees (as defined below in Section 3.2.2) report to the Foundation CEO or another Loaned Employee designated by the Foundation CEO.

3.2.1.3 d. Vacancy. In the event the ~~Executive Director~~Foundation CEO resigns, or is terminated according to by the terms of University, the Foundation terminates the Foundation CEO’s Loaned Employee Employment Agreement, or the Foundation CEO otherwise ~~leaves the employ of the University~~ceases to provide services to the Foundation, hiring of the subsequent ~~Executive Director~~Foundation CEO shall be done in accordance with Foundation procedures, and University procedures (including University equal employment procedures), policies and applicable law ~~(including laws applicable to the University).~~ The Foundation shall have the ability to terminate the.

3.2.2 Generally. The University and the Foundation have entered and will enter into additional agreements (each such agreement, a “Loaned Employee Agreement-upon notice to”) for the University as further set forth in the Loaned Employee Agreement loaning of Loaned Employees (as defined below) to the Foundation by the University. The Loaned Employee Agreements shall set forth the relative rights and responsibilities of the Foundation and the University. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation. The Foundation must provide the University with prior approval to: (a) post any position for hiring and (b) hire any employee that the Foundation and the University intend to be a ~~loaned employee~~ Loaned Employee before the University employs such individual.

~~e. Termination of the Executive Director in accordance with the Loaned Employee Agreement shall constitute grounds for a termination proceeding by the University or for non-renewal of the Executive Director’s contract with the University, if any.~~

~~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. Such loaned employees have no function at the University other than to act in their capacity as employees loaned to the Foundation.~~  
~~b. Notwithstanding the foregoing provisions in this Section 3.2, no University employee personnel other than an employee loaned to the Foundation a Loaned Employee shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Loaned Employees. For purposes of this Operating Agreement, “Loaned Employee” means all positions for which the Foundation and the University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to the Foundation by the University for the entire 12 months of the fiscal year and the Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year. No University employee who functions in a key administrative or policy making capacity for the University (including any Vice-President or equivalent position) shall be a Loaned Employee with responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Foundation employees.~~

3.3 B. Support Staff University Services. TheAs set forth in greater detail in the Service Agreement by and between the Foundation and the University (“Service Agreement”), the University shall charge the Foundation (“University Service Charge”) to provide administrative support in financial, accounting, investment and development payroll processing (including payment), employee benefits (including administration and payment), travel support, event support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data

and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services to the Foundation, ~~as set forth in the Service Agreement attached hereto as Exhibit "C" ("Service Agreement (collectively "University Services")~~). Except as specifically provided otherwise herein or in the Service Agreement, all University ~~employees~~personnel who provide support services to the Foundation shall remain University ~~employees~~personnel 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 Loaned Employee Agreement. ~~The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement or as otherwise determined by the agreement of the Parties.~~

### 3.4 University Service Charge.

3.4.1 University Service Charge Formula. The University Service Charge shall be calculated as follows:

$$\frac{\text{University Service Charge}}{\text{(80\% x Loaned Employee Payments) + Operating Expenses + OIT Costs + Operations Support Costs + Events Costs + Rent}}$$

3.4.2 Components of University Service Charge. Each of the components of the University Service Charge and the defined terms used in defining those components are defined as follows:

3.4.2.1 "Loaned Employee Payments" means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.

3.4.2.2 "Operating Expenses" means the portion of funds expended within the chart of accounts maintained by the University as part of the University's financial services to the Foundation for the fiscal year related to contracts, programmatic support, marketing, communications, events, travel and office operations other than expenses that are a part of other components of the University Service Charge set forth in this Section 3.4.2.

3.4.2.3 "OIT Costs" means the Office of Information Technology ("OIT") budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

3.4.2.4 "Operations Support Costs" means the sum of Payroll Support Costs, Accounts Payable Costs and HR Costs, which are defined as follows:

(a) “Payroll Support Costs” means the product of (a) \$2.25 (“Payroll Support Amount”), (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

(b) “Accounts Payable Costs” means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by \$7.00 (“Accounts Payable Amount”) and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

(c) “HR Costs” means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

3.4.2.5 “Events Costs” means the portion of the budget of the University’s Central Auxiliary Services comprised of the salaries and fringe benefits of University personnel dedicated to, and the expenses related to, the strategic events of the Foundation’s fundraising activities, which are Recognition Gala, Celebration of Scholarships, Shakespeare Festival and Red Carnation, for the fiscal year.

3.4.2.6 “Rent” means the square feet of the premises leased by the University to the Foundation multiplied by \$21.00 (“Rental Rate”) for the fiscal year.

### 3.4.3 Changes to Components of University Service Charge.

3.4.3.1 Generally. For the fiscal year commencing July 1, 2025 (“FY25”) or any fiscal year after FY25, each of the OIT Costs, Payroll Support Amount, Accounts Payable Amount and Rental Rate (each, a “Component”) may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

3.4.3.2 Discontinuation of Services. If all services provided by the University to the Foundation in connection with any of the terms defined in Section 3.4.2 are discontinued in their entirety, then the defined term associated with such services discontinued shall be removed from the formula for calculating the University Service Charge set forth in Section 3.4.1.

3.5 Foundation Services. As set forth in greater detail in the Service Agreement, the Foundation shall charge the University (“Foundation Service Charge”) to provide asset management, investment, fundraising, alumni relations and certain information technology services to the University (collectively, “Foundation Services”).

### 3.6 Foundation Service Charge.



3.6.1 Foundation Service Charge Formula. The Foundation Service Charge shall be calculated as follows:

$$\frac{\text{Foundation Service Charge}}{\text{Cost to Raise a Dollar} \times \text{Fundraising Goal}}$$

3.6.2 Components of Foundation Service Charge. For purposes of the formula set forth in Section 3.6, the cost associated with Foundation's fundraising efforts to raise one dollar ("**Cost to Raise a Dollar**") shall be \$0.20 ("**CRD Amount**"), which is based on current industry standards. The Foundation CEO and the University President shall collaboratively develop a list of vital goals ("**Vital Goals**") that shall include a goal for the amount of money the Foundation aims to raise through the Foundation's fundraising efforts for the upcoming fiscal year ("**Fundraising Goal**").

3.6.3 Changes to Components of Foundation Service Charge.

3.6.3.1 CRD Amount. For FY25 or any fiscal year after FY25, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year's CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year's CRD Amount.

3.6.3.2 Appropriations Holdback. In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences, the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. The Foundation may modify the Foundation Services or reduce the number of Loaned Employees, in the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge pursuant to the process set forth in the Service Agreement, which will include adequate notice to the Parties and documentation of the changes.

3.7 Process For Reconciliation; Payment. The process for reconciling the University Service Charge and the Foundation Service Charge will be set forth in the Service Agreement. Pursuant to the terms of the Service Agreement, the Foundation shall, after the reconciliation process is complete, make a payment to the University in an amount equal to the net of the University Service Charge and the Foundation Service Charge if the net amount is owed by the Foundation to the University. In no event will the University be required to make a payment to the Foundation. Pursuant to the terms of the Service Agreement, the Foundation shall make a payment to the University in an amount equal to 20% multiplied by the Loaned Employee Payments.

3.8 ~~C-~~ University Facilities and Equipment. The University ~~shaft~~shall provide the use of ~~the~~certain University's office space, ~~and associated services~~ to the Foundation's ~~employees~~ upon ~~the~~ terms ~~agreed to~~of use set forth in the Lease Agreement by ~~the University and between~~ the Foundation. ~~The terms of use (including amount of rent) of~~ and the University's



~~office space, and associated services~~ (“Lease Agreement”). The Rental Rate for the Foundation’s use of facilities under the Lease Agreement shall be ~~as~~ set forth in the Service Agreement.

~~D. No Foundation Payments to University Employees. Notwithstanding any contrary 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.~~

## ARTICLE IV ~~ARTICLE IV~~

### MANAGEMENT AND OPERATION OF FOUNDATION

#### 4.1 ~~A.~~ Gift Solicitation.

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

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

#### 4.2 ~~B.~~ Acceptance of Gifts.

4.2.1 ~~1.~~ **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 University’s prior written approval of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University. Prior to any approval by the University, the University shall obtain approval of the State Board where State Board policy requires such approval.

4.2.2 ~~2.~~ **Acceptance of Gifts of Real ~~Property~~ Estate.** The Foundation shall conduct due diligence on all gifts of real ~~property~~ estate that it receives. All gifts of real ~~property~~ estate that are intended solely by the donor to be developed for the University’s use or to otherwise house facilities of any kind for the University’s use shall be approved by the State Board in accordance with State Board policy before such gifts are accepted by either the University or the Foundation. The University shall be responsible for obtaining this approval by the State Board. In cases where the real ~~property~~ estate is intended to be used by the University in connection with carrying out its proper functions, the real ~~property~~ estate 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.

4.2.3 ~~3.~~ **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.

4.3 ~~C.~~ **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 Chief Financial Officer, Treasurer or other individual to whom such authority has been delegated by the Foundation's ~~Board of Directors~~ shall be responsible for transferring funds as authorized by the Foundation's ~~Board of Directors~~. All transfers and expenditures noted in this Section 4.3 must comply with Section 501(c)(3) of the Internal Revenue Code and be consistent with the Foundation's sole mission to support the University.

4.3.1 ~~1.~~ **Restricted Gift Transfers.** The Foundation may transfer restricted gifts to the University. Any such transferred restricted gifts will only be expended by the University pursuant to the terms of such restrictions. The Foundation shall inform the University officials into whose program or department restricted gifts are transferred of all restrictions on the use of such gifts and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted gifts 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 gifts.

4.3.2 ~~2.~~ **Unrestricted Gift Transfers.** The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I ~~of this Operating Agreement~~. The Foundation may make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with ~~state~~ applicable law and University policies. If the Foundation elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as the Foundation's ~~Board of Directors~~ may determine in ~~such~~ the Foundation Board's sole discretion.

#### 4.4 ~~D.~~ **Foundation Expenditures and Financial Transactions.**

4.4.1 ~~1.~~ **Signature Authority.** ~~The~~ With respect to transactions between the Parties, the Foundation hereby designates the Foundation ~~Chairman~~ CEO, Chief Financial Officer and Treasurer of the Foundation as the individuals with signature authority for the Foundation in all financial transactions. The Foundation's ~~CEO, Chief Financial Officer and~~ CEO, Chief Financial Officer and Treasurer of the Foundation may also delegate signature authority on a temporary basis consistent with the Foundation's Bylaws to another ~~Foundation employee, an employee loaned to the Foundation,~~ Loaned Employee or a Foundation Board member ~~who is not a University employee~~. In no event may University personnel have authority to sign for the ~~person with~~ Foundation ~~signature authority~~ for financial transactions ~~be a University employee,~~ unless such individual is ~~an employee who is loaned to the Foundation~~ a Loaned Employee.

4.4.2 ~~2.~~ **Expenditures.** All expenditures of the Foundation shall be (4a) consistent with the purposes of the Foundation, and (2b) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

**4.5 E. 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.

**4.6 F. 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:

**4.6.1 1.** A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such gift shall be deposited in a University account and, except for transfers described in ~~subsections 2~~ Sections 4.6.2 and ~~4 of this Section~~ 4.6.4, State Board approval will be required prior to the University's transfer of such funds to the Foundation.

**4.6.2 2.** 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.

**4.6.3 3.** The University has raised scholarship funds through a University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship purposes for which the funds were raised.

**4.6.4 4.** The University transfers to the Foundation any gift received by the University from a donor that meets the following criteria: (i) the gift is less than \$10,000; and (ii) the gift will be invested by the Foundation for scholarship or other general University support purposes. ~~This subsection, however, shall not apply to payments by the University to the Foundation for University obligations to the Foundation, operating expenses of the Foundation or other costs of the Foundation.~~

**4.7 G. Separation of Funds.** All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using the Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database ~~that is protected by separate password only access.~~ The Foundation is responsible for monitoring and controlling access to the financial records and protecting the security of the financial records. Accordingly, in providing information technology and financial services pursuant to the Parties' Agreements (as defined in Section 9.15), including data security and incident management, to the Foundation, the University's personnel will comply with the Foundation's data security plan and the security principle of least privilege to ensure that the security architecture is designed such that each University personnel is granted the minimum system resources and authorizations needed to perform the information technology or financial services for the Foundation. For convenience, however, some Foundation expenses may be paid ~~through~~ by 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~~ on the

Foundation's behalf as described in more detail in Sections 3.4.2.2 and 3.4.2.4(b) and the Service Agreement.

**4.8 H-Insurance.** ~~To the extent that the Foundation is not covered by the State of Idaho Retained Risk Program, the~~The Foundation shall maintain insurance to cover ~~the~~its operations ~~and, including~~ activities of its directors, officers and ~~employees~~Loaned Employees. The Foundation shall also maintain general liability coverage.

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

**4.10 J-Organization Structure of the Foundation.** The organizational structure of the Foundation is set forth in the ~~Foundation's Articles of Incorporation, which are attached hereto as Exhibit "E" and the Foundation's By-Laws, which are attached at Exhibit "F"~~Governing Documents.<sup>2</sup> The Foundation agrees to provide copies of any subsequent amendments to ~~such documents~~the Governing Documents to the University.

~~K.—Conflicts of Interest. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "G."~~

## ARTICLE V ~~ARTICLE V~~

### FOUNDATION ~~RELATIONSHIPS~~RELATIONSHIP WITH THE UNIVERSITY

**5.1 A-Access to Records.** The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws, ~~and~~ and Foundation policies, ~~and~~ and guidelines. In addition, upon request of the Foundation, the University shall execute a proprietary and confidentiality agreement and instruct its ~~agents and employees~~ and agents that all confidential information of the Foundation shall be protected from disclosure. Except as specifically authorized under this Operating Agreement or any applicable proprietary and confidentiality agreement between the University and the Foundation, the University's access to Foundation records shall not include ~~donor specific data of the Foundation such that would provide individually identifiable information about donors or their donations made to the Foundation~~the donor database and all other data, materials and information of the Foundation pertaining to past, current or prospective donors ("Confidential Donor Information"), which may be accessed only by Loaned Employees.

~~B.~~

## 5.2 **Records Management.**

~~1. The University acknowledges that in most cases the University is the primary recipient and depository of confidential donor information. The Parties recognize, however, 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. 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. The donor database and all other data, materials and information of the Foundation and the University pertaining to past, current or prospective donors, are proprietary to the Foundation and the University respectively and constitute confidential information and trade secrets. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of computer servers and software relevant to the database, in each case to the extent that these systems are in their respective control.~~

5.2.1 **Protection of Confidential Donor Information.** The Parties recognize that the records of the Foundation relating to actual or potential donors contain Confidential Donor Information. The Foundation owns and controls the Confidential Donor Information. The Confidential Donor Information is proprietary to the Foundation and constitutes confidential information and trade secrets. The Foundation is responsible for monitoring and controlling access to the Confidential Donor Information and protecting the security of the Confidential Donor Information. Accordingly, in providing information technology services, including data security and incident management, to the Foundation, OIT will comply with (a) the Foundation's data security plan, (b) all Foundation policies and procedures regarding the access, use, disclosure, retention, deletion and processing of the Confidential Donor Information and (c) the security principle of least privilege to ensure that the security architecture is designed such that each OIT personnel is granted the minimum system resources and authorizations needed to perform the information technology support services for the Foundation.

5.2.2 **Maintenance of Records.** The Foundation shall be responsible for maintaining all permanent records of the Foundation, including ~~but not limited to the Foundation's Articles, By-Laws and other governing documents~~ Governing Documents, all necessary documents for compliance with ~~IRS~~ Internal Revenue Service regulations, all gift instruments, Confidential Donor Information and all other Foundation records as required by applicable laws.

5.3 **3.-Inapplicability of State Laws.** The Foundation's ~~Board of Directors~~ shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The ~~parties~~ Parties understand that the Foundation is not a public agency or a governing body as defined in the Idaho Code ~~and, including the Idaho Open Meeting Meetings Law and Access to Public Records Statutes Act.~~ Nothing in this Operating Agreement shall be construed as a waiver of the Foundation's right to assert ~~exemption from~~ these statutes do not apply to the Foundation as a separate charitable entity. Although the Foundation is a private entity and is not subject to the Idaho Public Records Act, the Foundation, while protecting personal and private

information related to private donors, will endeavor, 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.

5.4 ~~C.~~ **Name and Marks.** Each Party hereby is granted a general, non-exclusive, royalty-free license to use the ~~corporate~~ name of the other Party, specifically: “The University of Idaho” and “The University of Idaho Foundation” and “The University of Idaho Foundation, Inc.” in all activities conducted in association with or for the benefit of the other Party. Use of the other Party’s name must be in a 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~~names. Use of other marks must receive prior written approval.

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

5.6 ~~E.~~ **Establishing *the* Foundation’s Annual Budget.** ~~The~~After the Parties have completed the process described in the Service Agreement related to forecasting the Foundation Service Charge and the University Service Charge for the next fiscal year and prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation’s proposed annual operating budget and capital expenditure plan (if any) ~~prior to the date, as approved by~~ 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 by the ~~President of the~~ University President to the Foundation’s ~~Treasurer~~ CEO by April 1 of each year.

~~F. — Attendance of the University’s President at Foundation’s Board of Director Meetings. The Foundation may invite the University’s President to attend meetings of the Foundation’s Board of Directors and may act in an advisory capacity in such meetings.~~

5.7 ~~G.~~ **Supplemental No Compensation of University ~~Employees~~ Personnel by Foundation.** No University ~~employee~~personnel shall receive direct payments, compensation, or other benefits ~~from the Foundation, provided that the Foundation may pay for those benefits which are necessary for its normal course of operation, including, but not limited to, travel and continuing professional education. Any such payment must be paid by the Foundation to the University and the University shall then pay or reimburse 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~~  
ARTICLE VI

AUDITS AND REPORTING REQUIREMENTS

6.1 ~~A.~~ **Fiscal Year.** The Foundation and the University shall have the same fiscal year.

6.2 ~~B.~~ **Annual Audit.** The Foundation shall have an annual financial audit conducted in accordance with ~~Government Accounting~~ Generally Accepted Auditing Standards ~~Board or Financial Accounting Standards Board principles as appropriate.~~ Accordingly, the University will provide financial data to the Foundation to support the Foundation's annual audit. The audit shall be conducted by an independent certified public accountant who is not a director or officer of the Foundation. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to the Foundation's Board ~~of Directors~~ and the University President. Such audit reports shall contain the Foundation's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect ~~donor privacy~~ Confidential Donor Information to the extent allowable by law.

6.3 ~~C.~~ **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, at its own expense, may, at reasonable times, inspect and audit the Foundation's financial books and accounting records in accordance with Article V, ~~A~~ above.

6.4 ~~D.~~ **Annual Reports to University President.** Upon request, the Foundation shall provide a written report to the University President setting forth the following items:

6.4.1 ~~1.~~ the annual financial audit report;

6.4.2 an annual report of the investment performance of the Consolidated Investment Trust and summary of funds held;

6.4.3 ~~2.~~ an annual report of Foundation transfers made to the University, summarized by University department;

6.4.4 ~~3.~~ an annual report of unrestricted funds received by the Foundation;

6.4.5 ~~4.~~ an annual report of unrestricted funds available for use during the current fiscal year;

6.4.6 ~~5.~~ a list of all of the Foundation's officers, directors, ~~and employees;~~

~~6. — a list of University employees for whom the Foundation made payments to the University for approved purpose during the fiscal year, and the amount and nature of each payment~~ and Loaned Employees;

6.4.7 ~~7.~~ a list of all state and federal contracts and grants managed by the Foundation;

6.4.8 ~~8.~~ an annual report of the Foundation's major activities;

6.4.9 ~~9.~~ 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

6.4.10 ~~10.~~ an annual report of any actual litigation involving the Foundation during its fiscal year, identification of legal counsel used by the Foundation for any purpose during such year, and identification of any potential or threatened litigation involving the Foundation limited to the extent necessary to protect attorney-client privilege and litigation strategy.

6.5 **Reports to University Leadership.** The Foundation will provide regular reports to certain University leadership (including the University President and the Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. Foundation leadership, including the Foundation CEO and the Foundation's lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information, which will remain in the possession of the Foundation. At the end of the fiscal year, the Chair of the Foundation Board and the Foundation CEO will meet with the University President to assess the Foundation's successes and areas for improvement.

## ARTICLE VII~~ARTICLE VII~~

### CONFLICT OF INTEREST AND CODE OF ETHICS AND CONDUCT

7.1 ~~A. *Conflicts*~~ **Conflict of Interest Policy** ~~Statement.~~ The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's ~~Conflict~~ conflict of Interest Policy as of the date of this Operating Agreement ~~interest policy~~ is attached hereto as Exhibit "G," ~~B~~ and ~~may be amended and/or restated by the Foundation from time to time~~ incorporated herein. The Foundation shall provide to the University any updates to the Foundation's conflict of interest policy, and upon such notice, Exhibit B shall be replaced with the updated conflict of interest policy.

7.2 ~~B.~~ **Dual Representation.** Under no circumstances may ~~a~~ University employee ~~personnel~~ represent both the University and the Foundation in any negotiation, ~~or~~ sign for both Parties in transactions, or direct any other University employee under their immediate supervision to sign for the related Party in any transaction. For any transaction between the University and the Foundation, a Loaned Employee may not direct University personnel not loaned to the Foundation to sign for the University, and University personnel not loaned to the Foundation may not direct a Loaned Employee to sign for the Foundation. This shall not, however, prohibit University ~~employees~~ personnel from drafting transactional documents that are



subsequently provided to the Foundation for the Foundation's independent review, approval and use.

7.3 ~~C.~~ **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 the State Board's approval of University contracts.

7.4 ~~D.~~ **Acquisition or Development ~~of~~ Real Estate.** The Foundation shall not acquire or develop real estate for the University's use or otherwise build facilities for the University's use unless the University first obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification by the University to the State Board required pursuant to this Section 7.4 may be made through the State Board's chief executive officer in executive session pursuant to Idaho ~~Code Section 67-2345(l)(e)~~law.

## **ARTICLE VIII**

### **GENERAL TERMS**

~~A.~~ *Effective Date*

## ARTICLE VIII

### TERM, TERMINATION AND DISPUTE RESOLUTION

8.1 **Term.** ~~This~~ The initial term of this Operating Agreement shall ~~be effective on the date set forth above~~ commence on the Effective Date and end on June 30, 2027, and thereafter, must be re-submitted to the State Board for re-approval every three years, or as otherwise requested by the State Board.

8.2 ~~B.~~ **Right to Terminate.** This Operating Agreement shall terminate upon the earlier of: (a) mutual written agreement of both the Parties. ~~In addition, either Party may, upon 90 days;~~ (b) one year prior written notice ~~to the other, terminate this Operating Agreement, and by~~ either Party may to the other Party to terminate this Operating Agreement ~~in the event the other~~ for any reason or no reason; or (c) a breach by a Party ~~defaults in the performance of its obligations and fails to cure the default of any material provision of this Operating Agreement and such breach is not cured~~ within 30 days after ~~receiving written~~ notice from the non-~~defaulting~~ breaching Party specifying the nature of the default. ~~Should the University choose to terminate this Operating Agreement by providing 90 days written notice (or in if the event breach is~~ of a default by the Foundation ~~nature that is not~~ it cannot be completely 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~~30-day period, if the non-breaching Party does not commence such curing within the 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the breach). The Parties agree that in the event this Operating Agreement ~~shall terminate~~terminates under this Section 8.2, 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~~dispute resolution mechanism described ~~below (through reference to the Foundation's Chairman and the State Board)~~in Section 8.3 to further attempt to negotiate a new agreement. ~~Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.~~

**8.3 ~~C-~~Dispute Resolution.** The Parties agree that in the event of any dispute arising from ~~this Operating Agreement, they~~the Parties' Agreements, the Parties shall first attempt to resolve the dispute by working together with the appropriate ~~staff members~~personnel of each of the Parties. If the ~~staff~~personnel cannot resolve the dispute within 30 days after the dispute arises, then the ~~dispute will be referred to the~~Foundation's Chairman CEO and the University's President have 30 days to resolve the dispute. If the ~~Foundation's Chairman CEO~~and the University's President cannot resolve the dispute within 30 days, then the ~~dispute will be referred to~~Chair of the Foundation's Chairman Board and the State Board ~~for resolution~~have 30 days to resolve the dispute. If the dispute is not resolved by the ~~mentioned Parties, the University and~~Chair of the Foundation Board and State Board within 30 days, 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~~the Parties' Agreements. 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, if awarded by a court of competent jurisdiction.

**8.4 Effect of Termination.** ~~Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.~~ For the avoidance of doubt, for so long as the University uses, retains, has access to or otherwise processes the Foundation's information, including Confidential Donor Information, the University shall continue to undertake those obligations set forth in the data security plan as well as any policies and procedures related to the processing of the Foundation's information. Should the University choose to terminate this Operating Agreement by providing one year prior written notice or in the event of a default by the Foundation that is not cured within the time frame set forth in Section 8.2, 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. Should the Foundation choose to terminate this Operating Agreement by providing one year prior written notice or in the event of a default by the University that is not cured within the time frame set forth in Section 8.2, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner.

## ARTICLE IX

### GENERAL TERMS

**9.1 ~~D.~~ Dissolution of Foundation.** Upon The Foundation's Articles of Incorporation include a clause stating that upon dissolution of the Foundation, it shall transfer the balance of all property and assets of the Foundation ~~in a manner consistent with its Articles of Incorporation, which state that in the event of dissolution of the Foundation, "no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the [Foundation] from any source, after the payment of all debts and obligations of the [Foundation], shall be vested in the Board of Regents of the University of Idaho in trust for the use and benefit of the University. Any such assets not disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."~~ to the State Board or the University.

**9.2 ~~E.~~ State 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 as required by the then applicable State Board ~~policy (~~s Policies and Procedures (currently, Section V.E.) and as requested by the State Board.

~~F. — Modification. Any~~ If this Operating Agreement or any subsequent modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties or restatement of this Operating Agreement is not submitted to the State Board pursuant to the State Board's Policies and Procedures, this Operating Agreement will continue to govern the relationship between the University and the Foundation until this Operating Agreement is replaced or terminated in accordance with the terms of this Operating Agreement.

**9.3 ~~G.~~ Providing ~~Document~~ Documents to and Obtaining Approval from the University.** Unless otherwise ~~indicated~~stated herein, whenever documents are to be provided to the University or whenever 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~~.

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

**9.5 Articles, Sections, Subsections and Subparagraphs.** This Operating Agreement consists of text divided into Articles that are identified by roman numerals (for example, I, II and III), Sections that are identified by a number corresponding to the number of the Article of which

the particular Section is a part followed by the number of the Section (for example, 1.1), subsections that are identified by numbers based on the order in which the subsections appear (for example, 1.1.1, 1.1.2 and 1.1.3) and subparagraphs that are identified by numbers based on the order in which the subparagraphs appear (for example, 1.1.1.1, 1.1.1.2 and 1.1.1.3). The organization is hierarchical, meaning that a reference to a division of this Operating Agreement includes all of its Sections, subsections and subparagraphs (for example, a reference to a Section includes the Section and all of its subsections and subparagraphs).

9.6 **Interpretation.** In this Operating Agreement: (a) the words “including”, “include” and similar words are to be construed as being followed by the phrase “without limitation”; (b) the word “may” is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase “as amended from time to time.”

9.7 ~~I-~~Notices. Any notices required under this Operating Agreement must be in writing and may be mailed or delivered as follows, or: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address identified by the relevant party that a Party provides by notice:

To the University:

~~President of the~~

University of Idaho ~~University~~  
Office of ~~Idaho~~the President  
875 Perimeter Drive MS 3151  
Moscow, Idaho 83844-3151

cc: [counsel@uidaho.edu](mailto:counsel@uidaho.edu)

To the Foundation:

~~Executive Director~~

University of Idaho Foundation, Inc.  
Chief Executive Officer  
875 Perimeter Drive MS 3143  
Moscow, Idaho 83844-3143

~~J. — No Joint Venture~~

9.8 **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Operating Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. 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.

~~K. — *Liability.* The As independent entities, the University and the Foundation are independent entities and neither shall not be liable for any of the other Party's contracts, torts, or other acts or omissions, or those of the other Party's trustees, directors, officers, ~~members or~~ employees or agents.~~

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

9.9 **Parties' Liability.** The Parties agree that each is responsible for any wrongful acts committed by them or their employees or agents arising out of their respective performance of this Operating Agreement and that each Party may be found individually liable to persons injured by any such individual wrongful act, including liability of one Party to the other for injuries or liability arising out of such wrongful act. The University's liability for wrongful acts is governed by the Idaho Tort Claims Act ("Act"), Idaho Code, §§ 6-901 – 6-929, including limitations of liability to no more than \$500,000 for any one occurrence or accident, as set forth in the Act. The University's liability coverage is self-funded by the State of Idaho and administered by the State of Idaho Risk Management Program pursuant to the terms of the Act. In no event shall the Foundation's aggregate liability to the University arising out of or related to this Operating Agreement exceed \$500,000 for any one occurrence or accident.

9.10 ~~M.~~ **Assignment.** This Operating Agreement is not assignable by either Party, in whole or in part.

9.11 **Modification.** Any modification to this Operating Agreement other than the Exhibits shall be in writing and signed by both Parties. Modifications to the Exhibits shall be pursuant to Sections 4.9 and 7.1.

9.12 ~~N.~~ **Governing Law.** This Operating Agreement shall be governed by the laws of the State of Idaho.

~~Q. — Articles, Sections, Subsections and Subparagraphs. This Operating Agreement consists of text divided into Articles that are identified by roman numeral (for example Article I); Sections that are identified by an uppercase letter followed by a period (for example A.); subsections that are identified by a number followed by a period (for example 1.) and subparagraphs that are identified by a lower case letter followed by a period (for example a.). The organization is hierarchical meaning that a reference to a division of the document includes all of its subsections (for example a reference to a Section includes the Section and all of its subsections and subparagraphs).~~

9.13 Waiver. Waiver by either Party of any breach of any term, covenant or condition contained in this Operating Agreement 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 contained in this Operating Agreement.

9.14 P.-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.

9.15 Q.-Entire Agreement. This Operating Agreement ~~constitutes and the agreements contemplated to be entered into by the Parties under this Operating Agreement, which are (a) the Service Agreement, (b) Lease Agreement and (c) Loaned Employee Agreements (collectively with this Operating Agreement, “Parties’ Agreements”), constitute~~ the entire agreement among the Parties pertaining to the ~~subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. Specifically,~~ Parties’ Agreements. In the event of any inconsistency between the provisions of the Parties’ Agreements, the provisions of this Operating Agreement shall control. This Operating Agreement amends, restates, and replaces the ~~Prior~~ Operating Agreement ~~entered into on August 31, 2009 by the Parties. Furthermore, and supersedes any prior written or oral statements related to the terms of~~ this Operating Agreement ~~terminates or the First Addendum to terms of the Prior~~ Operating Agreement, ~~entered into on August 31, 2009, by the Parties, inasmuch as the transition period described therein has passed and the actions described therein have taken place~~

9.16 Execution. This Operating Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)



IN WITNESS WHEREOF, the University and the Foundation have executed this Operating Agreement on the ~~above specified~~ date set forth below the Party's signature to be effective on the Effective Date.

~~University of Idaho~~

**THE BOARD OF REGENTS OF THE**  
**UNIVERSITY OF IDAHO**

By: \_\_\_\_\_

Name: C. Scott Green

Its: President

~~University of Idaho Foundation, Inc.~~

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

**UNIVERSITY OF IDAHO FOUNDATION,**  
**INC.**

By: \_\_\_\_\_

Name: Linda Copple Trout

Its: ~~Chairman~~ Chair of the Board of Directors

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

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EXHIBIT A  
INVESTMENT POLICY

EXHIBIT B

CONFLICT OF INTEREST POLICY

Document comparison by Workshare Compare on Monday, December 4, 2023  
1:39:50 PM

Input:	
Document 1 ID	iManage://imanager.hollandhart.com/worksite/30322534/1
Description	#30322534v1<imanager.hollandhart.com> - The University of Idaho Foundation, Inc. - Operating Agreement with The University of Idaho (HH Draft 8.15.23)
Document 2 ID	iManage://imanager.hollandhart.com/worksite/30322534/19
Description	#30322534v19<imanager.hollandhart.com> - University of Idaho Foundation, Inc. - Operating Agreement with The University of Idaho (For SBOE Approval)
Rendering set	Standard

Legend:	
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Padding cell	

Statistics:	
	Count
Insertions	464
Deletions	396
Moved from	17
Moved to	17
Style changes	0
Format changes	0

Total changes	894
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<u>SBOE Policy Reference</u>	<u>SBOE Policy Summary</u>	<u>Operating Agreement Reference</u>
§2(a)(v)	No University funds, assets, or liabilities may be transferred directly or indirectly to Foundation without the prior approval of the Board.	Article IV, Section 4.6
§2(a)(vi)	Transactions between University and Foundation shall meet the normal tests for ordinary business transactions. Under no circumstances shall a University employee represent both the University and Foundation.	Article VII, Section 7.2
§2(a)(vii)	Prior to the start of each fiscal year, Foundation must provide University President with Foundation's proposed annual budget, as approved by Foundation's board.	Article V, Section 5.5
§2(a)(viii)	Foundation shall conduct its fiscal operations to conform to University's fiscal year. Foundation shall prepare its annual financial statements in accordance with appropriate accounting principles.	Article VI, Section 6.1; Article VI, Section 6.2
§2(a)(ix)	University officers shall be invited to attend meetings of Foundation's board in an advisory role.	Article III, Section 3.1
§2(a)(x)	Foundation is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance, etc.	Article V, Section 5.2.3
§2(a)(xi)	Foundations governing documents and any amendments are to be provided to University. Such documents to include required dissolution language.	Article II; Article IX, Section 9.1
§2(a)(xii)	Foundation may not engage in activities that conflict with federal or state laws and shall comply with IRS provisions.	Article I
§2(a)(xiii)	Fundraising campaigns and solicitations shall be developed cooperatively between University and Foundation. Before accepting restricted contributions that may require administration or direct expenditure by University, Foundation will obtain prior approval.	Article III, Section 3.1.1.1; Article IV, Section 4.2.1
§2(a)(xiv)	Foundation shall obtain prior approval in writing from University President (or designee) if gifts, grants, or contracts include a financial or contractual obligation binding upon University.	Article IV, Section 4.2.1
§2(a)(xv)	Foundation to make clear to prospective donors that: (1) it is a separate legal and tax entity and (2) responsibility for governance of Foundation resides in Foundation's board.	Article IV, Section 4.1.1
§2(a)(xvi)	University shall ensure that Foundation controlled resources are not used to acquire or develop real estate for University's use without Board approval.	Article VII, Section 7.4
§2(b)	Board approval of Foundation Operating Agreement is required. Operating Agreement must be signed by chairman of Foundation board and University President.	Article IX, Section 9.2; Signature block

§2(b)	Operating Agreement shall establish the operating relationship between the University and Foundation and shall, at a minimum, address the following topics:	
§2(b)(i)	<b>Institution Resources and Services</b>	
§2(b)(i)(1)	Whether, and how, University intends to provide contract administrative and/or support staff services to Foundation. No employee of University who functions in a key administrative or policy making capacity shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, etc.	Article III
§2(b)(i)(2)	Whether, and how, University intends to provide other resources and services to Foundation, which are permitted to include: (a) access to University's financial systems; (b) accounting services; (c) investment, management, insurance and benefits administration; and (d) development services, encompassing research, information systems, donor records, communications, and special events.	Article III
§2(b)(i)(3)	Whether Foundation will be permitted to use any of University's facilities and/or equipment, and if so, the details of such arrangements.	Article III, Section 3.8
§2(b)(i)(4)	Whether University intends to recover its costs incurred for personnel, use of facilities or equipment, or other services provided to Foundation.	Article III, Section 3.7
§2(b)(i)(4)	No payments shall be made directly from Foundation to University employees.	Article V, Section .6
§2(b)(ii)	<b>Management and Operation of Foundations</b>	
§2(b)(ii)(1)	Guidelines for receiving, depositing, disbursing and accounting for all funds, assets or liabilities of Foundation. University officials into whose department or program Foundation funds are transferred shall be information by Foundation of restrictions on such funds.	Article IV
§2(b)(ii)(2)	Procedures with respect to Foundation expenditures and financial transactions, which must ensure that no person with signature authority shall be a University employee.	Article IV, Section 4.4.1
§2(b)(ii)(3)	Liability insurance coverage Foundation will have in effect to cover its operations and the activities of its directors, officers, and employees.	Article IV, Section 4.8
§2(b)(ii)(4)	Description of investment policies to be utilized by Foundation.	Article IV, Section 4.9
§2(b)(ii)(5)	Procedures that will be utilized to ensure that University and Foundation funds are kept separate.	Article IV, Section 4.7
§2(b)(ii)(6)	Detailed description of the organization structure of Foundation, which addresses conflict of interest in management of funds and Foundation data.	Article IV, Section 4.10; Article VII, Section 7.1
§2(b)(iii)	<b>Foundation Relationships with University</b>	

§2(b)(iii)(1)	University's ability to access Foundation books and records.	Article VI, Section 6.3
§2(b)(iii)(2)	The process by which the University President, or designee, shall interact with Foundation's Board regarding proposed annual operating budget and capital expenditure plan prior to approval by Foundation's board.	Article III, Section 3.1.1
§2(b)(iii)(3)	Whether, and how, supplemental compensation from Foundation may be made to University employees.	Article V, Section 5.6
§2(b)(iv)	<b>Audits and Reporting Requirements</b>	
§2(b)(iv)(1)	The procedure Foundation will utilize for ensuring that regular audits are conducted and reported to the Board.	Article VI, Section 6.2
§2(b)(iv)(2)	The procedure Foundation will use for reporting to University President the following items:	
§2(b)(iv)(2)(a)	(a) Regular financial audit report.	Article VI, Section 6.4.1
§2(b)(iv)(2)(b)	(b) Annual report of transfers made to the institution.	Article VI, Section 6.4.3
§2(b)(iv)(2)(c)	(c) Annual report of unrestricted funds received, and of unrestricted funds available for use in a fiscal year.	Article IV, Section 4.5; Article VI, Section 6.4.4; Article VI, Section 6.4.5
§2(b)(iv)(2)(d)	(d) A list of foundation officers, directors, and employees.	Article VI, Section 6.4.6
§2(b)(iv)(2)(e)	(e) A list of University employees for whom Foundation made payments for supplemental compensation.	Not applicable because compensation by Foundation is not permitted per Section 5.6.
§2(b)(iv)(2)(f)	(f) A list of all state and federal contracts and grants managed by Foundation.	Article VI, Section 6.4.7
§2(b)(iv)(2)(g)	(g) Annual report of Foundation's major activities.	Article VI, Section 6.4.8
§2(b)(iv)(2)(h)	(h) Annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding fiscal year for the benefit of University.	Article VI, Section 6.4.9
§2(b)(iv)(2)(i)	(i) Annual report of any actual litigation involving Foundation during its fiscal year, as well as legal counsel used by Foundation.	Article VI, Section 6.4.10
§2(b)(v)	A description of Foundation's conflict of interest policy approved by Foundation's board and applicable to all	Article VII, Section 7.1

	Foundation directors, officers, and staff members, and which shall also include a code of ethics and conduct.	
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