

Section 1

Core Organizational Documents

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The following is an unofficial text of the Idaho State University Foundation's Articles of Incorporation as amended. The Original Articles were filed with the Idaho Secretary of State on March 17th, 1967 with amendments filed May 13, 1983 and June 19, 2006. The official version is available on the Secretary of State's website.

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

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

ARTICLE I NAME

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

ARTICLE II PERIOD OF DURATION

This corporation shall have perpetual existence.

ARTICLE III PURPOSES

- A. Said organization is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.
- B. No part of the net earnings of the organization shall inure to the benefit of, or be distributed to, its members, trustees, officers or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof.
- C. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.
- D. Upon the dissolution of the organization, assets and records shall be distributed to the Idaho State Board of Education or Idaho State University for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

ARTICLE IV POWERS

Subject to the express limitation that the corporation shall not have or possess any power at any time, the effect of which prevents the corporation from qualifying as an exempt organization under paragraph 501 of the Internal Revenue Code of 1954 as it now exists or as it may be amended hereafter or which

prevents any gifts, grant, devise or bequest from qualifying as a charitable contribution for Federal Estate Tax purposes or for Federal Income Tax purposes, the corporation shall have and possess the following powers, any or all of which must be exercised exclusively in the furtherance of the purposes for which the corporation exists:

- a) To have perpetual succession by its corporate name.
- b) To sue and be sued, complain and defend, in its corporate name.
- c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- d) To purchase, take, receive, lease, take by gifts, devise, or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any interest therein wherever situated.
- e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- f) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality, or of any instrumentality thereof.
- g) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- h) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.
- i) To conduct its affairs, carry on its operations and have offices and exercise the powers granted by the provisions of Chapter 11, Title 30, Idaho Corporation Code, as that act presently exists or as it may be amended in the future, in any state, territory, district or possession of the United States or in any foreign country.

- j) To elect or appoint any committees and any officers or agents of the corporation as the Board of Directors may determine and to define their duties and fix the compensation to be paid to any officer or agent.
- k) To make and alter By-Laws not inconsistent with these Articles of Incorporation or with the Laws of the State of Idaho for the administration and regulation of the affairs of the corporation.
- l) To make donations for the general welfare of the Idaho State University and for charitable, scientific, literary, and educational purposes incident to the operation of the Idaho State University.
- m) To indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation whether for profit or not for profit against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be otherwise entitled.
- n) To cease its corporate activities and surrender its corporate franchise, or to merge with similar non-profit corporations.
- o) To have and exercise all powers necessary or convenient to effect any and all of the purposes for which the corporation is organized and exists.
- p) To execute trust agreements and accept and administer trust funds relating to the purposes for which the corporation has been organized and exists and not in conflict with the exempt status of the corporation under the Internal Revenue Code,
- q) To pay the reasonable and necessary expenses for the operation of the corporation out of the principal or income from gifts, grants, devises or bequests made expressly for that purpose or unrestricted as to their use by the donors or unless expressly provided to the contrary by the agreement controlling the use of such funds, from income received from other gifts, grants, devises or bequests during the period said funds are held by the foundation and are not required for the purposes specified by the donor, grantor or testator.

r) Unless otherwise specifically restricted by the donor, grantor, or testator, the corporation shall have and possess the following powers with reference to its investments:

1. To receive and accept in kind and to hold and administer as an investment as long as it shall seem to it best, any and all property which may come to it without liability for depreciation or loss through errors of judgment or otherwise.
2. To mingle funds of different gifts for the purpose of investment and reinvestment.
3. To acquire, invest, reinvest, exchange, retain, sell or otherwise dispose of stocks, bonds, or other securities in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence generally exercise in the management of their own affairs, not in regard to speculation but in making investments of their own funds with a view to probable increase of principal as well as safety of their capital and current income. Within the limitations of this standard, the corporation is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment including specifically, but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, stocks, preferred or common, and real estate mortgages and to retain any property properly acquired without limitation as to time and without regard to its suitability for original purchase. The corporation shall not be limited or restricted to authorized investments for trustees under the laws of Idaho or any other law as now existing or as hereafter enacted.
4. To determine whether money or other property received is principal or income, or partly one and partly the other; and to charge and apportion expenses and losses to principal and income as it may deem just and equitable; to make good any "wasting investment," losses of principal or premiums paid for securities, out of income over such periods of time as it may deem advisable.
5. To invest and reinvest expendable principal received by the Foundation for specific purposes but not presently required for the purposes specified by the donor, grantor or testator in such investments as the Board of Directors shall determine after taking into account the time when said principal funds will be required and the necessity to preserve said funds without loss of principal and to use or accumulate the net income received therefrom for reasonable expenses or operations of the Foundation, as the Board of Directors shall determine; provided, such expendable principal funds shall be available when required for use for the purposes specified by the donor, grantor or testator.

ARTICLE V REGISTERED OFFICE AND AGENT

The official registered office of the corporation shall be in the Administration Building on the Idaho State University Campus, Pocatello, Idaho. The resident agent of the corporation until otherwise designated by the Board of Directors is Dennis A. Hoiter, address: Campus Box 8050, Idaho State University, Pocatello, Idaho. The Board of Directors from time to time by appropriate resolution shall have the power and authority to change the location of the registered office of the corporation and to change the designation of the resident agent of the corporation.

VI. THE BOARD OF DIRECTORS

1. The affairs of the corporation shall be conducted by a Board of Directors of at least three members. The exact number of Directors shall be fixed from time to time by the By-Laws of the corporation. Until otherwise provided by the By-Laws, and until their successors are elected and qualified the Board of Directors shall consist of the following members: Dee Bogert, Member, State Board of Education; Dr. William E. Davis, President Idaho State University; Dr. Donald F. Kline; Frank D. Seelye; William J. Ryan, Jr., Executive Secretary of Alumni Association; Herman J. McDevitt, Attorney; and Charles H. Kegel. In addition, the President of the Foundation and the Treasurer are ex-officio members of the Board.
2. The qualifications of members of the Board, their manner of selection and the voting rights of ex-officio members shall be determined by the By-Laws.
3. The real estate and personal property of the corporation shall be under the complete control of the Board of Directors which is charged with the responsibility of administering and expending said property in accordance with the purposes for which the corporation has been organized and exists and in accordance with the terms and conditions of the gift, grant, devise or bequest under which the corporation has received the property in question, The Board of Directors may appoint an Investment Committee and may also appoint a fiscal agent or agents to handle its investments and financial affairs in such manner as may be determined advisable by the Board.

VII ORIGINAL INCORPORATORS

The names and Post Office addresses of the incorporators, who shall serve as Trustees until their successors are elected and qualified are: Charles H. Kegel; Frank D. Seelye; William J. Ryan; E. A. Bogert, Jr.; Dr. Donald F. Kline; Dr. William E. Davis; Herman J. McDevitt.

ARTICLE VIII BOARD OF TRUSTEES

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

ARTICLE IX AMENDMENTS

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

CERTIFICATE

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

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

Signed: William E. Davis, President; Donald F. Kline, Secretary

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1. Purpose of the Policy

- a. The Board recognizes the importance of voluntary private support and encourages grants and contributions for the benefit of the institutions and agencies under its governance. Private support for public education is an accepted and firmly established practice throughout the United States. Tax-exempt foundations are one means of providing this valuable support to help the institutions and agencies under the Board's governance raise money through private contributions. Foundations are separate, legal entities, tax-exempt under Section 501(c) of the United States Internal Revenue Code of 1986, as amended, associated with the institutions and agencies under the Board's governance. Foundations are established for the purpose of raising, receiving, holding, and/or using funds from the private sector for charitable, scientific, cultural, educational, athletic, or related endeavors that support, enrich, and improve the institutions or agencies. The Board wishes to encourage a broad base of support from many sources, particularly increased levels of voluntary support. To achieve this goal, the Board will cooperate in every way possible with the work and mission of recognized affiliated foundations
- b. The Board recognizes that foundations:
 - i. Provide an opportunity for private individuals and organizations to contribute to the institutions and agencies under the Board's governance with the assurance that the benefits of their gifts supplement, not supplant, state appropriations to the institutions and agencies;
 - ii. Provide assurance to donors that their contributions will be received, distributed, and utilized as requested for specified purposes, to the extent legally permissible, and that donor records will be kept confidential to the extent requested by the donor and as allowed by law;
 - iii. Provide an instrument through which alumni and community leaders can help strengthen the institutions and agencies through participation in the solicitation, management, and distribution of private gifts; and
 - iv. Aid and assist the Board in attaining its approved educational, research, public service, student loan and financial assistance, alumni relations, and financial development program objectives.
- c. The Board, aware of the value of tax-exempt foundations to the well being of the institutions and agencies under the Board's governance, adopts this policy with the following objectives:

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- i. To preserve and encourage the operation of recognized foundations associated with the institutions and agencies under the Board's governance; and
- ii. To ensure that the institutions and agencies under the Board's governance work with their respective affiliated foundations to make certain that business is conducted responsibly and according to applicable laws, rules, regulations, and policies, and that such foundations fulfill their obligations to contributors, to those who benefit from their programs, and to the general public.

2. Institutional Foundations

a. General Provisions Applicable to all Affiliated Foundations

- i. All private support of an institution not provided directly to such institution shall be through a Board approved affiliated foundation. While an institution may accept gifts made directly to the institution or directly to the Board, absent unique circumstances making a direct gift to the institution more appropriate, donors shall be requested to make gifts to the Board approved affiliated foundations.
- ii. Each affiliated foundation shall operate as an Idaho nonprofit corporation that is legally separate from the institution and is recognized as a 501(c)(3) public charity by the Internal Revenue Service. The management and control of a foundation shall rest with its governing board. All correspondence, solicitations, activities, and advertisements concerning a particular foundation shall be clearly discernible as from that foundation, and not the institution.
- iii. The institutions and foundations are independent entities and neither will be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, or staff.
- iv. It is the responsibility of the foundation to support the institution at all times in a cooperative, ethical, and collaborative manner; to engage in activities in support of the institution; and, where appropriate, to assist in securing resources, to administer assets and property in accordance with donor intent, and to manage its assets and resources.
- v. Foundation funds shall be kept separate from institution funds. No institutional funds, assets, or liabilities may be transferred directly or indirectly to a foundation without the prior approval of the Board except as provided herein. Funds may be transferred from an institution to a foundation without prior Board approval when:

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- 1) A donor inadvertently directs a contribution to an institution that is intended for the foundation. If an affiliated foundation is the intended recipient of funds made payable to the Board or to an institution, then such funds may be deposited with or transferred to the affiliated foundation, provided that accompanying documents demonstrate that the foundation is the intended recipient. Otherwise, the funds shall be deposited in an institutional account, and Board approval will be required prior to transfer to an affiliated foundation; or
 - 2) The institution has gift funds that were transferred from and originated in an affiliated foundation, and the institution wishes to return a portion of funds to the foundation for reinvestment consistent with the original intent of the gift.
 - 3) The transfer is of a *de minimis* amount not to exceed \$10,000 from the Institution to the Foundation and the transferred funds are for investment by the Foundation for scholarship or other general Institution/Agency support purposes.
 - 4) 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.
- vi. Transactions between an institution and an affiliated foundation shall meet the normal tests for ordinary business transactions, including proper documentation and approvals. Special attention shall be given to avoiding direct or indirect conflicts of interest between the institution and the affiliated foundation and those with whom the foundation does business. Under no circumstances shall an institution employee represent both the institution and foundation in any negotiation, sign for both the institution and foundation in a particular transaction, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the institution and the foundation.
 - vii. Prior to the start of each fiscal year, an affiliated foundation must provide the institution chief executive officer with the foundation's proposed annual budget, as approved by the foundation's governing board.
 - viii. Each foundation shall conduct its fiscal operations to conform to the institution's fiscal year. Each foundation shall prepare its annual financial statements in accordance with Government Accounting Standards Board (GASB) or Financial Accounting Standards Board (FASB) principles, as appropriate.

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- ix. Institution chief executive officers shall be invited to attend all meetings of an affiliated foundation's governing board in an advisory role. On a case by case basis, other institution employees may also serve as advisors to an affiliated foundation's governing board, as described in the written foundation operating agreement approved by the Board.
- x. Although foundations are private entities and are not subject to the Idaho Public Records Law, foundations, while protecting personal and private information related to private individuals, are encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.
- xi. A foundation's enabling documents (e.g., articles of incorporation and bylaws) and any amendments are to be provided to the institution. These documents must include a clause requiring that in the event of the dissolution of a foundation, its assets and records will be distributed to the Board or the affiliated institution. To the extent practicable, the foundation shall provide the institution with an advance copy of any proposed amendments, additions, or deletions to its articles of incorporation or bylaws. The institution shall be responsible for providing all of the foregoing documents to the Board.
- xii. Foundations may not engage in activities that conflict with federal or state laws, rules and regulations; or cause an institution to be in violation of Board policy; or the role and mission of the institutions. Foundations shall comply with applicable Internal Revenue Code provisions and regulations and all other applicable policies and guidelines.
- xiii. Fund-raising campaigns and solicitations of major gifts for the benefit of an institution by its affiliated foundation shall be developed cooperatively between the institution and its affiliated foundation. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by an institution, a foundation will obtain the prior approval of the institution chief executive officer or a designee.
- xiv. Foundations shall obtain prior approval in writing from the institution chief executive officer or a designee if gifts, grants, or contracts include a financial or contractual obligation binding upon the institution.
- xv. Foundations shall make clear to prospective donors that:
 - 1) The foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the institution; and

- 2) Responsibility for the governance of the foundation, including investment of gifts and endowments, resides in the foundation's governing board.
- xvi. Institutions shall ensure that foundation controlled resources are not used to acquire or develop real estate or to build facilities for the institution's use without prior Board approval. The institution shall notify the Board, at the earliest possible date, of any proposed purchase of real estate for such purposes, and in such event should ensure that the foundation coordinates its efforts with those of the institution. Such notification to the Board may be through the institution's chief executive officer in executive session pursuant to Idaho Code, Section 74-206(1)(c).
- b. Foundation Operating Agreements

Each institution shall enter into a written operating agreement with each of its affiliated foundations that ensures compliance with this Policy.

Board approval of affiliated foundation operating agreements is required if an affiliated foundation will receive donations, membership dues, gifts or other funds (collectively "funds") and delivers those funds directly to the institution. If an affiliated foundation will not receive or maintain funds, or if it routes all funds received to the institution through another Board-approved affiliated foundation, Board approval of the operating agreement is not required. In such cases, the institution shall ensure that services provided by a Board approved affiliated foundation to another affiliated foundation are provided pursuant to a service agreement between the affiliated foundations which complies with Board policy, a copy of which is available to the institution and to the Board.

Operating agreements must be signed by the chairman or president of the foundation's governing board, and by the institution chief executive officer. Operating agreements requiring Board approval must be approved by the Board prior to execution and must be re-submitted to the Board for re-approval every three (3) years, or as otherwise requested by the Board. Operating agreements shall follow the operating agreement template approved by the Board and found at <http://boardofed.idaho.gov/>. When an operating agreement is presented to the Board for review, an institution must include a redline to the Board's operating agreement template, as well as a redline to the previously Board approved version of the operating agreement, if there is one.

Foundation operating agreements shall establish the operating relationship between the parties, and shall, at a minimum, address the following topics:

- i. Institution Resources and Services.
 - 1) Whether, and how, an institution intends to provide contract administrative and/or support staff services to an affiliated foundation. When it is determined that best practices call for an institution employee to serve in a capacity that serves both the institution and an affiliated foundation, then the operating agreement must clearly define the authority and responsibilities of this position within the foundation. Notwithstanding, no employee of an institution who functions in a key administrative or policy making capacity (including, but not limited to, any institution vice-president or equivalent position) shall be permitted to have responsibility or authority for foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of foundation employees. The responsibility of this position within the foundation that is performed by an institution employee in a key administrative or policy making capacity shall be limited to the coordination of institution and affiliated foundation fundraising efforts, and the provision of administrative support to foundation fundraising activities.
 - 2) Whether, and how, an institution intends to provide other resources and services to an affiliated foundation, which are permitted to include:
 - a) Access to the institution's financial systems to receive, disburse, and account for funds held (with respect to transactions processed through the institution's financial system, the foundation shall comply with the institution's financial and administrative policies and procedures manuals);
 - b) Accounting services, to include cash disbursements and receipts, accounts receivable and payable, bank reconciliation, reporting and analysis, auditing, payroll, and budgeting;
 - c) Investment, management, insurance, benefits administration, and similar services; and
 - d) Development services, encompassing research, information systems, donor records, communications, and special events.
 - 3) Whether the foundation will be permitted to use any of the institution's facilities and/or equipment, and if so, the details of such arrangements.
 - 4) Whether the institution intends to recover its costs incurred for personnel, use of facilities or equipment, or other services provided to the foundation. If so, then payments for such costs shall be made directly to the institution.

No payments shall be made directly from a foundation to institution employees in connection with resources or services provided to a foundation pursuant to this policy.

ii. Management and Operation of Foundations.

- 1) Guidelines for receiving, depositing, disbursing and accounting for all funds, assets, or liabilities of a foundation, including any disbursements/transfers of funds to an institution from an affiliated foundation. Institution officials into whose department or program foundation funds are transferred shall be informed by the foundation of the restrictions, if any, on such funds and shall be responsible both to account for them in accordance with institution policies and procedures, and to notify the foundation on a timely basis regarding the use of such funds.
- 2) Procedures with respect to foundation expenditures and financial transactions, which must ensure that no person with signature authority shall be an institution employee in a key administrative or policy making capacity (including, but not limited to, an institution vice-president or equivalent position).
- 3) The liability insurance coverage the foundation will have in effect to cover its operations and the activities of its directors, officers, and employees.
- 4) Description of the investment policies to be utilized by the foundation, which shall be conducted in accordance with prudent, sound practice to ensure that gift assets are protected and enhanced, and that a reasonable return is achieved, with due regard for the fiduciary responsibilities of the foundation's governing board. Moreover, such investments must be consistent with the terms of the gift instrument.
- 5) Procedures that will be utilized to ensure that institution and foundation funds are kept separate.
- 6) Detailed description of the organization structure of the foundation, which addresses conflict of interest in management of funds and any foundation data.

iii. Foundation Relationships with the Institutions

- 1) The institution's ability to access foundation books and records.
- 2) The process by which the institution chief executive officer, or designee, shall interact with the foundation's board regarding the proposed annual

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operating budget and capital expenditure plan prior to approval by the foundation's governing board.

- 3) Whether, and how, supplemental compensation from the foundation may be made to institutional employees. Any such payments must have prior Board approval, and shall be paid by the foundations to the institutions, which in turn will make payments to the employee in accordance with normal practice. Employees shall not receive any payments or other benefits directly from the foundations.

iv. Audits and Reporting Requirements.

- 1) The procedure foundations will utilize for ensuring that regular audits are conducted and reported to the Board. Unless provided for otherwise in the written operating agreement, such audits must be conducted by an independent certified public accountant, who is not a director or officer of the foundation. The independent audit shall be a full scope audit, performed in accordance with generally accepted auditing standards.
- 2) The procedure foundations will use for reporting to the institution chief executive officer the following items:
 - a) Regular financial audit report;
 - b) Annual report of transfers made to the institution, summarized by department;
 - c) Annual report of unrestricted funds received, and of unrestricted funds available for use in that fiscal year;
 - d) A list of foundation officers, directors, and employees;
 - e) A list of institution employees for whom the foundation made payments to the institution for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
 - f) A list of all state and federal contracts and grants managed by the foundation; and
 - g) An annual report of the foundation's major activities;

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- h) 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; and
- i) An annual report of any actual litigation involving the foundation during its fiscal year, as well as legal counsel used by the foundation for any purpose during such year. This report should also discuss any potential or threatened litigation involving the foundation.

v. Conflict of Interest and Code of Ethics and Conduct.

A description of the foundation's conflict of interest policy approved by the foundation's governing board and applicable to all foundation directors, officers, and staff members, and which shall also include a code of ethics and conduct. Such policy must assure that transactions involving the foundation and the personal or business affairs of a trustee, director, officer, or staff member should be approved in advance by the foundation's governing board. In addition, such policy must provide that directors, officers, and staff members of a foundation disqualify themselves from making, participating, or influencing a decision in which they have or would have a financial interest. Finally, such policy must assure that no director, trustee, officer, or staff member of a foundation shall accept from any source any material gift or gratuity in excess of fifty dollars (\$50.00) that is offered, or reasonably appears to be offered, because of the position held with the foundation; nor should an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis.

vi. Affiliated Research Foundations and Technology Transfer Organization for Institutions of Higher Education

The Board wishes to encourage research and technology transfer and the corresponding economic development potential for the state of Idaho. The Board acknowledges that independent, affiliated foundations operating to support an institution's research and technology transfer efforts can be useful tools to provide institutions with avenues for engagement with the private sector as well as with public and private entities interested in funding research, funding technology transfer and promoting spin-off enterprises arising from institutional intellectual property and technology. Such affiliated foundations should operate substantially within the framework for affiliated foundations set out in paragraph 1 and 2 of this policy, with such variances as are reasonable based on the nature of the anticipated function of the specific foundation.

- 1) The institutions under the Board's governance may affiliate with non-profit entities which generally meet the criteria set forth in paragraph 2.b. of this

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policy and which operate for the purpose of supporting the research and technology transfer efforts of one or more of the institutions.

- 2) Research and Technology Transfer Foundation Operating Agreements. The requirement of a foundation operating agreement under paragraph 2.c. of this policy shall also apply to foundations supporting research and technology transfer. Institutions proposing to affiliate with a particular foundation may propose reasonable variances from specific requirements under paragraph 2.c. based upon the anticipated function of the foundation, provided that any such variances are specifically identified by the institution in materials presented to the Board when requesting approval of the foundation.

3. Foundations for Other Agencies

Other agencies under the Board's jurisdiction may establish foundations to accept gifts made for the benefit of the agencies' operating purposes. These agencies are subject to the same policies as the institutional foundations. However, agency foundations with annual revenues less than \$100,000 are not required to obtain an independent audit. These agencies must instead submit an annual report to the Board of gifts received and the disposition of such gifts.

4. Idaho Public Television Foundation

- a. Foundations that exist for the benefit of Idaho Public Television (IPTV) are required by Federal Communications Commission (FCC) regulations to have specific spending authority designated by the Board. Audits of the IPTV Foundation will be conducted by the State Legislative Auditor.
- b. By action of the Board, the Friends of Idaho Public Television, Inc., has been designated to accept gifts made for the benefit of public television in the state of Idaho. The Foundation will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.

5. Acceptance of Direct Gifts

Notwithstanding the Board's desire to encourage the solicitation and acceptance of gifts through affiliated foundations, the Board may accept donations of gifts, legacies, and devises (hereinafter "gifts") of real and personal property on behalf of the state of Idaho that are made directly to the Board or to an institution or agency under its governance. Gifts worth more than \$250,000 must be reported to and approved by the executive director of the Board before such gift may be expended or otherwise used by the institution or agency. Gifts worth more than \$500,000 must be approved

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by the Board. The chief executive officer of any institution or agency is authorized to receive, on behalf of the Board, gifts that do not require prior approval by the executive director or the Board and that are of a routine nature. This provision does not apply to transfers of gifts to an institution or agency from an affiliated foundation (such transfers shall be in accordance with the written operating agreement between the institution or agency and an affiliated foundation, as described more fully herein).

Idaho State University Foundation

Section 1.03 – Amended and Restated Bylaws – as amended through October 11, 2019

Article 1 Purpose and Duration of the Foundation

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

Article 2 Offices

Section 2.01 Principal Office

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

Section 2.02 Registered Office

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

Article 3 Board of Directors

Section 3.01 General Powers and Standard of Care

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

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

- a. One (1) or more officers or employees of the Foundation whom the director reasonably believes to be reliable and competent in the matters presented;

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

Section 3.02 Composition and Term

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

The Board of Directors, by a majority vote, shall be authorized to designate a limited number of its members as Lifetime Board members. The eligibility, method of designation, privileges, duties and responsibilities of Lifetime Board Members are described in Section 3.01.03 of the Board's policies.

Section 3.03 Method of Selection

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

Section 3.04 Qualifications

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

Section 3.05 Ex Officio Membership

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

- a. The President of Idaho State University;
- b. The Vice President for University Advancement at Idaho State University ("Executive Vice President");

- c. The Secretary of the Foundation;
- d. The Treasurer of the Foundation;
- e. The President of the Idaho State University Alumni Association;
- f. Legal Counsel for the Foundation;
- g. An ISU Faculty Member periodically appointed or elected by the ISU Faculty Senate to perform an active role in fund-raising for the University; and
- h. The President of the Bengal Athletic Boosters, Inc.;
- i. Unless they are also current voting directors, ex officio members of the Board shall not vote on matters being considered by the Board.

Section 3.06 Meetings of the Board of Directors

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

- a. Any Board action to remove a director shall require no less than seven (7) days written notice to each director that the matter will be voted on at a Board meeting. Such notice shall also include the time and place of such meeting.
- b. A director may, at any time before, during or after a Board meeting, waive any notice required by law, the Articles, or these Bylaws. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Foundation records.

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

- c. A majority of the voting membership of the Board shall constitute a quorum at any meeting and, unless otherwise provided by law or by the Articles, action of the Board shall be controlled by majority action of the voting directors present at any meeting at which a quorum is present.
- d. The Board shall keep a record of its proceedings and shall make a detailed report available to the directors, the officers, including ex officio officers of the Foundation, and Emeritus Directors.

Section 3.07 Committees of the Board of Directors

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

The Board shall have the right to create ad hoc committees from time to time to assist in accomplishing the duties and the responsibilities of the Foundation. Other details concerning ad hoc committees are described in Section 9.08 of the Policy Manual.

Membership on any committee need not be limited to members of the Board or Board Emeritus Directors. All committee members shall be subject to Foundation policies and in particular, policies and practices concerning conflicts of interest and confidentiality.

Section 3.08 Vacancies

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

Section 3.09 Removal of Directors

- a. Removal for Cause. Any director may be removed from office for cause by a two-thirds (2/3) majority vote of the total directors then in office.
- b. Removal for Unexcused Absences. A director may be removed from office after two (2) unexcused absences of any Board meeting within any twelve-month period, provided that a majority of the total directors then in office vote for such removal.

Section 3.10 Informal Action

Any action required to be taken at a meeting of the Board of directors may be taken without a meeting, if all the members of the Board consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 3.11 Open Meetings

The Board shall conduct its business meetings in open sessions whenever possible. However, the Board may meet in executive session in those circumstances where the Board is discussing or acting upon strategy with respect to litigation; discussing the purchase or sale of real property; interviewing prospective Foundation employees; or considering the evaluation, dismissal or disciplining of, or hearing complaints or charges brought against, a Foundation employee or staff member or on any matter which the Board feels must be dealt with in a confidential manner.

All board meetings shall be subject to Foundation Policy 2.05 with respect to confidentiality.

Section 3.12 Records

Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, will, to the extent reasonable, be open to public inquires related to revenue,

expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

Section 3.13 Director Conflicts of Interest

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

Section 3.14 Loans to Directors

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

Article 4 Emeritus Directors

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

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

Article 5 Officers

Section 5.01 Designation and Method of Selection

Officers of the Foundation shall consist of the Board Past Chair (“PCoB”), Chair (“COB”), Vice Chair (“VC”, Executive Vice President (“EVP”), Secretary and Treasurer. Except as otherwise provided herein, the officers shall be elected by the Board and, other than the PCoB, COB and VC, shall serve at the pleasure of the Board or until their respective successors are duly elected and qualified. The term of the PCoB and of the COB shall be two years each. The term of the VC shall be one year and shall begin one year before the end of the COB’s term. The VC will automatically assume the role of Chair at the end of the term of the previous Chair. The Chair will automatically assume the role of PCoB at the end of the term of the previous PCoB. Persons elected as Secretary or Treasurer shall be then current members of either the Board or Emeritus Directors. They serve a term of three years, and may serve additional three year terms after going through the nominating process at the end of each term. Any vacancies in any office shall be filled by the Board at any regular or special meeting of the Board from nominees provided by the nominating committee. The terms of officers as described herein may be increased or decreased by majority vote of the Board members present at the meeting at which such increase or decrease is voted on, provided a quorum is present.

Section 5.02 Duties of the Officers

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

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

Section 5.03 Removal

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

Section 5.04 Officer Conflict of Interest

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

Section 5.05 Loans to Officers

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

Article 6 Miscellaneous

Section 6.01 Indemnification

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

Section 6.02 Investment

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

Section 6.03 Depositories

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

Section 6.04 Contracts

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

Section 6.05 Checks, Drafts, Etc.

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

Section 6.06 Fiscal Year

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

Section 6.07 Books and Records

The Foundation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its Board, and committees having any of the authority of the Board, and shall keep a record giving the name and address of the members entitled to vote.

Section 6.08 Nondiscrimination

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

Section 6.09 Political Activity

The Foundation shall not, in any way, use corporate funds in the furtherance of, nor engage in, any political activity for or against any candidate for public office. However, this Bylaw shall not be construed to limit the right of any official or member of this Foundation to appear before any legislative committee, to testify as to matters involving the Foundation.

Section 6.10 Gifts

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

Section 6.11 Parliamentary Procedure

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

Section 6.12 Staff Conflict of Interest

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

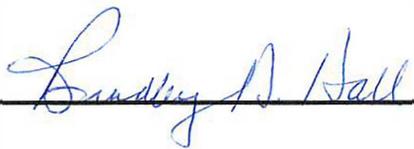
Article 7 Amendments

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

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

Secretary's Certification

This is to certify that the foregoing Bylaws of the Idaho State University Foundation have been duly adopted by the Board of Directors and contain all amendments made through the October 11, 2019 Board of Director's meeting.

 _____ *1-8-2020*

Brad Hall
Secretary, ISU Foundation Board of Directors

Date

Investment Policy Statement

Idaho State University Foundation, Inc.

921 South 8th Ave., Stop 8050

Pocatello, ID 83209-8050

Date: April 24, 2019

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PURPOSE

This Investment Policy Statement (IPS) sets forth the standards and guidelines governing the investment and management of the Foundation's financial assets in compliance with donor restrictions, the Foundation's governing policies and procedures, and state and federal laws and regulations including, but not limited to, the Uniform Prudent Investors Act and the Uniform Management of Institutional Funds Act.

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

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

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

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

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

DUTIES AND RESPONSIBILITIES

Board of Directors

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

Investment Committee

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

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

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

Outsourced Chief Investment Officer

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

Custodian

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

Governance Matrix

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

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

INVESTMENT CATEGORIES

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

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

ENDOWMENT POOL

Objectives

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

With its endowment management practices, the Foundation seeks to:

1. Support and augment Idaho State University’s programs by responsible stewardship of the money donated to the endowment funds,

2. Promote growth of the endowment in order to realize the greatest return on the endowment assets. Growth is expected to occur through positive net returns, building reserves and attracting new donors as a result of responsible management of the assets.
3. Achieve on average, over a full market cycle, the hurdle rate (net of investment management fees) or higher as it relates to annualized endowment performance. The hurdle rate is the aggregate of:
 - Spending rate (currently 4%)
 - Administrative fee (currently 1.5%)
 - Inflation rate (CPI; variable; approximately 2%)
4. Exceed, over a full market cycle, the average return (net of investment management fees) of appropriate indexes weighted by asset allocation target percentages. This total portfolio benchmark is viewable on the monthly performance statement for the endowment provided by the OCIO; this benchmark can change throughout time as the asset mix changes.
5. Exceed, over a full market cycle, appropriate index returns in each asset class.

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

Asset Allocation Targets

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

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

Within each asset class, assets will be invested in accordance with the Guidelines set out below.

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

Investment Manager will retain discretion with respect to modifications required to the asset allocation identified above.

Adherence to Policy Targets and Rebalancing

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

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

Rebalancing among funds will occur to ensure that the target asset allocation specified in this Investment Policy is maintained within acceptable ranges as determined by the Investment Manager. The Investment Manager will identify the amount of assets that must be reallocated in order to bring the Endowment back into compliance with this Investment Policy and will issue the necessary instructions for the transfer of funds. The Investment Manager automatically rebalances return generating assets and fixed income assets on a quarterly basis with a 2% tolerance band. The alternative assets are rebalanced on a quarterly basis with 5% tolerance bands.

Investment Securities, Strategies and Diversification

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

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

Volatility

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

MEDIUM-TERM CASH POOL

Objectives

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

Investment Allocation

In order to maximize the investment revenues, these funds may be invested in securities or other investment vehicles assuming a level of risk and commensurate return are less than the endowment pool, but more than the short-term cash pool. The level of risk taken should minimize but not eliminate the risk that the value of the investments is less than the original value when the funds are called by the University or needed for Foundation operations.

HOLDING ACCOUNT CASH POOL

Objectives

The Foundation holds funds that are intended for short-term investment separate from the endowment pool. These funds are expected to be called by the University or used for Foundation operations within a 0-3 year time frame, but could be needed at any time.

Investment Allocation

In order to maximize the investment revenues, these funds may be invested in securities or other investment vehicles assuming a level of risk and commensurate return less than the endowment or medium-term cash pools, but more than would be earned if carried as cash. The level of risk taken should eliminate or nearly eliminate the risk that the value of the investments is less than the original value when the funds are called by the University or needed by the Foundation.

OTHER INVESTMENTS

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

CONTROL PROCEDURES

Review of Assumptions

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

Review of Investment Objectives

Investment performance will be reviewed annually to determine the continued feasibility of achieving the investment objectives and the appropriateness of the Investment Policy for achieving these objectives. In addition, the validity of the stated objective will be reviewed annually.

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

Review of Investment Manager and Investments

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

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

Performance reviews will focus on:

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

Performance Expectations

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

The Committee recognizes that this real return objective may not be meaningful during some time periods. In order to ensure that investment opportunities available over a specific time period are fairly evaluated, comparative performance statistics (including benchmark indices) will be used to evaluate investment results.

ADOPTION OF INVESTMENT POLICY STATEMENT
The Idaho State University Foundation, Inc. Board of Directors has reviewed, approved and adopted this Investment Policy Statement, dated April 24, 2019, prepared with the assistance of SEI Investments Management Corporation.

Bradley A. Hall

10-11-2019

Signature

Date

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

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

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

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

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

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

WHEREAS, furthermore, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Agreement, personnel experienced in planning for and managing private contributions and works with the University to assist and advise in such activities.

WHEREAS, the parties hereby acknowledge that they will at all times conform to and abide by, the Idaho State Board of Education's Governing Policies and Procedures, Gifts and Affiliated Foundations policy § V.E., and that they will submit this Agreement for initial prior State Board of Education ("State Board") approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

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

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

agree as follows:

ARTICLE I Foundation's Purposes

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

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

ARTICLE II Foundation's Organizational Documents

The Foundation posts its current Articles of Incorporation and Bylaws on its public website. The Foundation will update its public website for any amendments to such documents, as soon as possible, after they are adopted. Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

ARTICLE III University Resources and Services

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

- b. Finance Director: The Finance Director of the Foundation is an employee of the University loaned to the Foundation. All of the Finance Director's services shall be provided directly to the Foundation as follows:
- i. The Finance Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the Finance Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in iii below. The Finance Director shall be subject to the control and direction of the Foundation.
 - ii. The Finance Director shall be an employee of the University and entitled to University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the Finance Director. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the Finance Director, including such expenses as salary, payroll taxes, and benefits.
 - iii. The Foundation and the University shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the Finance Director is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the Finance Director, including the following:
 1. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation procedures and applicable law; such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.
 2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall also result in termination of any obligation of the University to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University.
 3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or her/his designee. Further, the Foundation shall have the primary role in hiring a Loaned Employee, subject to applicable State or University requirements.
- c. Other Loaned Employees. Other loaned employees providing services pursuant to this Agreement shall also serve pursuant to a Loaned Employee Agreement,

Exhibit “A,” which shall set forth their particular responsibilities and duties. The effective dates of all loaned employee agreements, the names and duties of the loaned employees, and the compensation amount shall be revised and updated as needed by the University and Foundation.

- d. **Limited Authority of University Employees.** Notwithstanding the foregoing provisions, no University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.
2. **Support Staff Services.** The University shall provide administrative, financial, accounting and development services to the Foundation, as set forth in the Services Agreement attached hereto as Exhibit "B" ("Services Agreement"). All University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Services Agreement. The portion of such costs shall be determined by the agreement of the Parties.
3. **University Facilities and Equipment.** The University shall provide the use of the University's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the University and the Foundation. The terms of use (including amount of rent) of the University's office space, equipment and associated services shall be as set forth in the Services Agreement, Exhibit “B” hereto.
4. **No Foundation Payments to University Employees.** Notwithstanding any provision of this Agreement to the contrary, the Foundation shall not make any payments directly to a University employee in connection with any resources or services provided to the Foundation pursuant to this Article of this Operating Agreement.

ARTICLE IV Management and Operation of Foundation

1. **Gift Solicitation.**
 - a. **Authority of Vice President for University Advancement.** All Foundation gift solicitations shall be subject to the direction and control of the Vice President for University Advancement.
 - b. **Form of Solicitation.** Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the

benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

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

2. Acceptance of Gifts.

- a. Approval Required Before Acceptance of Certain Gifts. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University, and where required by State Board policy, approval of the State Board. Similarly, the Foundation shall also obtain the prior written approval of the University of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University.
- b. Acceptance of Gifts of Real Property. The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the University shall be approved by the State Board before acceptance by the University and the Foundation. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property.
- c. Processing of Accepted Gifts. All gifts received by the University or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated gift administration office (a unit of the Foundation) in accordance with the Services Agreement.

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

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

4. Foundation Expenditures and Financial Transactions.
 - a. Signature Authority. The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions with the University. The Foundation may supplement or change this designation with written notice to the University; provided, however, in no event may the person with Foundation signature authority for financial transactions with the University be a University employee nor a “Loaned Employee” as that term is used in this Agreement.
 - b. Expenditures. All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.
5. University Report on Distributed Funds. On a regular basis, which shall not be less than annually, the University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the University. This report shall specify the restrictions on any restricted funds and the uses of such funds.
6. Transfer of University Assets to the Foundation. No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:
 - a. A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such funds shall be deposited in an institutional account, and State Board approval will be required prior to the University's transfer of such funds to the Foundation.
 - b. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
 - c. The institution has raised scholarship funds through an institution activity and the institution wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship nature of the funds.
 - d. Transfers of a de minimis amount not to exceed \$10,000 from the institution to the Foundation provided such funds are for investment by the Foundation for scholarship or other general University support *purposes*. This exception shall not apply to payments by the institution to the Foundation for obligations of the institution to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate, password protected accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis. Further, the Foundation shall make data available to external auditors as necessary to complete audit responsibilities.
8. Insurance. To the extent that the Foundation is not covered by the State of Idaho Retained Risk program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers, and employees. The Foundation shall also maintain general liability coverage.
9. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's current investment policy which is posted on the Foundation's public website; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the investment policy and will update its public website for any amendments, as soon as possible, after they are adopted.
10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the Foundation's Amended and Restated Bylaws. The Foundation posts the current version of such documents on its public website. The Foundation will update its public website for any amendments to such documents, as soon as possible, after they are adopted.
11. Conflicts of Interest and Ethical Conduct. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy and the Foundations Code of Ethical Conduct will be provided to the Board as requested.

ARTICLE V

Foundation Relationships with the University

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

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

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

2. Record Management.

- a. The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the University shall be limited to the University's President and any designee of the University's President.
- b. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.
- c. Except to the extent that records are confidential (including confidential donor information), the Foundation agrees to be open to public inquiries for information that would normally be open in the conduct of University affairs and to provide such information in a manner consistent with the Idaho Public Records Law, set forth in Idaho Code Sections 9-337 – 9-350, except where otherwise required by state and federal law.

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

4. Identification of Source. The Foundation shall be clearly identified as the source of

any correspondence, activities, and advertisements emanating from the Foundation.

5. Establishing the Foundation's Annual Budget. The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing to the Foundation's Treasurer and Assistant Treasurer. If the request is for reimbursement, the University shall provide appropriate documentation to the Foundation to ensure that the funds to be reimbursed were used in compliance with donor intent.
6. Attendance of University's President at Foundation's Board of Director Meetings. The University's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.
7. Supplemental Compensation of University Employees. No supplemental compensation of University employees may be made by the Foundation. Provided the Foundation may reimburse the University for those benefits that are necessary for its normal course of operations, including, but not limited to, travel and continuing professional education. This is not intended to proscribe reimbursement by the Foundation of the University's expenses associated with "Loaned Employees" as set forth elsewhere in this Agreement, nor the payment of funds by the Foundation to the University in support of endowed chairs or similar faculty positions.

ARTICLE VI

Audits and Reporting Requirements

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

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

4. Annual Reports to University President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the University President and the State Board setting forth the following items:
 - a. the annual financial audit report;
 - b. an annual report of Foundation transfers made to the University;
 - a. an annual report of unrestricted funds received by the Foundation;
 - b. an annual report of unrestricted funds available for use during the current fiscal year;
 - c. a list of all of the Foundation's officers, directors, and employees;
 - d. a list of University employees for whom the Foundation made payments to the University for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
 - e. a list of all state and federal contracts and grants managed by the Foundation;
 - f. an annual report of the Foundation's major activities;
 - g. 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
 - h. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.

ARTICLE VII

Conflict of Interest and Code of Ethics and Conduct

1. Conflicts of Interest and Code of Ethics and Conduct Policy Statement. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations.
2. Dual Representation. Under no circumstances may a University employee represent

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

3. Contractual Obligation of University. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University and, if applicable under law or policy, the State Board of Education. University approval of any such contract shall comply with policies of the State Board of Education with respect to approval of University contracts.
4. Acquisition or Development or Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board and where appropriate, the Idaho Legislature, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

ARTICLE VIII General Terms

1. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both parties. In addition, either party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either party may terminate this Operating Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event the parties are unable to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating

Agreement shall not constitute or cause dissolution of the Foundation.

2. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every three (3) years or more frequently if otherwise requested by the State Board.
3. Modification. Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.
4. Providing Documents to and Obtaining Approval from the University. Unless otherwise indicated herein, any time documents are to be provided to the University or any time the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's President or an individual to whom such authority has been properly delegated by the University's President.
5. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.
6. Notices. Any notices required under this agreement may be mailed or delivered as follows:

To the University:

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

To the Foundation:

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

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

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

8. Liability. The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, or employees.
9. Indemnification. The University and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.
10. Dispute Resolution. The parties agree that in the event of any dispute arising from this Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, the dispute will be referred to the Chair of the Foundation and the University President. If the Foundation and University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unsolved, then, in such case, either party shall have the right to initiate litigation arising from this Agreement. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.
11. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and/or Articles of Incorporation, should the Foundation cease to exist or cease to qualify as an Internal Revenue Code §501(c)(3) organization, the Foundation will transfer its assets and property to the University, to a reincorporated successor Foundation organized to benefit the University, or to the State of Idaho for public purposes, in accordance with Idaho law.
12. Assignment. This Agreement is not assignable by either party, in whole or in part.
13. Governing Law. This Agreement shall be governed by the laws of the State of Idaho
14. Severability. If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.
15. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and

understandings pertaining thereto.

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

Idaho State University

By: 

Its: President

Idaho State University Foundation, Inc.

By: 

Its: President

“Exhibit A”
AGREEMENT FOR LOANED EMPLOYEE
Idaho State University / Idaho State University Foundation

THIS AGREEMENT is entered into by and between IDAHO STATE UNIVERSITY, a state educational institution, and a body politic and corporate organized and existing under the laws of the state of Idaho (“University”). And IDAHO STATE UNIVERSITY FOUNDATION, a private nonprofit corporation (“ISUF”) effective for the period [Click here to enter a date.](#) and [Click here to enter a date.](#).

BACKGROUND

- A. The ISUF, incorporated as a 501(c)(3) organization in 1967, raises and manages private funds for the benefit of the University, and
- B. University has agreed to loan its employee, [Click here to enter text.](#) (“Loaned Employee”), to ISUF to act in the capacity of [Click here to enter text.](#) (*position*) for the Idaho State University Foundation.

AGREEMENT

The parties agree as follows:

- 1) Relationship between Loaned Employee and University.
 - a) Loaned Employee may be an exempt, fiscal year employee of the University subject to all applicable policies and procedures of the Board and the University, or a classified employee subject to the applicable State of Idaho, State Board, and/or University rules and procedures. (*Choose one and delete the other option*)
 - b) Loaned Employee will be paid at a fiscal year salary rate of [Click here to enter text.](#) Payable on the regular bi-weekly paydays of the University. Loaned Employee will be entitled to University benefits to the same extent and on the same terms as other full-time University employees of his/her classification.
 - c) University shall be responsible for the payment of all salary and benefits to Loaned Employee. University shall be responsible for all payroll-related taxes, benefits costs, and other related payroll costs arising out of the Loaned Employee’s employment with the University.
- 2) Relationship between ISUF and Loaned Employee.
 - a) Loaned Employee will work full time and shall be under the exclusive supervision, direction, and control of the ISUF Board of Directors during the performance of his/her duties under this Agreement. Such duties shall include, but shall not be limited to, supervision of the back office operational processing of gift and reporting to various stakeholders; responsible for the management and operations of the donor system; support of development staff and other personnel associated with the utilization of the donor system; relations with the University relative to IT support and security; oversight and management of ISUF operational policies and, direct supervision of the Finance Manager, and other staff. Loaned Employee will report directly

“Exhibit A”
AGREEMENT FOR LOANED EMPLOYEE
Idaho State University / Idaho State University Foundation

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

- b) ISUF is solely responsible for payment of income, social security, and other employment taxes, if any, due to the proper taxing authorities arising from its payment of reimbursements to Loaned Employee. ISUF agrees to indemnify, defend, and hold the University harmless from any and all liabilities, losses, claims, or judgments relating to the payment of taxes.
- c) No later than ninety (90) days prior to the end of the term of this Agreement, and each subsequent term, if any, ISUF will evaluate the performance of Loaned Employee. In the case where the Loaned Employee is a classified employee, such evaluation shall occur in accordance with rules and procedures applicable to such employees. ISUF will provide a copy of the evaluation document to the University no later than fourteen (14) days after the evaluation is completed.
- d) ISUF may terminate or non-renew Loaned Employee’s employment contract, or discipline Loaned Employee in accordance with ISUF’s procedures and applicable law, any such termination or non-renewal shall constitute grounds for termination, nonrenewal or discipline of Loaned Employee by the University. Provided however, particularly when the Loaned Employee is a classified employee, any contemplated termination shall be subject to applicable legal and procedural requirements of the State of Idaho and the University.

3) Relationship between ISUF and University.

- a) ISUF will reimburse University for one hundred percent (100%) of the University’s total cost of Loaned Employee’s salary and benefits including payroll-related taxes, benefits, and other related payroll costs and the costs associated with travel approved by ISUF. Such costs will be billed quarterly and paid to the University.
- b) University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, ISUF shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of one year following the completion of the Agreement.
- c) The furnishing of Loaned Employee shall not be considered a professional service of the University. At no time during the performance of this Agreement shall the Loaned Employee receive or act under instructions from the University regarding the work performed on behalf of ISUF.
- d) University shall have no liability to ISUF for loss or damage growing out of or resulting from the activities of the Loaned Employee. ISUF therefore agrees to release, defend, indemnify and hold harmless the State of Idaho, University, its governing board, officers, employees, and agents, and the Loaned Employee from and against any and all claims, demands, losses, damages, cost, expenses, and liabilities, including but not limited to injuries (including death) to persons and for damages to property (including damages to property of ISUF or others) arising out of or in connection with the activities of the Loaned Employee under this Agreement. The limitation on liability and any agreement to defend, indemnify, or hold harmless expressed in the Agreement shall apply even in the event of the fault or negligence of the Loaned Employee.

“Exhibit A”
AGREEMENT FOR LOANED EMPLOYEE
Idaho State University / Idaho State University Foundation

4) General Terms

- a) Term, Termination. This agreement will terminate on the same day as Loaned Employee’s contract as an exempt employee of the University terminates, or in the case of classified employees, after applicable rules and procedures have been followed, or upon Employee’s resignation or other separation from employment, whichever is earlier. By mutual written consent, in conjunction with any renewal of the Loaned Employee’s contract as an exempt employee of the University, the parties may extend the term of this Agreement for a term equal to the term of the exempt Loaned Employee’s renewed contract with the University, the parties may extend the term of this Agreement for a term equal to the term of the exempt Loaned Employee’s renewed contract with the University, or in the case of a classified employee, continued into the next ensuing fiscal year such that the term of this Agreement shall always be equal to the term of Loaned Employee’s status as an exempt or classified employee of the University. The Loaned Employee remains subject to all applicable Board and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline for adequate cause, and where applicable, rules and procedures pertaining to classified employees.
- b) Governing Law. This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Bannock County.
- c) Notice. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

To ISUF:

Idaho State University Foundation Board of Directors
President [Click here to enter text.](#)
921 South 8th Avenue STOP 8050
Pocatello, ID 83209-8050

To the University:

Idaho State University
Vice President for Advancement [Click here to enter text.](#)
921 South 8th Ave. STIP 8024
Pocatello, ID 83209-8024

To the Loaned Employee:

[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

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

“Exhibit A”
AGREEMENT FOR LOANED EMPLOYEE
Idaho State University / Idaho State University Foundation

- d) Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
- e) Attorney’s Fees. In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney’s fee, together with such other costs as may be authorized by law.

Signatures:

Idaho State University

Chief Finance Officer, [Click here to enter text.](#) Date

Vice President University Advancement, [Click here to enter text.](#) Date

Idaho State University Foundation

President, ISUF Board of Directors, [Click here to enter text.](#) Date

Loaned Employee concurrence and commitment:

[Click here to enter text.](#), [Click here to enter text.](#) Date

EXHIBIT "B"

SERVICES AGREEMENT

IDAHO STATE UNIVERSITY– IDAHO STATE UNIVERSITY FOUNDATION

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

A. The University agrees to provide to the ISUF the following administrative, financial, accounting, and investment support services.

1. Administrative support for reconciliation between appropriate ISUF and ISU accounts such as scholarship and spendable accounts and appropriate revenue reports between ISUF and ISU, assist with transfer of gift funds to ISU, assist with monitoring gift fund use to ensure compliance with wishes of donor, ISUF policies and applicable laws.
2. Administrative support for ISUF gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to ISUF, assist with receipt of distributions from estates and trusts to ISUF.

B. All University employees who provide support services to the ISUF shall remain University employees under the direction and control of the University.

C. The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the ISUF, the nature and location of which shall be in the University's discretion. In addition, the University shall furnish office space and office equipment for use by the "loaned employees," the nature and location of which shall be subject to agreement of the parties.

D. The ISUF will pay directly to the University a reasonable consideration for the services, facilities, equipment, software and operating supplies provided to the ISUF pursuant to the Service Agreement based upon agreed upon budgets for the services and operations described herein. In conjunction with the University's annual budget process, the University will prepare and present to the ISUF for consideration and acceptance an operating budget for the services and operations to be provided under this Agreement upon which the consideration shall be based.

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the University's fiscal year until terminated by either party. This Services Agreement may be terminated by either party upon written notice of termination, such termination to be effective 30 days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the most recently signed Operating Agreement

between the University and the ISUF. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement which accrued prior to the date of termination.

IDAHO STATE UNIVERSITY



Brian Hickenlooper
Interim Vice President
Finance and Administration

Date: July 9, 2018

IDAHO STATE UNIVERSITY FOUNDATION



Valerie Hoybjerg
President

Date: July 9, 2018