OPERATING AGREEMENT

BETWEEN

IDAHO STATE UNIVERSITY FOUNDATION, INC.

AND

IDAHO STATE UNIVERSITY

THIS AGREEMENT, entered into as of this 5th day of February, 2009, is between Idaho State University, herein known as “University” and the Idaho State University Foundation, Inc., herein known as “Foundation”.

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

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

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

WHEREAS, as stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.
WHEREAS, furthermore, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Agreement, personnel experienced in planning for and managing private contributions and works with the University to assist and advise in such activities.

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

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

ARTICLE I
Foundation's Purposes

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

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

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the University and the State Board. All amendments of such documents shall also be provided to the University and the State Board. Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

ARTICLE III
University Resources and Services

1. University Employees.

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

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

      ii. The Vice President for University Advancement or her/his designee shall attend each meeting of the Foundation’s Board of Directors and shall report on behalf of the University to the the Foundation's Board of Directors regarding the University's coordination with the Foundation's fundraising efforts.

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

      i. The Finance Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the Finance Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in iii below. The Finance Director shall be subject to the control and direction of the Foundation.

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

iii. The Foundation and the University shall enter into a written agreement, in the form of Exhibit “A” hereto, establishing that the *Finance Director* is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the *Finance Director*, including the following:

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

2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall also result in termination of any obligation of the University to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University.

3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or her/his designee. Further, the Foundation shall have the primary role in hiring a Loaned Employee, subject to applicable State or University requirements.

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

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

2. **Support Staff Services.** The University shall provide administrative, financial, accounting, and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). All University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.

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

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

ARTICLE IV

**Management and Operation of Foundation**

1. **Gift Solicitation.**

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

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

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

   a. **Approval Required Before Acceptance of Certain Gifts.** Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University, and where required by State Board policy, approval of the State Board. Similarly, the Foundation shall also obtain the prior written approval of the University of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University.

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

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

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

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

4. **Foundation Expenditures and Financial Transactions.**

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

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

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

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

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

b. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.

c. The institution has raised scholarship funds through an institution activity and the institution wishes to deposit the funds with the foundation for investment and distribution consistent with the scholarship nature of the funds.

d. Transfers of a de minimis amount not to exceed $10,000 from the institution to the Foundation provided such funds are for investment by the Foundation for scholarship or other general university support purposes. This exception shall not apply to payments by the institution to the Foundation for obligations of the institution to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

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

8. **Insurance.** To the extent that the Foundation is not covered by the State of Idaho Retained Risk program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

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

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

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

**ARTICLE V**

**Foundation Relationships with the University**

1. **Access to Records.** The Foundation shall establish and enforce policies to protect donor confidentiality and rights. The donor database, as well as other data, materials and information of the Foundation pertaining to past, current or prospective donors, are proprietary to the Foundation and constitute its confidential information and trade secrets. The University shall not access 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 accounting procedures if the University should so require. Provided, however, that the University need not conduct an audit to be provided such access, but shall be provided such access at any time.

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

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

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

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

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

4. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.
5. Establishing the Foundation's Annual Budget. The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing to the Foundation's Treasurer and Assistant Treasurer by March 1 of each year.

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

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

ARTICLE 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 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 State of Idaho 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, summarized by University department;

   c. an annual report of unrestricted funds received by the Foundation;

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

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

   f. a list of University employees for whom the Foundation made payments to the University for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;

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

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

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

   j. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.
ARTICLE VII
Conflict of Interest and Code of Ethics and Conduct

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

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

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

4. Acquisition or Development or Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining 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.

ARTICLE VIII
General Terms

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

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

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

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

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

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

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

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

To the Foundation:

   Vice President for Advancement
   Finance Director
   Idaho State University
   Idaho State University Foundation
   921 South 8th Ave. Stop 8024
   921 South 8th Ave. Stop 8050
   Pocatello, ID 83209-8024
   Pocatello, ID 83209-8050

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

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

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

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

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

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

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

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

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

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

Idaho State University

By: [Signature]
Its: President

Idaho State University Foundation, Inc.

By: [Signature]
Its: President
EXHIBIT "A"  Loaned Employee Agreement (follows)
EXHIBIT "B"  Service Agreement (follows)
EXHIBIT "C"  Investment Policy (See Section V Policy D)
EXHIBIT "D"  Articles of Incorporation (See Section I Policy A)
EXHIBIT "E"  Amended and Restated Bylaws (See Section I Policy D)
EXHIBIT "F"  Conflict of Interest Policy (See Section II Policy D)
EXHIBIT "G"  Code of Ethics and Conduct (See Section II Policy C)
EXHIBIT “A”

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

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

BACKGROUND

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

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

AGREEMENT

The parties agree as follows:

1. Relationship between Loaned Employee and University.

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

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

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

2. Relationship between ISUF and Loaned Employee.

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

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

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

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

3. Relationship between ISUF and University.

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

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

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

d. University shall have no liability to ISUF for loss or damage growing out of or resulting from the activities of the Loaned Employee. ISUF therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, and the Loaned Employee from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, including but not limited to injuries (including
death) to persons and for damages to property (including damage to property of ISUF or others) arising out of or in connection with the activities of the Loaned Employee under this Agreement. The limitation on liability and any agreement to defend, indemnify, or hold harmless expressed in the Agreement shall apply even in the event of the fault or negligence of the Loaned Employee.

4. General Terms

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

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

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

To ISUF:

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

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

To the University:

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

Phone: (208) 282-3198
Fax: (208) 282-4487
To the Loaned Employee:

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Last address on file with University’s Human Resources

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

d. **Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

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

IDAHO STATE UNIVERSITY     IDAHO STATE UNIVERSITY

_____________________________  _____________________________
James A. Fletcher, Vice President  Michael J. Byrne, President
Finance and Administration

Date:_________________________  Date:________________________

_____________________________
Kent Tingey, Vice President
University Advancement

Date:_________________________

LOANED EMPLOYEE concurrence and commitment:

_____________________________
Date:_________________________
SERVICES AGREEMENT
IDAHO STATE UNIVERSITY—IDAHO STATE UNIVERSITY FOUNDATION

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

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

1. Administrative support for reconciliation between appropriate ISUF and ISU accounts such as scholarship and spendable accounts and appropriate revenue reports between ISUF and ISU, assist with transfer of gift funds to ISU, assist with monitoring gift fund use to ensure compliance with wishes of donor, ISUF policies and applicable laws.

2. Administrative support for ISUF gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to ISUF, assist with receipt of distributions from estates and trusts to ISUF.

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

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

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

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the University’s fiscal year until terminated by either party. This Services Agreement may be terminated by either party upon written notice of termination, such termination to be effective 30 days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Operating Agreement between the
University and the ISUF dated __________. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement which accrued prior to the date of termination.

IDAHO STATE UNIVERSITY

______________________________

James A. Fletcher, Vice President
Finance and Administration

Date:__________________________

IDAHO STATE UNIVERSITY FOUNDATION

______________________________

Michael J. Byrne, President

Date:__________________________