

## Operating Agreement

THIS AGREEMENT is entered into between Montana State University – Northern (“University”) and the Montana State University - Northern Foundation (“Foundation”). This Agreement is intended to meet the requirements as set forth in its Policy 901.9 (Campus-Affiliated Foundations of the Board of Regents Policy and Procedures).

### RECITALS

1. Montana State University Northern is an institution of higher education and a campus of the Montana University System.
2. The Foundation is a separately incorporated, nonprofit, tax exempt organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University, soliciting cash, securities, real 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.
3. The University has officially recognized the Foundation as its affiliated Foundation for the purposes outlined in Section 901.9 of the Montana Board of Regents Policy and Procedures Manual.

In consideration of the mutual commitments herein contained, the Parties agree as follows:

#### **Section 1 – University Name, Seal and Logotype**

Consistent with its mission to help to advance the plans, priorities, and objectives of the University, the Foundation is granted the use of the name Montana State University - Northern and the use of the University’s logo solely for fulfillment of its duties under this agreement. The Foundation shall not use the name and logo for commercial purposes except in compliance with the university contracts and upon the written permission of the Chancellor. The Foundation may use the name and logo until such time as the Foundation dissolves, ceases to be recognized as a tax exempt organization, or recognition of the Foundation is withdrawn by Montana State University’s President. The decision to withdraw recognition of the Foundation may be appealed to the Montana Board of Regents (“BOR”) under Section 203.5.2 of the Montana University System, Policies and Procedures Manual.

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## **Section 2 The Foundation's Relationship to the University**

The Foundation's Board of Trustees is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent and according to all applicable laws.

The Foundation is responsible for the performance and oversight of all aspects of its operations based on its bylaws that address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

The Foundation is responsible for the employment, compensation, and evaluation of its employees, including the Foundation's chief executive officer. The Foundation shall support the University through the services outlined in Section 5, unless the parties agree otherwise and when modified by a written agreement of the parties.

## **Section 3 The University's Relationship to the Foundation**

The University has officially recognized the Foundation as its affiliated Foundation for the purposes outlined in Section 901.9 of the Montana Board of Regents Policy and Procedures Manual.

The University recognizes that the Foundation is a private, non-profit corporation with the authority to keep all records and data confidential to the extent allowed by law. As such, the University will adhere to policies and procedures that protect the confidential nature of the Foundation's data and foster the individual reasonable expectation of privacy attendant to that data as allowed by law.

The Chief Executive Officer of the Foundation shall be a member of the Chancellor's Council and the University shall include the Foundation as a participant in the strategic planning for the University.

The Chancellor of the University shall serve as an ex-officio, non-voting member of the Foundation Board and shall assume a prominent role in fund-raising activities.

**Section 4 University Responsibilities.** The University agrees to provide the following to the Foundation:

**4.1 Funding Priorities.** At least annually, the Chancellor will present to the Foundation Trustees a list of the University's current private fundraising priorities. Before embarking in actively fundraising, the Foundation will assess the priorities and discuss the fundraising feasibility of each with the Chancellor.

The University Chancellor or his/her representative will work in conjunction with the leadership of the Foundation board and its Chief Executive to identify, cultivate, and solicit prospects for private gifts.

**4.2 Integrated Advancement.** The University will actively coordinate its Alumni Relations (ALUM) activities with those of the Foundation to develop a programmatic culture within the University's student, alumni and private support constituencies that effectively encourages increased philanthropy.

**4.3 Consideration.** In consideration for Foundation services, including but not limited to the responsibilities listed in Section 5 (Foundation Responsibilities), the University will provide the Foundation with a fair and reasonable payment for services as negotiated by the parties. The consideration for this contract term is included as Attachment A.

**4.4 Office Space.** The University shall provide office space to the Foundation and will waive rent as part of the consideration for the services performed under this agreement.

The University will provide the Foundation with network services including user administration, internet access, use of the University email system, and access to local search engines implemented by the University.

**4.5 Provision of Data.** When allowed by law, the University shall provide to the Foundation data reasonably requested by the Foundation and deemed necessary by the Foundation for the maintenance and support of the Foundation's efforts under this agreement.

**4.6 Alumni Records.** The University shall provide the Foundation with timely access to alumni data. This access shall include such data as the Foundation and ALUM find necessary to carry out their missions. This includes but is not limited to alumni name, street address, email address, phone numbers, and other contact information, as well as student activity, degree and employment information. The Foundation shall not release or otherwise use this data for any purpose outside of that expressly outlined in this Agreement. The Foundation will execute and comply with the FERPA requirements as set forth in the Data Security Agreement attached as Attachment B.

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The University will provide the Foundation with quarterly updates to its alumni records. The University will periodically survey its alumni in order to improve the quality and quantity of its alumni records.

**4.7 Confidentiality.** All data related to the Foundation's donors and prospective donors, as well as all data related to any aspect of the Foundation's operations including but not limited to employee records, accounting data, investment records and all management information are the exclusive property of the Foundation. The University shall not share this information with any other party without the express written permission of the Foundation. To the extent permitted by applicable law, the University will support and honor the policies established by the Foundation to protect the privacy and confidentiality of donor and prospective donor records.

**Section 5 Foundation Responsibilities.** The Foundation will provide the following services to the University.

**5.1 Fund-Raising.** In a coordinated and cooperative effort with the University, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University as established by the University.

The Foundation, working with the University Chancellor, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

The Foundation will actively analyze the fundraising priorities presented by the Chancellor and assess the feasibility of each new priority. The Foundation will not engage in fundraising for any project not approved by the Chancellor.

**5.2 Fund Stewardship and Asset Management.** The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments. The Foundation also manages gifts made directly to the University. Such gifts shall be managed as agency funds that are not the property of the Foundation.

The Foundation is the primary depository for private gifts to the University. The Foundation will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and gift agreements. The Foundation will vet the proposed use of donor provided funds to assure that the use of these funds is in accordance with the intent of the donor. In performing this duty, the Foundation will rely primarily on the review and endorsement of appropriate University staff. When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal

determination on the gift. The University will abide by such restrictions and provide appropriate documentation.

In managing gifts the Foundation will establish asset-allocation, disbursement and spending policies that adhere to all current and future applicable federal and state, including the Uniform Prudent Management of Institutional Funds Act (UPMIFA) as amended or modified from time to time.

The Foundation shall provide periodic summaries and confirmations of balances of University funds as may be requested or required. Additionally, the Foundation shall provide the University with a copy of the most recent investment policy.

**5.3 Donor Confidentiality.** The Foundation shall establish and enforce policies to protect donor and prospective donor confidentiality and rights.

**5.4 Gift Acceptance and Acknowledgment.** The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts. If assets are received by the University in lieu of the Foundation, the Foundation will provide appropriate recognition for such gifts when properly notified by the University.

**5.6 Accounting principles.** The Foundation will maintain financial and accounting records in accordance with generally accepted accounting principles or other comprehensive Basis of Accounting, as approved by an independent auditor.

**5.7 Foundation Funding and Administration.** The Foundation is responsible for establishing a financial plan to pay the cost of Foundation programs, operations, and services. In addition to the consideration for the services provided under this agreement, the Foundation has the right to impose reasonable fee assessments on funds established with the Foundation to support its programs.

The Foundation will provide reimbursement to the university for telephone systems and utilities used by the Foundation. The Foundation, at its own expense, will provide for adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.

**5.8 Alumni Records.** The Foundation recognizes that alumni records belong to the University and shall not release or otherwise use these records for any purpose outside of that expressly outlined in this Agreement. The Foundation is responsible for the management, security, and organization of all data held in Blackbaud Raiser's Edge, including alumni records. The Foundation will update alumni records held in Blackbaud Raiser's Edge quarterly using information provided to the Foundation. The Foundation shall pay 100% of the annual license

fees related to database software (Blackbaud Raiser's Edge) as well as the reporting software used in conjunction with the Blackbaud Raiser's Edge.

#### 5.9 Reporting Requirements.

Within 60 days of the close of a foundation's fiscal year, the foundation will submit a report to the affiliated campus and the BOR providing information from the most recent year that addresses (a) the financial benefits to and related expenses of the affiliated campus, (b) the investment management results achieved by the foundation related to its endowment portfolio, and (c) performance metrics related to responsibilities cited in the operating agreement.

By October 1<sup>st</sup> each year, the foundation will provide a copy of its annual financial statement as audited by an independent accounting firm.

Within 30 days of filing with the Internal Revenue Service, the foundation will provide a copy of Form 990 as filed with the Internal Revenue Service for the fiscal year.

As required by GASB 39, campuses with affiliated foundations shall include financial information from audited financial statements in the annual campus financial reporting.

5.8 Other Responsibilities. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements.

The Foundation will maintain and enforce a conflict-of-interest policy, that is a policy intended to protect the Foundation's interest when it is entering into a transaction or arrangement that might benefit the private interest of a Trustee, officer or committee member or employee of the Foundation.

No salary supplement for the Chancellor will be underwritten by the Foundation without the approval of and public disclosure by the Board of Regents.

The Foundation will maintain compliance with Campus Affiliated Foundations Policy, Section 901.9, Montana Board of Regents Policies and Procedures Manual.

## **Section 6 Confidentiality and Access to Information**

**6.1 Public Information.** The Foundation will provide copies or provide access to all public documents including:

- (a) Policies and procedures documentation, including:
  - a. Gift Acceptance Policy,
  - b. Investment Policies,
  - c. Disbursement Guidelines,
  - d. Accountability Policies,
- (b) Organizational documents, including articles of incorporation and corporate bylaws;
- (c) Audited financial statements;
- (d) Form 990, Return of Organization Exempt from Income Tax.

**6.2 Confidential Information.** The parties agree that confidential information which is not available for public inspection includes, but is not limited to, the following:

- (a) Information relating to donors and prospective donors:
  - a. Contact information including, but not limited to, addresses, phone numbers, and email addresses;
  - b. Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning or gift planning matters;
  - c. Records received from a donor or prospective donor regarding such donor's prospective gift or pledge;
  - d. Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge;
  - e. Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor;
  - f. Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This does not apply to a gift or pledge from a publicly held business corporation;
- (b) Information relating to fundraising plans and strategies;
- (c) Trade secret information and information relating to the business of any the Foundation subsidiary which, if released, could create a competitive disadvantage;
- (d) Individual employee information other than name, title and salary;
- (e) Individual student information not otherwise exempted;
- (f) Information relating to trusts and annuities administered by the Foundation, except as to actual gifts to the Foundation from such a trust or annuity; and
- (g) Other information protected by law.

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When necessary or beneficial to the efficient execution of the Foundation activities, the Foundation may provide access to the Foundation data and records to select the University personnel on a limited, need-to-know basis in accordance with applicable laws and the Foundation policies and guidelines. Providing such access shall not negate the confidential nature of the information and records or the classification of such information and records as trade secrets. Additionally, providing such access does not undermine the reasonable expectation of privacy of donors and prospective donors with respect to the information provided to and/or maintained by the Alumni Foundation. Anyone other than a Foundation employee with access to the Foundation information shall be held to the highest standard of confidentiality and sign a confidentiality agreement specifically governing such access.

## **Section 7 Other Matters**

7.1 Winding Up Upon Dissolution. Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an IRC § 501 (c)(3) organization, it will transfer its assets and property to the University, or its assignee. For purposes of this section, a corporate reorganization, merger, or consolidation or a renaming of the Foundation shall not constitute a cessation of existence provided to the Foundation, or its successor, if recognized as the affiliated Foundation of Montana State University-Northern for the purposes outlined in Section 901.9 for the Montana University System Policy and Procedures Manual.

7.2 Regent's Approval. This agreement is not effective until approved by the Montana Board of Regents. The parties agree and understand that this agreement will be reviewed and approved by the Board of Regents every two (2) years.

7.3 Liability Exposure. The parties understand and agree that the liability of the University, its officials and employees, is controlled and limited by the provisions of Title 2, Ch. 9, MCA. Any provisions of this agreement shall be controlled, limited and otherwise modified to limit any liability of the State of Montana and the University to that set forth in the above cited law.

### 7.4 Indemnification.

- (a) Each party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees, to the full extent required by law.
- (b) Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other upon request.



## MEMORANDUM OF UNDERSTANDING


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7.5 Termination. This agreement may be terminated at any time by the mutual written consent of the parties or termination may be invoked by either party upon six (6) months written notice to the other. In the event of termination, the University's financial obligation shall end six (6) months after the termination notice is received or on the last day of the fiscal year in which termination occurs, whichever is later. In the absence of termination notice, this agreement shall be automatically renewed year to year under the same terms as set forth in this agreement.

The parties have caused this Operating Agreement to be executed by their duly authorized representatives.

**MONTANA STATE  
UNIVERSITY NORTHERN**

**MONTANA STATE UNIVERSITY NORTHERN  
FOUNDATION**

  
\_\_\_\_\_  
Chancellor

  
\_\_\_\_\_  
Chief Executive Officer

Date: 10-11-2016

Date: 10/11/2016

October 11, 2016

**Attachment A**

**Development Services Compensation Agreement**

The University and the Foundation, hereby agree that the direct compensation to be paid by the University to the Foundation for services provided as outlined in Section 5 of Operating Agreement shall be as follows:

Total for FY 2017 \$182,204.00

Total for FY 2018 \$182,204.00

Payments shall be made as follows:

\$15,183.65 Monthly

Signed and agreed to this 11<sup>TH</sup> day of Oct, 2016 by:

**MONTANA STATE  
UNIVERSITY NORTHERN**

**MONTANA STATE UNIVERSITY NORTHERN  
FOUNDATION**

  
\_\_\_\_\_  
Chancellor

  
\_\_\_\_\_  
Chief Executive Officer