

Operating Agreement

The University of Montana and The University of Montana Foundation

THIS AGREEMENT, entered into as of _____ by and between the University of Montana (“University”) and the University of Montana Foundation (“Foundation”) is intended to meet the Board of Regents of the Montana University System (BOR) requirements as set forth in its *Policy 901.9: Campus-Affiliated Foundations*.

RECITALS

The BOR is responsible for supervising, coordinating, managing and controlling the Montana University System, including overseeing the mission, leadership, and operations of the University. As part of its responsibilities the BOR is responsible for the employment, compensation, and evaluation of all University employees including the president of the University.

The Foundation exists for the sole purpose of providing support to the University of Montana, consistent with the mission and priorities of the University of Montana. The mission of the Foundation is to ensure the University of Montana’s excellence, access and affordability through a public/private funding partnership. As stated in its articles of incorporation, the Foundation is a separately incorporated non-profit tax-exempt 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.

The University adheres to the centralized constituency fund-raising model, whereby all philanthropic fund-raising activities are coordinated by and through the Foundation. As the official development office for the University, the Foundation is responsible for the coordination

of all fund-raising activities conducted for the benefit of the University. The Foundation is dedicated to assisting the University in addressing, through philanthropic support, the long-term academic and other priorities of the University as formally articulated to the Foundation from time to time. This Agreement replaces the Operating Agreement between the BOR, the University and the Foundation dated February 1, 2015. 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:

Section 1: UM Foundation Name, Seal and Logotype

Consistent with its mission to help to advance the plans and objectives of the University, the Foundation is granted the use of the name the University of Montana Foundation.

The Foundation shall operate under its own seal and logotype and shall not use the University seal or other identifying marks in the promotion of its business and activities except as expressly allowed by the University.

Section 2: Relationship Between the University and the UM Foundation

The University President is responsible for communicating the University's priorities and long-term plans to the UM Foundation on a regular basis.

The UM Foundation shall support the University and respective programs through the services outlined in Section 4 (Foundation Responsibilities), unless the Parties agree otherwise and when modified by an attachment to this Agreement.

The University recognizes that the UM Foundation is a private and separately incorporated Montana nonprofit corporation with the authority to keep confidential and private all records and data to the extent allowed by law. As such, the University will create, maintain, enforce, and adhere to policies and procedures that protect the private and confidential nature of the UM Foundation's records and data and foster the expectation of privacy attendant to those records and data as allowed by law.

The UM Foundation President and CEO shall serve as an ex-officio, non-voting

member of the President's Cabinet and be invited as needed to the University President's cabinet and senior administrative team meetings.

The University President shall serve as an ex-officio, non-voting member of the UM Foundation Board of Trustees and shall assume a prominent role in appropriate constituent-related activities.

The University President and the UM Foundation President and CEO shall maintain lines of communication as necessary to keep the UM Foundation apprised of UM's strategic priorities and to ensure the parties responsibilities outlined herein are being met.

The UM Foundation Board of Trustees is solely responsible for the control and management of all assets of the UM Foundation, and is responsible to ensure that all gifts made to the UM Foundation are managed prudently, with donor intent, and according to all applicable laws.

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

The UM Foundation is solely responsible for the employment, compensation, and evaluation of its employees, including the President and CEO of the UM Foundation.

The Foundation shall consult with the University President or the President's designee in connection with the Foundation's strategic planning.

Section 3: University Responsibilities

3.1 Fund-raising. At least annually the President of the University shall communicate to the Foundation the University's current private fund-raising priorities. The University shall rely upon the Foundation, or its designee, to assess the priorities and the private funding feasibility of each.

The President of the University and the University's leadership (including, but not limited to its executive administrators and academic officers) shall work in conjunction with the leadership of the Foundation Board and the President and CEO to identify, cultivate, and solicit prospects for private gifts.

The University shall direct to the Foundation any bequests or other gifts made directly to the University.

When requesting distribution of funds, the University shall abide by any terms, conditions, or limitations imposed by the donor or any legal determination on the gift, and shall provide appropriate documentation with requests. The University bears primary responsibility for review and endorsement of distribution requests.

3.2 Integrated Advancement. The University shall actively coordinate its alumni relations and University Relations activities with those of the Foundation in order to develop a programmatic culture within the University's student, alumni and private support constituencies that effectively encourages increased philanthropy.

3.3 Direct Compensation. In consideration for Foundation services including but not limited to the responsibilities listed in *Section 4: Foundation Responsibilities*, the University shall provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation will be negotiated and agreed upon on a biennial basis (or more frequently if so agreed by both parties) by the end of January prior to the fiscal year in which the compensation is to be paid. The compensation amounts and payment dates for each of the fiscal years immediately subsequent to the date of this agreement are included as **Appendix A: Direct Compensation Agreement**.

3.4 Donor and Constituent Related Activities. The University shall comply with the Foundation's policies and support its processes relating to philanthropic, alumni, and constituent related activities that seek and solicit private support.

Additionally, the University President, deans, directors, appropriate administrators, other University officials, and University-selected or University-sanctioned volunteers shall work in

conjunction with the Foundation administration and staff to develop and steward philanthropic support, constituent engagements, and advocacy of University priorities.

3.5 Development Officer Cost Sharing. The University shall share the costs for development officers assigned to serve particular units of the University. The cost-sharing arrangement for each such development officer position shall be funded from gift funds held by the Foundation for use at the discretion of the unit served (or if necessary, the President of the University). The arrangement shall be evidenced by the form included as **Appendix B: Development Officer Cost-Sharing Agreement**.

3.6 Office Space. The University shall lease adequate office space to the UM Foundation under the terms of a separately negotiated, fair market lease agreement on mutually acceptable terms.

3.7 Information Technology Services. In consideration for Foundation services, the University shall provide in-kind support, including but not limited to the following.

- The University shall support BANNER Advancement, the database application used to contain both (1) the Foundation's donors and prospective donors and (2) the University's alumni records maintained by the University Alumni Relations (UMAR). This support includes (1) the hosting of the BANNER software components used in BANNER Advancement and related data warehouses and datamarts, (2) the hosting and operational support of related servers and services, (3) provision of the Oracle and general Operating System licenses necessary to host and operate BANNER Advancement and related systems and services, (4) database and system administration services related to the above, including regular database maintenance, database optimization, data backups, security and recovery related to these databases, and (5) quarterly updates to alumni and donor records through the National Change of Address (NCOA) system for which the Foundation pays 30 percent of the cost, and (6) the provision of adequate hardware to operate BANNER Advancement and related databases and services. All services shall be provided in accordance with generally accepted industry best practices. The Foundation reserves the right to contract with third-parties for product specific database tuning and other services to augment University provided services.

- The University shall install annual and periodic BANNER Advancement and supporting Oracle software upgrades in a reasonable timeframe after these upgrades become available.
- In the event a new system is implemented to replace BANNER Advancement, the Foundation shall bear the cost of acquisition and implementation. The Foundation shall, without cost to the University, provide the Alumni Relations department up to twelve (12) seats on the new system with access to alumni Directory Data, for use by UMAR employees and student workers. Additional seats will be provided at a mutually agreed upon cost based upon actual current cost to the Foundation.
- The University and the Foundation will continue to share the cost of the UM Student Scholarship Portal software, AcademicWorks. For FY18, the University shall assume the vendor contract for AcademicWorks and the Foundation shall pay 25% of the licensing costs for the core product. For FY19 the Foundation shall pay 15% of the licensing costs. The Foundation will continue to support the implementation towards the University's goal of having 100% of non-athletic scholarships be offered, reviewed, and awarded through the Academic Works system. Once 100% implementation has been reached, if the Stewardship Module is needed by the Foundation, the Foundation will pay 100% of the implementation and ongoing licensing fees for the Stewardship module as long as the module is in use by the Foundation. The additional features the Stewardship Module makes available, will be made available at no additional cost to the University by the Foundation.
- The University shall provide the Foundation with rack space for Foundation servers in secure University server hosting facilities, including environmental controls and environmental monitoring with notification, conditioned power, and network connectivity.
- The University shall provide the Foundation network services including operations support and provisioning, including security monitoring, network and internet bandwidth, and sufficient ports and drops to meet Foundation needs for network attached devices including desktops, servers, printers, copiers, and network attached storage.
- The University shall provide the Foundation with network services including user administration and authentication, internet access, use of the University email system, and access to local search engines implemented by the University. The University shall provide authentication services in support of Foundation efforts to implement single sign-on and

develop and deploy a portal for information access and sharing by Foundation and University personnel.

- The University shall provide the Foundation with network (wireless and wired) services in the Gilkey building sufficient to meet the Foundation's day to day operational needs.
- The University shall make the UM phone system and related services available at the same net rates paid by campus administrative users for Foundation employees with offices on campus.
- When the University provides virtualized servers for its own units, the University shall provide virtual servers to the Foundation upon request at a rate to be negotiated based upon requirements and costs.
- The University shall provide the Foundation access to training facilities when such use does not conflict with University training schedules.
- The University shall provide access to volume software and equipment purchasing and licensing agreements, and to software provided to the general campus and affiliates as contractually permitted.
- The University shall include representatives of the Foundation in the University IT planning and governance processes as appropriate.
- It is understood that the Foundation may request services in addition to those listed above and that the University may elect to charge the Foundation for those additional services at a mutually agreed upon rate.

3.8 Alumni Records. Alumni records along with Foundation records are held as part of a single dataset known as the Alumni Foundation Database. The purpose, responsibility, ownership, maintenance, access and confidentiality of the Alumni Foundation Database are outlined in the University's policy titled "Alumni Foundation Database: Use, Access and Maintenance." The University shall not change the Alumni Foundation Database Policy without the written permission of the Foundation.

Section 4: Foundation Responsibilities

4.1 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, each as established by the University.

The Foundation, working in consultation with the President of the University, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the University's mission and related to the fundraising priorities established by the University and communicated by the University President per Section 3.1. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

The Foundation, including its Development Officers, shall not engage in fund-raising for any University project not approved by the President of the University or their delegate(s).

The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Trustees and the respective governmental agency.

4.2 Fund Stewardship and Administration. The Foundation is the primary depository of private gifts to the University. The Foundation shall act to ensure the intent of donors is well-documented and honored.

The Foundation also administers gifts made directly to the University and other University-related but distinct entities. Such gifts shall be administered as "agency funds"; that is, funds that are not the property of the Foundation.

The Foundation shall promptly acknowledge and issue receipts for all gifts on behalf of the UM Foundation and the University and provide appropriate recognition and stewardship of such gifts.

The Foundation shall adhere to and periodically assess its gift-management and acceptance policies.

When a distribution of donor-provided funds is requested by the University, the Foundation shall evaluate the proposed use to ensure that the use of these funds is in accordance with the intent of the donor. In performing this duty the Foundation shall rely primarily on the review and endorsement of appropriate University staff. When distributing gift funds to the University, the Foundation shall disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift.

4.3 Asset Management. The Foundation shall 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

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

4.4 Asset Investment. When the University deposits funds with the Foundation for investment purposes, the Foundation may commingle those funds with Foundation's funds and other funds held by the Foundation in a pooled investment portfolio ("Pooled Investments"). In doing so, it is mutually understood that:

- The University retains ownership of University funds;
- The Foundation is authorized to invest the University funds in the same manner as other Foundation funds;
- University funds are subject to the Foundation's administrative fees in accordance with the Foundation's Fund Administration Policies;
- University funds may be pooled with the Foundation's institutional funds and other funds for the purpose of participating in the Pooled Investments;
- There is no trust relationship between the University and the Foundation express or implied;
- Pooled Investments are invested in accordance with the Foundation's investment policy;
- There is an inherent risk involved with investing that is beyond the control of the Foundation, including the potential for loss of the University's principal in the initial investment, loss of subsequent deposits, loss of interest or appreciation, and loss of other financial gains;

- Neither party is obligated to offer or accept investment advice to or from the other party;
- The Foundation has not and does not hold itself out as an investment advisor or as a professional investment corporation; and
- The University representative for all matters relating to the investment of University funds by Foundation is the President of the University or his or her designee.

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

Upon written notice from an authorized University administrator requesting withdrawal of University funds from the Pooled Investments, the Foundation shall withdraw the funds within a reasonable length of time such that removal of the funds may be completed without adversely affecting the remaining investment portfolio.

4.5 Foundation Funding and Administration. The Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.

The Foundation has the right to impose fees for its services on gifts as well donor provided funds held in support of University needs. While the Foundation's Board of Trustees has latitude to make any changes to the schedule of Foundation fees, the Foundation shall seek University input before making any changes to its fees.

Except as outlined in Sections 3.5 and 3.6, above, and Appendix B, the Foundation shall provide, at its own expense, office space (pursuant to the terms of the lease agreement referenced in Section 3.5 above), computers, copiers, printers, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.

The Foundation shall provide access to data and records to the University in accordance with the Alumni Foundation Database Policy.

4.6 Information Technology Services. The Foundation shall provide technical and administrative support to the University for UMAR's access and use of BANNER Advancement and the data contained therein. This support includes:

- The Foundation shall create, maintain, and operate interfaces between Banner Advancement and Alumni systems used for email and direct mail distribution, and for the periodic updating and validation of this data.
- Working with UMAR, the Foundation shall develop and deliver training to staff on Banner use.
- The Foundation shall create custom reports, extracts and utility programs for UMAR use.
- The Foundation will provide the technical expertise needed to maintain the integration between iModules and Banner Advancement.
- The Foundation shall create and operate custom data imports for the benefit of UMAR and the University. The Foundation shall pay 100% of the annual license fees related to BANNER Advancement as well as the reporting software (Logi Analytics, Advizor, and any future business intelligence reporting tool used in conjunction with the BANNER Advancement data sets.
- The Foundation shall also pay 30% of the annual license fees related to the address verification software (RUNNER TECHNOLOGY) used to improve the quality of alumni and donor addresses stored in the Alumni Foundation Database.
- The Foundation will pay 28 percent of the annual licensing fee (\$7,865 in FY2018 and \$8,130 in FY2019 for the use of iModules Encompass suite of programs and tools, including mass email distribution and online registration and payment functions.

4.7 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 the Alumni Foundation Database Policy.

As detailed in the Alumni Foundation Database Policy, the Foundation is responsible for the management, security, and organization of all data held in the Alumni Foundation Database, including alumni records, and all supporting data repositories including data warehouses and data marts.

The Foundation shall update the Alumni Foundation Database using information provided by the University as outlined in Section 3.8 (Alumni Records).

4.8 Alumni Relations Support. The Foundation shall work with the executive and academic officers of the University to engage the alumni base for each assigned University unit as outlined in Section 3.5 (Development Officer Cost Sharing).

The Foundation shall continue to explore opportunities to work in closer collaboration and partnership with the Office of Alumni Relations and the Alumni Association Board of Directors.

4.9 Other Responsibilities. The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly 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 President and CEO.

The Foundation shall engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and shall provide the University and the BOR with its annual audited financial statements.

The Foundation shall provide the BOR and the University with all other information required under the BOR's *Policy 901.9: Campus-Affiliated Foundations*.

The Foundation Board of Trustees shall 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. No salary supplement shall be provided by the Foundation to the President of the University without the approval of the BOR.

With the explicit approval of the Foundation Board, the Foundation may from time to time serve as an instrument for entrepreneurial activities for the University including but not limited to the purchasing, developing, or managing real estate for University or University-related expansion.

The Foundation may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue with no direct connection to a University purpose.

Section 5: Confidentiality and Access to Information by Other than Foundation Employees.

The Foundation will provide copies or provide access to all public documents of the Foundation including:

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

The Parties recognize that the Foundation maintains that confidential information which is not available for public inspection includes but is not limited to the following, and as such, the University agrees to treat such information as confidential to the extent it is allowed by law

- (a) Information relating to Foundation constituents:
 - a. Contact information including, but not limited to, addresses, phone numbers, and email addresses:
 - b. Records and portions of records that disclose personal, financial, estate planning or gift planning matters;
 - c. Records and portions of records regarding a prospective gift or pledge;
 - d. Records and portions of records regarding the appropriateness of a solicitation and/or dollar amount of a gift or pledge;

- e. Records and portions of records regarding the identity of an alumnus, donor, or prospective donor or that could identify an alumnus, donor, or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with a 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 Foundation which if released, could create competitive disadvantage;
- (d) Foundation employee information, except as required by law;
- (e) Individual student information, except as required by law;
- (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.

When necessary or beneficial to the efficient execution of Foundation activities, the Foundation may provide access to Foundation data and records to select University personnel on a limited, need-to-know basis in accordance with applicable laws and Foundation policies and guidelines. As such, the University shall create, enforce and adhere to policies and procedures that protect the confidential nature of the Foundation's data and records and foster the expectation of privacy attendant to those data and records as allowed by law.

Providing such access shall not negate the confidential nature of the Foundation's information and records of 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 Foundation. Any non-Foundation employee with access to the Foundation information shall be held to the highest standard of confidentiality, shall sign a confidentiality agreement specifically governing such access, and shall adhere to all relevant Foundation policies and processes regarding the acceptable use of data and information.

If a public records request is made of any University official or employee for any information the Foundation deems confidential, even where there is a signed

confidentiality agreement with the Foundation as outlined above, the University will give the Foundation twenty (20) business days' notice of the request so that the Foundation can seek a protective order. If a protective order is not secured and the matter not resolved by the Foundation with the requestor, the University may release any relevant requested records without any legal liability to the Foundation.

Section 6: Other Matters

This Agreement is intended to set forth policies and procedures that will contribute to the coordination of their mutual activities. To ensure effective achievement of the items of the agreement, University and Foundation representatives (including but not limited to respective staff and Foundation Trustees) shall hold periodic meetings to foster and maintain productive relationships and ensure open and continuing communications and alignment of priorities.

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 Internal Revenue Code 501 (c) (3) organization, the Foundation will transfer its assets and property to the University.

The University and the Foundation may enter into formal arrangements in addition to this Agreement from time to time. No terms or conditions of those agreements will contravene any element of this Agreement. This agreement expires on June 30, 2019.

The Recitals are incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS Agreement to be executed by their duly authorized officers as of the day and date above.

UNIVERSITY OF MONTANA

UNIVERSITY OF MONTANA FOUNDATION

Seth Bodnar, President
University of Montana

Cindy Williams, President and CEO
University of Montana Foundation

Date: _____

Date: _____

Appendix A: Direct Compensation Agreement

Further to Section 3.3 of the Agreement between the University of Montana (the “University”) and the University of Montana Foundation (the “Foundation”), the direct compensation to be paid by the University to the Foundation shall be as follows:

<u>Fiscal Year Ending June 30, 2018</u>		<u>Fiscal Year Ending June 30, 2019</u>	
Due on August 1, 2017	\$ 137,500	Due on August 1, 2018	\$ 137,500
Due on October 1, 2017	137,500	Due on October 1, 2018	137,500
Due on January 1, 2018	137,500	Due on January 1, 2019	137,500
Due on April 1, 2018	137,500	Due on April 1, 2019	137,500
Total for FY 2018	\$ 550,000	Total for FY 2019	\$ 550,000

Appendix B: Development Officer Cost Sharing Agreement

The University of Montana Foundation is a private and separately incorporated Montana nonprofit corporation founded and operated for the purposes of raising and stewarding funds for the support of the University of Montana. The Foundation employs qualified personnel to assist with its mission to support the University and will assign qualified development staff to work in collaboration with various programs, departments, schools or colleges of the University under the conditions set forth below. In consideration of the foregoing, it is understood and agreed by the Foundation and the University as follows:

1. The Foundation agrees to assign a qualified Foundation employee – to the extent feasible under the Foundation’s operating budget – to guide, manage, develop and advance the fund-raising and outreach efforts of those units on the campus where the President of the University has determined that a development program is needed and the Foundation has determined that there is a reasonable feasibility of fundraising success.
2. Development staff shall at all times be and remain employees of the Foundation. Development staff will report directly to the Foundation, but will also be accountable to the dean or other campus partner for progress toward development goals mutually developed by the Foundation and the campus partner. Although the Foundation will consult with and consider the input of the assigned dean or campus partner, final decisions regarding the hiring and assignment of development staff will be the responsibility of the Foundation.
3. The Foundation will be responsible for development staff performance evaluation and other personnel matters, but will consult with and give reasonable consideration to the input of the assigned dean or campus partner in the preparation, formulation and approval of the annual fundraising plan.
4. In exchange for the services provided by assigned development staff, the appropriate dean, campus partner, or University President will authorize the use of Foundation funds to pay for one-half (½) of the cost of salary and benefits for the development staff assigned to the dean or campus partner, based on the percentage of the development staff time allocated to the duties hereunder. (For example, if a development staff member is assigned duties hereunder on a 0.5 FTE basis, authorization will be given to use Foundation funds to pay one-quarter (¼) of the associated salary and benefits.)

5. In addition, the program, school, college or department will pay for travel and other expenses associated with development activities in support of the unit and, if the dean or campus partner provides an on-campus office for assigned staff, the dean or campus partner will provide office furniture, telephone, supplies and other reasonable office expenses. The Foundation will provide a computer and necessary mobile technology for use by assigned development staff.

This Cost Sharing Agreement can be terminated with 30 days written notice by either party.