



# Illustrative Memorandum of Understanding

**Between a Public Institution  
or System and an Affiliated  
Foundation**



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## ABOUT AGB

Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country's unique form of institutional governance through its research, services, and advocacy. Serving more than 1,280 member boards, nearly 2,000 institutions, and 35,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and institutionally related foundations with resources that enhance their effectiveness.

In accordance with its mission, AGB has developed programs and services that strengthen the partnership between the president and governing board; provide guidance to regents and trustees; identify issues that affect tomorrow's decision making; and foster cooperation among all constituencies in higher education. For more information, visit [www.agb.org](http://www.agb.org).

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## Institution-Foundation MOUs: Recommended Principles and Practices

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**I**nstitutionally related foundations play a vital role in advancing the missions of public colleges and universities, serving as gift repositories, fundraisers, asset managers, and advocates, and undertaking real-property projects and other entrepreneurial ventures. When well-structured, foundation-institution partnerships enable public colleges and universities to leverage opportunities and resources otherwise unavailable to state entities and to engage the talent, insights, relationships, and financial support of community, business, and philanthropic leaders. The close integration of public and private entities may, however, create concerns about external influence over institutional affairs, conflicts of interest, and transparency and accountability. In 2005, the Association of Governing Boards of Universities and Colleges (AGB) and the Council for Advancement and Support of Education (CASE), working with a national task force, developed an illustrative memorandum of understanding (MOU) that was widely promulgated and served as a model for many institutions and systems. The 2005 illustrative MOU provided a catalyst and starting point for conversations among institution and foundation leaders about the role of foundations, the structure of development, and the respective responsibilities of institution and foundation boards. While the principles informing the 2005 MOU remain sound, the context in which foundations operate has changed significantly.

The growing need for private support is leading many institutions to explore changes to the structure of their development programs and encourage their foundations to play a more-active role in fundraising and assume increased responsibility for real estate projects. At the same time, institution administrators and boards may feel the need to exercise increasing levels of oversight over affiliated entities that represent important institutional resources and potential risks that might fall outside of the parameters of the institution's risk management practices. To help public institutions and foundations adapt to these changes, AGB, working with CASE and an advisory group of public higher education leaders, has revised the 2005 illustrative MOU, including guidance on issues that should be taken into consideration when thinking about foundation-institution partnerships and recommended practices for the development and implementation of MOUs. It should be emphasized that there is no definitive best model for foundation-institution partnerships; the illustrative MOU is presented as a starting point for a collaborative process of assessment and strategic thinking about how the foundation and institution can most-effectively work together. When developing an MOU, legislative or regulatory regimes, institution or system polices, institutional culture, financial considerations, and strategic objectives must be considered to identify the best model for a particular institution at a given point in time.

## FOUNDATION INDEPENDENCE

Changed contexts and perceptions related to foundation independence merit special consideration. For several decades, foundation leaders saw foundation independence as a vital means of safeguarding donor privacy, ensuring foundations' ability to fulfill their fiduciary obligations and enhancing flexibility and fundraising capacity. AGB's 1994 publication, "College and University Foundations," outlined two different taxonomies that characterized foundations by relative degrees of institutional control, financial independence, operational autonomy, and scope of responsibilities. Foundations were seen as ranging from small, passive entities that served primarily as gift repositories and endowment managers, to robust, autonomous organizations that executed a comprehensive range of advancement and entrepreneurial services on behalf of their institutions. Endowment size, financial and operational independence, and board engagement were loosely correlated with fundraising capacity. The same publication included an analysis of court rulings on the applicability of state freedom of information laws to affiliated foundations. This and subsequent research suggested that organizational independence was a key factor in determining whether foundations should be treated as private corporations or state entities. In the past decade, however, court rulings, state legislation, changes in system policy, and heightened standards of accountability have changed. In California and Iowa, for instance, legislative and judicial actions have opened foundation records but created some protections for donor information. Recognizing the importance of transparency in sustaining trust, many foundations are increasingly opting to voluntarily disclose information to the extent possible without compromising donor privacy or business-sensitive information. The need to operate more efficiently, better share information, and demonstrate transparency has also led some institutions and foundations to integrate select functions. AGB's research suggests, however, that most foundation leaders believe that a degree of independence remains essential for foundations to fulfill their fiduciary responsibilities and advance their missions. The appropriate degree of independence for any foundation will be determined by multiple factors, including state law, system policy, financial resources, functions performed by the foundation, and institutional culture and history.

Well-crafted MOUs help clarify the boundaries between institution and foundation, identify and document state resources used by the foundation, clarify respective responsibilities for functions that may be conducted jointly by the foundation and institution, clarify relationships between institution and foundation staff, and affirm the foundation's status as an independently governed charitable corporation. When revising or developing a new MOU, institutions and foundations should ask if the relationship articulated in the MOU ensures that the foundation board has the capacity to exercise independent judgment in fulfilling its fiduciary obligations and commitments to donors. Legal counsel should be consulted to determine whether the terms of the MOU increase the likelihood that the foundation would be treated as a public entity subject to open records laws, prevailing wage standards, or other regulations applicable to state institutions that would limit its ability to serve its mission and advance institutional

priorities. Finally, the financial and operational implications of the MOU for both institution and foundation should be examined. An MOU that mandates a high degree of independence may incur spending on redundant staff or operational resources rather than putting funds to use in ways that could more efficiently advance institutional priorities.

## **PURPOSES OF THE MOU**

- ✧ Thoughtfully undertaken, the process of developing or updating the MOU provides an opportunity for both institution and foundation leaders to examine how the foundation can most effectively advance the mission of the institution, develop a shared vision for the future partnership, and clarify mutual expectations and responsibilities.
- ✧ The MOU enumerates the primary ways in which the foundation supports the institution and clearly delineates the responsibilities of the foundation in its relationship with the institution and the institution with respect to the foundation.
- ✧ The MOU affirms the independent corporate status of the affiliated foundation and articulates the ways in which it fulfills its charitable purpose of institutional support. (The corporate status of affiliated foundations may also be addressed in state law or system policy.)
- ✧ The MOU provides transparency and accountability regarding the use of both state and private resources.
- ✧ The MOU documents the expectations of the institution or system and confirms the status of the foundation as a representative of the institution in its interactions with donors and the public. The MOU serves as an enforceable contract, but perhaps more importantly, it memorializes agreements about key elements of the foundation-institution relationship, providing a shared point of reference should disagreements between the foundation and institution arise.
- ✧ MOUs provide a vital source of continuity through leadership transitions and serve as an important tool to educate new administrators and board members, as well as external constituents, about the role of the foundation and its relationship with the primary institution.

## **THE MOU: PRINCIPLES, PROCESS, AND IMPLEMENTATION**

- ✧ The dialogue informing the development of the MOU may be more important than the resulting contract. Any effective foundation-institution partnership must be based on mutual understanding and trust. The MOU process, thoughtfully undertaken, is an invaluable means of fostering this.
- ✧ The institution president or chancellor, the chair or other representative of the institution's governing board, the foundation chief executive, and the foundation board chair should all participate in the process of developing the MOU and be signatories to the final document. This responsibility should not be delegated from the start to attorneys or other representatives. Discussion among the principle stakeholders helps to ensure that the final MOU will reflect a genuine consensus and address strategic issues rather than legal quibbles.

- The MOU process may follow naturally from strategic or campaign planning as a means of identifying how the foundation can most-effectively advance institutional priorities and objectives. An MOU developed in response to a specific conflict or issue will likely do little to foster effective collaboration and may limit the flexibility that is one of the benefits of a foundation.
- The MOU is intended to provide stability and continuity, but it should be reviewed on some regular basis. As noted above, the conclusion or planning of a campaign or development of a new strategic plan may provide the catalyst for revisiting the MOU, but absent such transitional events, the foundation and institution should review the MOU every five years or so. The review process provides an occasion for reflection on ways the foundation might be more effectively engaged. It can also help ensure that new staff and volunteer leaders understand the terms of the relationship, preclude mission drift or unwitting departure from policy, and head off potential conflicts.
- A joint retreat including the foundation and institution boards and staff provides a valuable opportunity to assess the existing relationship and explore ways to enhance and strengthen the partnership prior to review and revision of the MOU.
- An external facilitator with a sound understanding of institutionally related foundations can provide valuable insights into the way alternative foundation-institution models work and help ensure that the process is perceived as equitable.
- The MOU need not address every aspect of the foundation-institution relationship; existing institution and foundation policies may simply be referenced, and issues that are likely to require more regular reconsideration can be addressed in additional agreements.
- While MOUs serve important legal purposes, they should, to the extent possible, be written in plain language. An unduly legalistic MOU is less useful as a tool to orient and educate board members and may occlude rather than provide transparency regarding the foundation-institution relationship. For similar reasons, the MOU should not be so lengthy or detailed as to preclude easy perusal.

## ELEMENTS FOR POSSIBLE INCLUSION IN THE MOU

Not every MOU will address the same elements, but the following issues should be discussed and considered for inclusion:

### **Foundation-Institution Relationship**

- An introduction summarizing the overall relationship between the foundation and its affiliated institution or system. This statement should broadly define the foundation's responsibilities and clarify the foundation's standing as an independent public trust, specifying that assets held by the foundation are dedicated to support the mission of the affiliated institution or system.



- Designation of the foundation as the repository for gifts made in support of the institution in accordance with state law or institution policy and reference to policies regarding the acceptance of restricted gifts. The foundation's use of the institution's name and service marks/trademarks and the institution's use of the foundation's name and service marks/trademarks. A brief description of overlapping board structures, joint meetings, and reporting relationships of the foundation chief executive if he or she also serves as an officer of the institution. (Foundation bylaws typically enumerate institution administrators and others designated as ex-officio members of the foundation board.)

#### **Responsibilities of the Institution or System**

- A statement of the institution board's responsibilities relating to determination of institutional mission and priorities, employment and compensation of university employees, oversight of university operations, and other key issues where the work of the foundation and institution intersect.
- A description of the ways institutional priorities and objectives and other information essential to the foundation's ability to fulfill its mission will be shared with the foundation.

#### **Responsibilities of the Foundation**

- A statement of the foundation board's responsibilities for investment and stewardship of foundation assets, employment and compensation of foundation employees, and operational oversight and risk management.
- A statement of the foundation's responsibility to comply with state and federal laws, maintain its tax-exempt status, and avoid or properly manage potential conflicts of interest involving staff or board members.
- A description of the appropriate ways in which the foundation board may participate in advocacy efforts on behalf of the institution.
- A description of services and resources provided by the foundation in support of the institution, and notification of any change in business purpose or scope.
- A description of donor and alumni records owned by the foundation and provisions for the use of such data by the institution, if allowable by law.
- A description of required reporting, audits, and other accountability practices.

#### **Finances and Administration**

- A description of the reporting relationship of the foundation chief executive and authority for hiring, assessment, determination of compensation, and termination of the foundation chief executive.

- A description of compensation or other benefits provided by the foundation to institution administrators or staff.
- A description of how the foundation is financed, including a summary of institution resources (including staff, if any) provided for use by the foundation.
- Provisions for the use of unrestricted gifts.

#### **Terms of the MOU**

- A provision for updating and periodic review of the MOU.
- Definitions of terms and conditions, including circumstances for terminating the relationship or the dissolution of the foundation and distribution of the assets it holds. The MOU might also specify processes by which conflicts can be managed and mitigated.
- A formal adoption of the MOU by the institution's and/or system governing board's leaders and the foundation board's leadership.

### **A NOTE ON SYSTEMS AND SYSTEM FOUNDATIONS**

System foundations may receive and manage resources supporting the system as a whole or manage endowments and other long-term investments on behalf of multiple campus foundations or accounts. Similarly, they may coordinate and support fundraising and provide development services for campuses across a system, provide support for planned giving or other specialized services for campus foundations/development programs, or play little role in supporting campus development. MOUs may, accordingly, vary widely from the illustrative model that follows, but many of the principles and practices outlined above remain applicable.

MOUs of foundations supporting campuses overseen by a system board may also vary from those affiliated with institutions with individual campus governing boards. While boards with oversight responsibility for multiple campuses may be tempted to mandate a uniform MOU for use with all foundations affiliated with campuses within the system, such an approach undermines the value of the MOU process, eliminating strategic discussion about the most-effective ways foundations can support their affiliated campuses and imposing structures that may not be well adapted to the specific circumstances of individual campuses and foundations. System boards do, however, have a fiduciary responsibility for the campuses under their oversight and may adopt policies for campus relationships with affiliated entities such as minimum reporting requirements and financial controls, limitations on the use of state resources, rules regarding compensation of institution employees by the foundation, and elements to be addressed in campus-foundation MOUs.

## Illustrative Memorandum of Understanding Between a Public Institution or System and an Affiliated Foundation

*Note: AGB commends this illustrative memorandum of understanding to their members for consideration when drafting or revising their own such documents. The following illustrative document includes examples of best practice that each foundation and public institution or system should consider based upon their own needs and relationships. Foundations and institutions are encouraged to consult with legal counsel when developing an MOU to ensure that the final document conforms to federal and state laws and policies.*

THIS AGREEMENT was entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the \_\_\_\_\_ [name of institution or system (the Institution)] and the \_\_\_\_\_ [name of the foundation (the Foundation)].

- ☞ The Foundation was organized and incorporated in \_\_\_\_ [year] for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the Institution.
- ☞ The Foundation exists to raise and manage private resources supporting the mission and priorities of the Institution, provide opportunities for students, and contribute to institutional excellence.
- ☞ The Foundation is dedicated to assisting the Institution by fostering a culture of philanthropy, growing the endowment, and providing financial and other support for long-term academic and other institutional priorities. *[Note: The MOU should identify specific functions such as real-property management or other entrepreneurial work assumed by the foundation in addition to or in lieu of fundraising responsibilities.]*
- ☞ As stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the Institution; soliciting cash, securities, real and intellectual property, and other private resources for the support of the Institution; and acknowledging and stewarding such gifts in accordance with donor intent and fiduciary responsibilities.
- ☞ The Institution designates the Foundation as the repository of private gifts made in support of the Institution unless otherwise specified by the donor. This provision might address whether the foundation can endorse checks made out to the university for gifts.
- ☞ In connection with its fundraising and asset-management activities, the Foundation retains personnel with expertise in advancement services, fundraising, gift planning, investment management, and other capacities necessary for the fulfillment of its mission and works with the Institution to assist and advise in such activities. *[Note: Not all foundations retain personnel; in such instances, personnel conducting foundation business report to other institutional staff, but the foundation board may be engaged in assessment processes and hiring and compensation decisions.]*

- ✧ The Foundation and the Institution will jointly establish gift-acceptance policies, naming policies, and provisions for the establishment of scholarships, chairs, and other endowed purposes.
- ✧ Consistent with its mission to help to advance the plans and objectives of the Institution, the Foundation is allowed to associate the name “Institution” in connection with the operations of the foundation; however, the Foundation will 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. *[Note: It is not unusual for foundations, upon mutual agreement, to have the authority to use the institution’s seal and marks.]*
- ✧ 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:

## **INSTITUTION OR SYSTEM RESPONSIBILITIES**

- ✧ The Governing Board of the Institution is responsible for overseeing the mission, leadership, and operations of the institution.
- ✧ The Governing Board of the Institution is responsible for determining philanthropic and strategic priorities.
- ✧ The Governing Board of the Institution is legally responsible for the performance and oversight of all aspects of Institution operations.
- ✧ The Governing Board of the Institution is responsible for the employment, compensation, and evaluation of all Institution employees, including the President or Chancellor (“President”). *[Note: In some cases, the foundation may provide funds to supplement the compensation of the institution’s chief executive. The governing board, however, remains solely responsible for setting total compensation and evaluating the performance of the chief executive.]*
- ✧ The Institution President is responsible for communicating on a regular basis the priorities and long-term plans of the Institution, as approved by the Governing Board, to the Foundation.
- ✧ The Institution recognizes that the Foundation is a separate, private corporation with the authority to keep all records and data confidential, consistent with the law.
- ✧ The President of the Institution shall serve as an ex-officio member of the Foundation Board and shall assume a prominent role in fundraising activities. *[Note: This can be with or without vote. Consult legal counsel for the most appropriate structure, and factor that into the language.]*
- ✧ The Chief Executive of the Foundation shall be included as a member of the Institution President’s cabinet and senior administrative team. *[Note: If the foundation is totally independent, the chief executive should have regular access to this group, and language in this document should reflect this.]*

- ✧ The Institution shall include the Foundation as an active and prominent participant in strategic planning for the Institution.
- ✧ The Institution shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.
- ✧ The Institution shall ensure that gift funds and other privately contributed resources are used in compliance with donor intent.
- ✧ The Institution recognizes that the Foundation bears major responsibility for fundraising. University representatives will coordinate fundraising initiatives, including major gifts solicitations with the Foundation. *[Note: When a foundation supports a system or institution for which multiple affiliated entities raise and manage private support, the MOU should indicate how the organizations work together to most effectively identify, cultivate, solicit, and steward donors. The MOU might also clarify, without comprehensively detailing, the relationship between the foundation and alumni association or other affiliated entities.]*
- ✧ The President and other senior administrators of the Institution will work in conjunction with the leadership of the Foundation Board of Directors and the Foundation Chief Executive to identify, cultivate, and solicit prospects for private gifts.

## FOUNDATION RESPONSIBILITIES

- ✧ The Foundation shall maintain its status as a separately incorporated 501(c)(3) nonprofit organization created to raise, manage, distribute, and steward private resources to support the various priorities of the Institution. *[Note: Language should be added to clarify the exact entity the foundation supports—for example, a system-wide university, a single campus, an academic unit within the university, or a campus within the system.]*
- ✧ The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts, consistent with donor intent.
- ✧ The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly addresses the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies. The Foundation will apprise the institution of significant changes made to the bylaws.
- ✧ The Foundation shall establish and enforce policies to identify and manage potential conflicts of interest and ensure that foundation assets do not directly or indirectly unduly benefit an individual or other person.

- The Foundation is responsible for the employment, compensation, and evaluation of all its employees, including the Foundation Chief Executive. The Institution President will be included as a prominent participant in discussion and decision making regarding the hiring, assessment, and termination of the Foundation Chief Executive. *[Note: MOU language should clarify whether the foundation has its own employees or relies on institution employees to fulfill its responsibilities.]*
- The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President of the Institution and will either transfer a percentage of those funds annually to the Institution in compliance with state law and university policies or reimburse appropriate presidential expenditures. *[Note: All such expenditures must comply with the IRS 501(c)(3) code and be consistent with the foundation's mission. Such funds will be audited as part of the foundation's annual independent audit.]*

### **Fundraising**

- The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the Institution.
- The Foundation is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the strategic priorities identified by the President and Institution Governing Board. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate. *[Note: When there are shared responsibilities for fundraising, or if the institution is responsible for all fundraising activities, language should be added that clarifies each entity's roles and responsibilities. For example: The university wishes to hire the expertise of the foundation to provide coordination and assistance in the operation, development, accounting, management, and marketing activities of the university development office. Or the foundation wishes to provide such services, not as an employee or agent of the university, but as an independent organization.]*
- 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 and provide appropriate recognition and stewardship of such gifts.
- The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Directors and the governmental agency. *[Note: Some foundations, such as those serving in support of university health centers, can be called upon to accept and manage governmental grants].*

- The Foundation shall establish and enforce policies to protect donor confidentiality and rights. *[Note: See the “Donor Bill of Rights” developed by the American Association of Fund-Raising Counsel (AAFRC), Association for Healthcare Philanthropy (AHP), Council for Advancement and Support of Education (CASE), and the Association of Fundraising Professionals (AFP).]*

### **Asset Management**

- The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, patents, copyrights, 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 will establish prudent asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).
- 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 Institution with a copy of the annual audited financial statements, including management letters. *[Note: Management letters, including concerns and/or recommendations about management practices, are typically shared with institutional presidents or chancellors in those cases where the foundation is dependent or interdependent].*
- The Foundation will establish internal controls and other enterprise risk management practices commensurate with the Board’s fiduciary responsibility.

### **Entrepreneurial Activities**

- The Foundation will explore current opportunities, including acquisition and management of real estate or personal property on behalf of the Institution, for future allocation, transfer, or use.
- The Foundation may serve as an instrument for entrepreneurial activities for the Institution and engage in such activities as purchasing, developing, or managing real estate for campus expansion and student housing, or participating in joint ventures that advance the mission of the institution. It also 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 an institutional purpose.



## FINANCES AND ADMINISTRATION

### Transfer of Funds

- The Foundation will transfer funds to the designated entity within the Institution in compliance with applicable laws, Institution and Foundation policies, and gift agreements. *[Note: Disbursement policies should be developed in collaboration with institution administrators to facilitate effective financial planning while ensuring that gift funds are spent in a timely manner and in compliance with donor intent.]*
- The Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The Institution will abide by such restrictions and provide appropriate documentation.
- The Foundation's disbursements on behalf of the Institution must be reasonable business expenses that support the Institution, are consistent with donor intent, and do not conflict with the law. *[Note: Expenditures for luxury travel, presidential residences, or other donor cultivation activities perceived as lavish or conferring undue benefits on institution or foundation staff have repeatedly compromised the reputations of colleges and universities. Both foundation and institution boards have a responsibility to ensure that such risks are effectively managed.]*
- All requests for Foundation funds other than regular disbursements and expense reimbursements must be submitted to the Foundation by the President of the Institution or his or her designee.

### Funding

- The Foundation, in collaboration with the Institution, is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.
- In consideration for Foundation services including, but not limited, to those enumerated in this agreement, the Institution will provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation will be negotiated on an annual basis by \_\_\_\_ [date] of the preceding year.
- In consideration of Foundation services, the Institution will also provide in-kind support including: [list major in-kind support such as staff, office space, and technology]. *[Note: Institution support for foundation services may be detailed in a separate contract for services. Also, if the foundation does not receive any funding from the institution or system, then language should specify this.]*



- The Foundation has the right to use a reasonable percentage of the annual unrestricted funds; assess fees for services; or assess fees on gifts, endowed funds, and other investments. *[Note: The use of fees and assessments should be decided in consultation with institution administrators, applied uniformly, and disclosed to donors.]*
- The Foundation, at its own expense, will provide office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations. *[Note: Depending on the degree of independence of the foundation, and if state law permits, the institution may help the foundation by providing support that may include personnel, office space, utilities, and services, or it may contract with the foundation for the services it provides; language should take this into account. Language should also be added to clarify whether the institution or the foundation owns the computer server and the records on the server. Institution gifts-in-kind should be appropriately reported in the foundation's annual report.]*
- The Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.
- The Foundation will provide access to data and records to the Institution on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The Foundation will provide copies of its annual report and other information that may be publicly released. *[Note: State regulations and case law should be taken into consideration to ensure that data-sharing practices are compatible with expectations regarding foundation and donor privacy.]*

## **TERMS OF THE MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding, made this \_\_\_ [day] of \_\_\_\_\_ [month], 20\_\_ [year], by and between the board of the Institution and the Foundation (an Internal Revenue Code 501(c)(3) nonprofit corporation), 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, the Institution and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities. The Institution and Foundation will review and amend this agreement at least every five years.

Either party may, upon 90 days prior written notice to the Chief Executive and Board Chair of the other party, terminate this agreement. The party initiating termination of the agreement must act in good faith to provide an opportunity for a meeting to include Institution and Foundation executives and Board Chairs (or the Board Chairs' designees) of both parties within 30 days of initial written notice of intention to terminate the agreement.

Notwithstanding the foregoing, either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice to the Chief Executive and Board Chair of the defaulting party.

Should the Institution choose to terminate this agreement, the Foundation may require the Institution to pay, within 180 days of written notice, all debt incurred by the Foundation on the Institution's behalf, including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this agreement, the Institution may require the Foundation to pay debt it holds on behalf of the Foundation in like manner.

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) nonprofit corporation, the Foundation will transfer its assets and property to the Institution, to a reincorporated successor Foundation, to another 501(c)(3) organization affiliated with the Institution, or to the state or federal government for public purposes, in accordance with the law and donor intent.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

\_\_\_\_\_  
Chair  
Board of The Institution

\_\_\_\_\_  
Chair  
Board of The Foundation

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

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

\_\_\_\_\_  
President or Chancellor  
The Institution

\_\_\_\_\_  
Chief Executive  
The Foundation

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

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

## ACKNOWLEDGMENTS

With thanks to the members of the AGB MOU Task force, for their review and revision of the illustrative memorandum of understanding and the development of the associated recommendations regarding purposes, principles and practices.

### The AGB MOU Task Force

- ✧ **David Bass**, Task Force staff; director of foundation programs and research, AGB
- ✧ **Carol Cartwright**, president emerita, Kent State University; consultant, AGB Consulting
- ✧ **Ed Davis**, president, Texas A&M Foundation
- ✧ **Brian Flahaven**, director, legislative, foundation, and recognition programs, Council for Advancement and Support of Education
- ✧ **Thomas K. Hyatt**, partner, Dentons; senior fellow, AGB
- ✧ **James L. Lanier, Jr.**, former vice chancellor for institutional advancement and CEO, East Carolina University Foundation; senior fellow, AGB
- ✧ **Kathleen S. Mehfoud**, chair and former university rector, University of Mary Washington Foundation
- ✧ **Thomas C. Meredith**, former commissioner of higher education, Mississippi University System; senior fellow, Ingram Center for Public Trusteeship and Governance; consultant, AGB Consulting
- ✧ **Donna Vuchinich**, president and CEO, University of Hawaii Foundation
- ✧ **John Walda**, president and CEO, National Association of College and University Business Officers

## ADDITIONAL RESOURCES

*Effective Foundation Boards: A Guide for Members of Institutionally Related Foundations.* AGB Press, 2012.

*Margin of Excellence. The New Work of Higher Education Foundations,* by Rick Legon. AGB, 2005.

*The Governance Committee (Foundation Boards),* by Jim Lanier. AGB Press, 2014.



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