Foundation Model Agreement

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal offices located at State University Plaza, Albany, New York 12246, hereinafter referred to as "State University'', acting through the State University of New York at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, New York, hereinafter referred to as "Campus", and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Foundation, Inc., a corporation exempt from federal and state income taxation, organized and existing under the laws of the State of New York, having its principal place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, New York, hereinafter referred to as "Foundation."

The Foundation has been established as an independent, tax-exempt corporation formed under the New York State \_\_\_\_\_\_\_\_\_\_\_\_\_ Law[[1]](#footnote-1), principally to support the Campus by serving as a means of receiving and managing gifts and making these revenues available to the Campus for approved programs and activities as well as a vehicle to manage real property for the benefit of the Campus; and

The parties desire to enter into an agreement setting forth the terms under which the Foundation will provide support for the benefit of the Campus and the Campus will provide certain resources for use by the Foundation.

Accordingly, the parties hereto agree as follows:

# The Foundation will conduct its Activities, as defined in Section 2, below, in accordance with the policies of the Campus and State University, including the Board of Trustees’ Guidelines for Campus-Related Foundations, as required by New York Education Law §355, attached hereto and made a part hereof as **Exhibit B**.

# The Foundation is authorized to conduct those services and activities enumerated in **Exhibit C** (the “Activities”), exclusively for the benefit of the Campus. Prior to engaging in any activities, which are not in furtherance of the enumerated Activities, the Foundation and the Campus will amend this agreement by adding such Activities to **Exhibit C**, which amendment must be approved in writing by the Chancellor or designee and when necessary, by the NYS Attorney General and the Office of the State Comptroller (together, the “Regulatory Agencies”).

# The Parties acknowledge that the Foundation and the State University, including the Campus, are independent entities and that neither is authorized to make any commitment or incur any expense or liability on behalf of the other without written authorization. Without limiting the foregoing, where Foundation funds are to be expended on Campus property, using Campus employees or equipment and under such circumstances as will require reciprocal or collateral Campus involvement and financial obligation, the prior approval of the Campus president shall be secured. Funds accepted by the Campus president shall be for Campus purposes that will not commit the State University to assume financial responsibility at any time, unless such a commitment has been agreed upon by the appropriate officials of the State University prior to the acceptance of the funds. Capital construction activities on Campus property supported in whole or in part by Foundation funds shall follow all State University and State procedures governing such projects.

# Campus, in accordance with the terms and conditions of this agreement, shall make available to the Foundation the facilities, personnel, equipment and other support, goods and services (collectively “Campus Support”) designated in **Exhibit D**, attached hereto and made a part hereof. Any changes to the Campus Support shall be made by written mutual consent of Campus and the Foundation, a copy of which shall be filed with the State University Controller. Any reimbursement to the Campus by the Foundation for the Campus Support shall be consistent with the Foundation approved annual budget and the terms indicated on **Exhibit D**.

# The Foundation shall take good care of the property set forth in **Exhibit D** and shall maintain it in a clean, sanitary and orderly condition. The Campus shall keep such specified premises in good repair and make all necessary capital improvements in order to comply with all applicable federal, state and municipal health and safety codes. Any alteration or improvement to the premises, fixtures, or replacement equipment that may be paid for by the Foundation shall become the property of State University. Upon removal from the premises, the Foundation shall return the equipment and facilities provided hereunder in good and clean condition.

# Campus may supply all ordinary and necessary utilities for the premises. Any reimbursement to the Campus by the Foundation for utilities shall be consistent with the Foundation approved annual budget and the terms indicated on **Exhibit D**.

# The parties acknowledge that the Foundation is the primary foundation within the meaning of the Guidelines contained in **Exhibit B**. The Foundation has established the affiliated organizations listed in **Exhibit E** which organizations shall be organized and operated in accordance with the Guidelines attached hereto as **Exhibit B**. Campus Support provided to the Foundation affiliated organizations is described on **Exhibit E**.

# Campus hereby grants the Foundation a non-exclusive right to use its name and marks.

# 🞏 [IF APPLICABLE] Campus shall make available to the Foundation records and information concerning students and alumni in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 and regulations promulgated thereunder (“FERPA”). Such records and information shall be maintained by the Foundation in accordance with FERPA, in good condition and shall not be released to other organizations without the written permission of Campus.

# 🞏 [IF APPLICABLE] Additionally, in performing this agreement, the Foundation will receive, maintain, process or otherwise will have access to confidential information on students and/or customers of the Campus. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission’s Safeguards Rule (16 CFR Part 314), the Foundation must implement and maintain a written Information Security Program (“Program”) in order to protect such customer information. Customer information is defined as “any record containing nonpublic personal information as defined in 16 CFR §313(n)” (the FTC’s Privacy Rule) “about a customer of a financial institution, whether in paper, electronic, or other form” (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that must be implemented under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

The Foundation shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The Foundation shall be liable for the costs associated with any breach of these provisions if caused by the negligent or willful acts or omissions of the Foundation or its agents, officers, employees, or subcontractors.

If the Foundation sub-contracts with a third party for any of the services that it is required to undertake in furtherance of this agreement, the Foundation must ensure that such third parties implement practices which protect nonpublic personal information of students and/or campus customers which they receive, maintain, process or otherwise are permitted access.

The Foundation agrees to maintain network security that conforms to generally recognized “Industry Standards” and best practices that the Foundation applies to its own network. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (see <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) (see <http://www.pcisecuritystandards.org>).

# 🞏 [IF APPLICABLE] The Foundation hereby assigns to the Campus its right to collect any unpaid amounts due from any student enrolled at the Campus and billed by the Campus. The right extends to referral to the NYS Attorney General for collection or to an authorized collection agency.

# The Foundation shall be solely responsible for compliance with all applicable laws, rules, orders, regulations and requirements of federal, state and municipal governments applicable to its operation including the provisions attached hereto and made a part hereof as **Exhibit A**.

# The Foundation shall defend, indemnify and hold harmless the State University and the State of New York from and against claim, damage, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation or occasioned by any act, neglect or omission of the Foundation, its officers, employees or agents or its affiliates or sub-contractors.

In the event any damage or injury is caused to the equipment or facilities provided by Campus hereunder, by the negligence or improper conduct of the Foundation, its agents, subcontractors or employees, the Foundation shall cause the said damage or injury to be repaired as speedily as possible at its own cost and expense. Notwithstanding the above, to the extent loss is due to the negligence of Campus, its officers or employees, the Foundation shall be relieved of its responsibility for replacement or repair.

In no event shall anything contained in this agreement be deemed to impose liability of any nature upon the Foundation for loss or damage to persons or property, to the extent caused by the State University, its officers or employees or by any third party over which the Foundation exercises no control.

# This agreement does not create the relationship of landlord and tenant between the Foundation and Campus regarding the use of Campus facilities.

# The term of this agreement shall commence \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, and shall continue for a term of five (5) years through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This agreement may be terminated in whole or in part by Campus upon 45 days prior written notice in accordance with the notice provisions of this agreement.

# Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail addressed as follows:

TO CAMPUS:  
  
President  
State University of New York at  
(Address)  
  
  
TO THE FOUNDATION:

or to such persons as may be hereafter designated by notice. Any notice served or mailed hereunder shall be effective as of the date of service thereof if served personally, or as of the date of receipt thereof if mailed.

# This agreement consists of the following documents:

## Standard NY Contract Clauses - **Exhibit A**

## Guidelines for Campus Foundations - **Exhibit B**

## Foundation Activities - **Exhibit C**

## Facilities, Personnel, Equipment and Other Support, Goods and Services Provided by Campus - **Exhibit D**

## Description of Affiliated Organizations and Campus-provided Resources - **Exhibit E**

# In the event of any controversy of terms, the priority of the interpretation of documents shall be in the following order:

## **Exhibit A**

## Guidelines for Campus Foundations – **Exhibit B**

## This agreement

## Foundation Activities - **Exhibit C**

## Facilities, Personnel, Equipment and Other Support, Goods and Services Provided by Campus - **Exhibit D**

## Description of Affiliated Organizations and Campus-provided Resources - **Exhibit E**

# This agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this agreement are hereby superseded.

# The parties agree that any amendment to this agreement or to any exhibit hereto will not become effective until it has received the approval of both the NYS Attorney General and the State Comptroller and any other regulatory agencies when necessary.

IN WITNESS WHEREOF, the parties have entered into this agreement the day and year first above written.

State University of New York Foundation:  
on behalf of its state-operated campus:   
   
  
  
By: By:   
 President Title:

In addition to the acceptance of this agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved:  
  
  
Date:   
  
By:   
 State University of New York Controller

Approved as to Form: Approved and Filed:  
  
  
Date: Date:   
  
ERIC SCHNEIDERMAN THOMAS P. DI NAPOLI  
Attorney General NYS Office of the State Comptroller  
  
  
By: By:   
 Assistant Attorney General For the Comptroller

CORPORATE ACKNOWLEDGMENT

STATE OF )

COUNTY OF ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known, who being duly sworn, did depose and say that he/she resides in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; that he/she is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

Exhibit A

Exhibit B

Exhibit C  
****Foundation  
Services and Activities****

## Services and activities to be provided by the Foundation (enumerate all distinct services and activities)[[2]](#footnote-2):

## Fiscal agent services (enumerate all services, activities, and entities[[3]](#footnote-3)):

## Services to be provided by Subcontractors and/or Affiliates of the Foundation (enumerate all distinct services, activities, and entities):

Exhibit D  
Foundation  
Facilities, Personnel, Equipment and Other Support, Goods and Services Provided by the Campus

## Description of space utilized for each service provided:

|  |  |  |
| --- | --- | --- |
| Building Name | Square Footage | Space Description |
|  |  |  |
|  |  |  |

## Campus Personnel assigned:

## Description of equipment and other support, goods and services provided (e.g., postage, supplies, travel, print costs, etc.):

## Description of reimbursement:

Exhibit E  
****Foundation  
Description of Affiliated Organizations  
and Campus-provided Resources****

## Name and address of affiliates

## Description of services and activities

## Description of space utilized for each service provided:

|  |  |  |
| --- | --- | --- |
| Building Name | Square Footage | Space Description |
|  |  |  |
|  |  |  |

## Campus Personnel assigned:

## Description of equipment provided:

1. Insert applicable Law: Not-For-Profit Corporation Law or Education Law. [↑](#footnote-ref-1)
2. Suggested list: fundraising, including receipt and acquisition of real and personal property to supplement State of New York resources, investment management, including endowment fund management with asset allocation, investment manager selection and spending formula, real property management, including student housing, fiscal, administrative and investment functions (list entities and functions), hold funds, activities in support of system wide or multi-campus functions, auxiliary services corporations services, and other services. [↑](#footnote-ref-2)
3. Fiscal services shall comply with State University agency account guidelines and shall not be used to receive, hold or disburse State funds. [↑](#footnote-ref-3)