

Policy 3.011 College Foundation Guidelines

THE CITY UNIVERSITY OF NEW YORK FOUNDATION GUIDELINES

I. PREAMBLE

The City University of New York (“CUNY” or the “University”) recognizes the vital role that the CUNY-related foundations (each a “Foundation”) play in enabling the University and the colleges to achieve their mission. Although independent, each Foundation is organized for the sole purpose of supporting CUNY and in most cases, a particular CUNY college or school (each a “college”). Through fundraising and other activities in cooperation with the college, a Foundation can assist its supported college in meeting its goals.

As a condition of a Foundation’s use of the University’s or a college’s name, facilities and/or other resources, a Foundation must accept and follow these Guidelines, which are intended to protect the University’s interests, as well as to help ensure that the Foundation operates in a prudent, lawful manner. As further described in this document, each Foundation shall be:

- organized solely for the benefit of a particular supported college and its students, a particular CUNY or college operation, or CUNY generally;
- operated in a fiscally prudent manner and consistent with its governance documents and applicable federal, state or local law and regulation; and
- guided by best practices in good governance and ethical judgment.

II. PURPOSE

The Foundations are entities created and operated exclusively to benefit a particular CUNY college (including its students) or operation (e.g., CUNY TV, John D. Calandra Italian American Institute), or CUNY generally (e.g., a Foundation organized to benefit the University as a whole, not a particular college or operation), by conducting fundraising, investment and fund management including endowment fund management, and otherwise aiding and promoting the educational and charitable purposes and lawful activities of that college, operation, or CUNY ¹.

[Footnote:] ¹ Throughout these Guidelines references to the “college” and the “college president” or “president” shall mean CUNY and the Chancellor in the case of Foundations and their Affiliates organized to support a particular CUNY operation or CUNY generally, unless otherwise indicated.

Foundations and their Affiliates (as defined below) shall not engage in activities on behalf of a college that are (1) prohibited by applicable federal, state or local law or regulation, or (2) would cause a college to be out of compliance with CUNY policies, procedures or contractual obligations, to the extent that such policies, procedures and obligations are made known to the Foundations and Affiliates. For example, a Foundation:

- shall not offer or manage an educational program unless the Foundation meets any and all governmental requirements for such activity, such as licensure by the State Education Department or organization as an education corporation through the Board of Regents, as the case may be; and
- shall not receive and/or manage funds for research that the CUNY Board of Trustees has determined shall be administered by The Research Foundation of The City University of New York.

III. AUTHORITY

A Foundation may be created under a college's name only with the approval of the CUNY Board of Trustees after review of the purpose of the Foundation, its proposed organizational format and scope of its activities. Each college shall have only one Foundation unless otherwise authorized by the CUNY Board of Trustees.

Established Foundations must submit to the CUNY Board of Trustees for approval any proposed change in nature, purpose, or scope of the Foundation activities that is substantial in nature, and outside the normal function of the Foundation.

IV. STRUCTURE AND GOVERNANCE

A. Structure

1. Foundations. Each Foundation shall be organized and operated as a New York not-for-profit corporation that is legally separate from the college and the University. It shall obtain and maintain status as a tax-exempt, charitable organization under § 501(c)(3) of the Internal Revenue Code and applicable state laws so contributions and bequests to it will be deductible charitable contributions as provided by Federal income tax laws. The charter or certificate of incorporation of the Foundation should make reference to the CUNY college or operation it will benefit in terms of purposes, objectives, and programs.

2. Affiliates. An "Affiliate" for purposes of these Guidelines is an entity formed by a Foundation to assist it in meeting the specific needs of, or providing a direct benefit to a college or an associated Foundation. An Affiliate may be created under a college's name only with the approval of the CUNY Board of Trustees.

3. Dissolution. Each Foundation and Affiliate certificate of incorporation and/or other organizing documents (e.g., bylaws or operating agreement) shall include a clause requiring that in the event of its dissolution, the Foundation's or Affiliate's net assets shall be distributed to another appropriate not-for-profit corporation, or to the University, for the benefit of the CUNY college or operation that the Foundation or Affiliate was created to support.

4. Documentation. Copies of all organizing documents, including all amendments thereto must be on file with the college and the CUNY Office of the General Counsel.

B. Governance

1. Composition of Board. The composition of a Foundation's or Affiliate's governing body (each a "board"), including its membership, committee structure, and adherence to term limits

if any, shall be in full compliance with its governance documents and these Guidelines. The majority of its members and officers shall be external, non-CUNY employees. The college president or dean (each a “president”) (including any acting or interim president approved by the Board of Trustees) or designee shall be an ex officio, voting member of the Foundation board and shall have the right to serve at the college president’s option, on the governance body of any Affiliate, but may not serve as the chair of the board of the Foundation or any Affiliate, or as the chief executive officer or president of the Foundation or any Affiliate. To the extent that any Affiliate is formed as a single member limited liability company and the Foundation is the sole member thereof, the governance documents for such limited liability company need not provide for the college president or designee to serve on the governance body for such single member limited liability company.

2. Audit Committee. Even if not so required by New York Not-For-Profit Corporation Law (N-PCL) § 712-a, Foundations must have an audit committee whose voting members consist solely of independent directors. The audit committee shall oversee the accounting and financial reporting processes of the Foundation and its Affiliates and the audit of their financial statements, and shall review the Internal Revenue Service (IRS) Forms 990 for the Foundation and its Affiliates before they are signed and filed.

3. Conflict of Interest. Each Foundation and Affiliate must have a conflict of interest policy in compliance with the N-PCL to ensure that its directors, officers, and key persons act in the entity’s best interest and comply with applicable legal requirements.

V. ACCOUNTABILITY AND COMPLIANCE

A. Corporate and Fiduciary Responsibilities

Each Foundation and Affiliate shall meet all requirements of the N-PCL and/or other applicable laws covering its organizational structure. It shall maintain its organizational status on a current basis through filings as required by the New York State Secretary of State.

Each Foundation and Affiliate shall be familiar with, and fulfill, its fiduciary responsibilities under the New York Prudent Management of Institutional Funds Act (NYPMIFA) N-PCL Article 5-A, and any other statutes that define its fiduciary responsibilities. Each Foundation and Affiliate shall comply with all other local, state and federal laws applicable to its organization and activities.

B. Solicitation in New York and Other States

Each Foundation and Affiliate shall meet all registration and reporting requirements of New York charities pursuant to the New York Estates, Powers and Trust Law and the New York Executive Law, and all applicable New York State statutes and regulations affecting fundraising and management of gift assets, as well as the requirements of such other jurisdictions in which the Foundation or Affiliate concentrates its fundraising activities.

C. Tax Requirements

Each Foundation and Affiliate shall make all required filings with the IRS and the New York State Department of Taxation and Finance, and follow all other applicable tax laws enforced and/or promulgated by the IRS or New York State.

Each Foundation and Affiliate shall make available for public inspection its Form 1023 request to the IRS for tax-exempt status, its IRS “determination” letters as a 501 (c)(3) organization,

and its Form 990s for the past three years. It shall provide copies of these documents to those who request them, as required by law.

D. Contracts

No Foundation or Affiliate shall enter into any contract that would obligate its supported college or the University without the prior written approval of the college president or designee, or the Chancellor or designee in the case of a Foundation or Affiliate that supports a University operation or the University generally. All such contracts shall be for the benefit of the college and/or the University.

Consistent with N-PCL § 716, a Foundation or its Affiliate shall not provide a loan to any of its directors or officers, including without limitation the college president, or to any entity in which a director or officer has a financial interest or is a director or officer. Any loan from a Foundation or an Affiliate to its supported college is subject to the approval of the CUNY Board of Trustees prior to its acceptance by the college.

E. Use of College Name and Marks

A Foundation and its Affiliates may, solely in connection with their lawful activities to benefit the supported college or the University, use the name, logos, seals, and other symbols and marks of the college or University, pursuant to the terms and conditions of the Memorandum of Understanding between the Foundation and the college.

F. Legal Counsel

Each Foundation may retain independent legal counsel, as appropriate.

G. Compliance with Investigations

Each Foundation shall cooperate, and shall ensure that its Affiliates cooperate, with the University and government authorities regarding any investigation of the Foundation and/or an Affiliate regarding the conduct of the Foundation's and/or Affiliate's activities in support of a college or CUNY generally, as the case may be.

VI. INSURANCE AND INDEMNIFICATION

Each Foundation shall obtain directors and officers' liability insurance (for a minimum of \$1 million) and comprehensive general liability insurance in such amounts determined by the Foundation board to be reasonable and appropriate. Each Foundation board should routinely review total amounts for all forms of insurance to ensure sufficient and appropriate coverage, including coverage for new gift assets.

Each Foundation's by-laws shall include provisions indemnifying its directors and officers in a manner consistent with the provisions of Article 7 of the N-PCL.

VII. PERSONNEL

Each Foundation and Affiliate should have adequate and qualified staff, or should retain fiscal agents, to fulfill its responsibilities to donors as trustee under any retained-income arrangements (gift annuities, pooled income funds, charitable trusts, etc.) and under any other fiduciary relationship between a Foundation or Affiliate and its donors, and to carry out its other responsibilities.

No college employee who is also a voting member of a Foundation's or Affiliate's governing body, including the college president, shall serve as an officer of the Foundation or an Affiliate. In particular, but without limitation, a Foundation's Treasurer shall not be a college employee.

Pursuant to University policy, a college president's salary shall be paid from tax-levy funds; no Foundation shall underwrite any compensation for the college president. No Foundation shall underwrite any compensation for other college faculty and staff without the prior approval of the college president, the Foundation's board, and the Chancellor of the University. Pursuant to University policy a college president shall annually report all college faculty and staff compensation, including any approved compensation paid by a Foundation, to the CUNY Board of Trustees' Committee on Faculty, Staff and Administration. No Foundation shall underwrite any compensation for the Chancellor of the University without the prior approval of the Foundation's board and the University's board of trustees.

No Foundation or Affiliate shall discriminate in employment or in its programs and activities on the basis of race, color, creed, national origin, ethnicity, ancestry, religion, age, sex (including pregnancy, childbirth and related conditions), sexual orientation, gender, gender identity, marital status, partnership status, disability, genetic information, alienage, citizenship, military or veteran status, status as a victim of domestic violence/stalking/sex offenses, unemployment status or any other legally prohibited basis in accordance with federal, state or local laws.

VIII. FUNDRAISING AND RELATED ACTIVITIES

A. Cooperation with College and University

Each Foundation and Affiliate supporting a particular college shall plan and conduct all fundraising and related advancement activities in close cooperation with the president of its supported college and the college office of development and institutional advancement, and in concert with college and University policies. Each Foundation and Affiliate supporting a CUNY operation or CUNY generally shall plan and conduct all fundraising and related advancement activities in close cooperation with the Chancellor or designee and the CUNY Office of Budget and Finance, and in concert with University policies. No funded program shall be created by a Foundation or Affiliate without the approval of the college president, or the Chancellor or designee in the case of Foundation or Affiliate supporting a CUNY operation or CUNY generally.

B. Gifts Payable to Other than Foundation

Each Foundation and Affiliate shall adopt guidelines to ensure that funds or gifts payable to its supported college, the University, or any other University entity are deposited with or transferred to the appropriate entity, or are otherwise dealt with according to policy or agreement with the college or the University. (See also Cash and Treasury Management – Transfer of Funds, below.)

C. Approval of Restricted Gifts

Each Foundation and Affiliate shall advise donors that any restrictive terms and conditions attached to gifts for the benefit of its supported college, a CUNY operation or CUNY generally are subject to college approval in the case of gifts for the benefit of the college and CUNY central office approval in the case of gifts for the benefit of a CUNY operation or CUNY generally. Any restrictions on previous gifts that are illegal or discriminatory must be addressed.

D. Stewardship

Each Foundation and Affiliate shall insure that all donors are appropriately acknowledged, and that use of gifts is in compliance with the donors' intent. A system and written policy to ensure this practice must be implemented.

E. Policies and Procedures

Each Foundation and Affiliate shall adopt appropriate policies and procedures to ensure that the proceeds of its fundraising are appropriately recorded, credited, acknowledged, and administered based on legal requirements and donor stewardship parameters. Each Foundation and Affiliate shall adhere to standards of best practice such as those set out in the Council for the Advancement and Support of Education (CASE) "Donor Bill of Rights" and Association of Fundraising Professionals "Code of Ethical Standards." Policies adopted must include:

- Gift Acceptance Policy, which addresses, among other things:
 - a. accountability of cash at the point of receipt;
 - b. provision of gift documentation to donors in compliance with applicable law. Each donor who creates a restricted fund should enter into a written, signed agreement with the Foundation or Affiliate, which describes any fees to be charged, and which authorizes the Foundation's or Affiliate's board to re-direct disbursements from the fund should the purposes for which it was created no longer be feasible;
 - c. acceptance, management and disposition of non-cash gifts, including securities and real estate gifts;
 - d. prior to acceptance, legal review and estimate of gift management costs of donor restrictive gifts, gifts of real property, and gifts of personal property that are not readily marketable;
 - e. creation of a system for tracking all restricted funds separately; and
 - f. maintenance of a separate record for each donor and for each gift.

Each gift shall be counted, valued or discounted in accordance with CASE standards and Generally Accepted Accounting Principles (GAAP).

- Policy for regularly reporting to donors on the use of funds and on their financial status.
- Policies regarding investment, spending rates, and endowment audits (see Cash and Treasury Management, below).
- A spending policy governing expenses of the Foundation on behalf of its supported college, which shall be established in accordance with policies of the CUNY Board of Trustees regarding the use of non-tax levy funds.

IX. MEMORANDUM OF UNDERSTANDING

Each Foundation shall enter into a written memorandum of understanding (“Memorandum of Understanding” or “MOU”) with its supported college in the form set forth in Appendix B (unless otherwise approved by the CUNY Board of Trustees), which clearly defines their respective roles, relationships, and expectations. In addition to those items mentioned below, the MOU shall address, among other things, the Foundation’s right to use a college or CUNY name and/or trademarks, management and use of funds held by the Foundation, and coordination of fundraising activities.

A. Use of Facilities

A Foundation may occupy, operate, and use college facilities and property separately or jointly with its supported college as identified by the MOU between the college and the Foundation. The Foundation shall use the facilities and property only for those services and functions that are consistent with the MOU and applicable current or future policies, rules, and regulations of the CUNY Board of Trustees and the college.

B. Provision of Space and Services

The college may provide certain services, at no cost, to the Foundation, which may include office space, utilities, telephones, custodial and facilities maintenance services, equipment and information systems service and advice, personnel and related assistance and other similar services.

A Foundation may reimburse its supported college for expenditures incurred by the college as a result of activities of the Foundation. In these situations, the college shall invoice the Foundation for such expenditures, indicating items charged and the method of determining costs. Any such reimbursement by a Foundation should be consistent with the approved annual budget and terms and conditions of the MOU with the college.

C. Alumni Information/Database

In principle and practice, the creation, maintenance, support, and ownership of alumni information and the alumni database itself should always be consistent with the best interests of the college. This is particularly true when these functions and responsibilities are shared among a college and either or both its Foundation and a separately incorporated alumni association. In general and wherever possible, the college should own and manage the alumni database and provide access to the college’s Foundation and/or alumni association. Laws such as the Family Educational Rights and Privacy Act (FERPA) and national best practices and precedents should guide the Foundation and its supported college in addressing the issues of ownership and usage of alumni information. A Foundation, its supported college and any other parties which share use and/or responsibility for alumni information must enter into a written agreement (which may be the MOU) that sets forth: (i) who owns the alumni information and the database, (ii) permitted and prohibited uses of alumni data by third parties (i.e., credit card services, insurance, and alumni directories), and (iii) college policy regarding the privacy of alumni data. In all events, the college must have the right of full access and use of the alumni data without cost and as and when requested, even when held in a database owned and/or maintained by a Foundation or Affiliate.

X. FINANCIAL MANAGEMENT

Each Foundation and Affiliate is responsible for developing, managing and monitoring its fiscal and operational plans. They are also responsible for complying with applicable federal, state and local laws, and University and college financial procedures regarding participation in the CUNY Investment Pool (for those Foundations and Affiliates that participate) and other

procedures made known to the Foundations and Affiliates by the University and necessitated by the inclusion of the Foundations and Affiliates as discretely presented component units in the University's financial statements.

A. Budget

Each Foundation and Affiliate shall develop an annual operating budget in consultation with the college president.

The college president should plan for current and future college operations and programs with the assumption that continued and growing financial support by the Foundation will be in place. Annual budgets and plans shall be reviewed by and approved by a Foundation's board in partnership with the college president. Financial commitments and expenditures by Foundations and Affiliates shall be in accordance with the approved budgets and plans.

B. Cash and Treasury Management

1. Investments. Any cash held by a Foundation that is scheduled to be used in the current year can be invested in short-term investments such as U.S. Treasury bills, money market accounts, certificates of deposits etc., or the University's Short-term Investment Pool (STIP). Funds that can be invested for a longer period should be invested in accordance with the Foundation's investment policy, or may be invested in the University's Investment Pool. All funds shall be managed and invested as required by NYPMIFA and, to the extent that a Foundation or Affiliate invests funds outside of the University's Investment Pool, it shall develop written investment and spending rate policies for those funds in accordance with NYPMIFA.

2. Endowments. Endowments shall be invested with respect to prevailing principles of sound financial management and legal obligations. Earnings are credited according to the amount of principal endowed and any previously unspent earnings on the individual endowment. A portion of the earnings of these accounts becomes available to support the respective endowments in accordance with the directions specified by the donor of the endowment. The Foundation's or Affiliate's spending rate policy shall set forth guidelines for determining how much of the earnings of the endowments may be spent.

3. Transfer of Funds. Any transfer of endowments or other assets by the supported college or the University to a Foundation or Affiliate, or by a Foundation or Affiliate to its supported college or the University, for management or investment (assuming such transfer is permissible under the donor documents), shall be formalized in a memorandum of agreement so the fiduciary requirements of the respective governing boards are complied with and to assure, among other things, that any restrictions governing the future dispositions of the funds are observed.

C. Purchasing

Each Foundation and Affiliate shall follow sound purchasing practices and procedures that provide for open and free competition to the maximum extent practicable while meeting the needs of management for flexibility and minimum administrative burden. Each Foundation and Affiliate shall take steps to ensure fairness in all contracts, including abiding by Section 715 of the N-PCL regarding related party transactions.

D. Accounting

Each Foundation and Affiliate shall maintain a financial system that provides for accrual based accounting and is used to process all financial transactions. Foundations and Affiliates shall

follow the Financial Accounting Standards Board (FASB) Statements and Interpretations, Accounting Principles Board Opinions, and Accounting Review Boards of the Committee of Accounting Procedures and Generally Accepted Accounting Principles (GAAP). Each Foundation should implement all new FASB accounting rules and regulations.

XI. FINANCIAL REPORTING AND AUDIT

A. Reporting to the Board/Financial Statements

The chief executive officer and/or chief financial officer of each Foundation and Affiliate shall provide its board with periodic financial and managerial reports. Each Foundation and Affiliate shall prepare annual financial statements in conformity with GAAP and have them audited by a licensed, independent certified public accounting firm (CPA) in accordance with generally accepted auditing standards. To enable the University to include pertinent information in its annual financial statements, the audit committee and board, if applicable, must accept the audited financial statements within 90 days after the close of a Foundation's fiscal year.

B. Independent Auditor

The independent CPA retained by a Foundation and/or Affiliate must have experience auditing tax exempt organizations and must be approved by a designee of the Chancellor. No independent CPA firm shall serve as the audit firm for the Foundation or Affiliate for more than seven years and a three-year period must elapse before such CPA firm may serve again as auditor.

On an annual basis the Foundation's auditor must confirm its independence to the University's external auditors via a signed "independence letter."

C. CUNY Audit Rights

1. CUNY Audit. The books and records, financial condition, operating results, and program activities of a Foundation and its Affiliates are subject to periodic audit by the college president and/or designee, the University or outside firms hired by the University, and to the extent allowed by law, outside regulatory bodies.

2. Reporting to CUNY. A Foundation shall promptly provide copies of each of its audit reports from whatever source, including the certified (consolidated) financial statements, any report indicating a significant deficiency or material weakness in the internal controls over financial reporting and any management letter or other report, together with the associated corrective action plan of the Foundation and each of its Affiliates, to the college president and the University's Office of Budget and Finance.

Additionally, each Foundation must:

- Semi-annually upload their financial statement information to the University's financial accounting system, CUNYfirst, using a template established by the Office of Budget and Finance.
- Annually provide the college and the University's Office of Budget and Finance with a complete list of all bank and investment accounts;
- Require each member of the Foundation's and any Affiliate's board to provide written acknowledgement to the Foundation of the following, upon implementation of these

Guidelines for directors currently serving at such time or upon their election or appointment to the board for new directors, and thereafter upon any modification to the Guidelines or the MOU: (i) that they have received a copy of these Guidelines and the MOU and reviewed them and (ii) that they understand that these Guidelines and the MOU are binding on the Foundation or Affiliate, as the case may be; and require all officers of the Foundation and any Affiliates to provide the same written acknowledgement on an annual basis and upon any modification to the Guidelines or the MOU. Directors and officers may provide such acknowledgements as part of their annual conflict of interest disclosure statements. The Foundation shall provide on a timely basis copies of such acknowledgements to the college president or the University upon their request.

- Concurrent with its filing with the IRS, provide a copy of the Foundation's and any Affiliate's IRS Form 990 to the University's Office of Budget and Finance, and provide on a timely basis such other information on the Foundation's financial status and operations as requested by the college president.

XII. POLICY MANUAL

Each Foundation and Affiliate shall develop a comprehensive manual documenting the policies, procedures, standards, and other administrative and operating criteria applicable to it. The manual shall be maintained on a current basis and the Foundation and/or Affiliate shall provide copies of the current version, as well as any updates or revisions as they are adopted, to the supported college's business office and the University's Office of Budget and Finance, and to internal and external auditors on request.

XIII. INTERNAL CONTROLS

Each Foundation and Affiliate is responsible for establishing and maintaining adequate internal controls. Some of these controls include maintaining segregation of duties between the cash receipts and disbursements functions, preparing timely bank reconciliations, requiring dual signatories on payments over set amounts, maintaining segregation duties between the accounts payable and purchasing and payroll and human resource functions and restricting access to the vendor listing.

XIV. RECORDS RETENTION

Each Foundation and Affiliate should establish a document retention policy that provides for the orderly management of Foundation and Affiliate records consistent with local, state and federal laws.

XV. EXCEPTIONS AND AMENDMENTS

Any proposed exceptions to these Guidelines must be approved in writing by the Chancellor or designee. Any proposed amendments to these Guidelines must be approved by the Board of Trustees. The CUNY Offices of the General Counsel and Budget and Finance are responsible for the periodic review of these Guidelines, as well as ensuring that all appropriate parties are informed of them. All Guideline amendments shall become effective upon a duly adopted amendment to the MOU between the college and the Foundation.

XVI. RELATED INFORMATION

The following links and/or references provide additional information related to this guidance:

New York Not-for-Profit Corporation Law: <http://public.leginfo.state.ny.us>

Internal Revenue Service: www.irs.gov

New York State Charities Bureau

- www.oag.state.ny.us/charities/charities.html
- http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf
- <http://www.charitiesnys.com/pdfs/NYPMIFA-Guidance-March-2011.pdf>
- http://www.charitiesnys.com/pdfs/Audit_Committees.pdf

New York State Office of the Inspector General: <https://ig.ny.gov/>

Payment Card Industry Data Security Standards: <https://www.pcisecuritystandards.org>

National Association of State Charity Officials: www.nasconet.org

American Institute of Certified Public Accountants: www.aicpa.org

Financial Accounting Standards Board: www.fasb.org

National Association of College and University Business Officers: www.nacubo.org

Council for Advancement and Support of Education: www.case.org

Association of Fundraising Professionals: <http://www.afpnet.org/>

(Board of Trustees Minutes,2017,06-26,3,A)

MODEL MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and between The City University of New York, by and on behalf of [*name of College, School, or other appropriate CUNY unit or program*] located at [*address*] (“College”)¹, and [*name of Foundation*], a New York not-for-profit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“Foundation”).

RECITALS

A. The College is a constituent unit of The City University of New York, a public institution of higher education established pursuant to Article 125 of the New York Education Law (the “University”).

B. The Foundation is organized for the sole purpose of aiding and promoting the educational and charitable purposes and lawful activities of the College.

C. The College and the Foundation acknowledge the importance of establishing a mutually cooperative working relationship in order to enable the Foundation to carry out its mission consistent with the needs of the College.

D. The College and the Foundation desire to formalize their working relationship in the form of a Memorandum of Understanding (“MOU”).

TERMS

In consideration of the mutual covenants, promises and conditions herein contained, and for good and valuable consideration the adequacy of which is hereby acknowledged, College and Foundation agree as follows:

1. Foundation Activities. The Foundation’s sole purpose is to provide support to the College and its students. The College and the Foundation agree that the Foundation shall conduct those services and activities listed in **Exhibit B** (the “Activities”), as it may be amended from time to time, exclusively for the benefit of the College.
2. College Support of Foundation. Subject to the availability of funding and the budget process, the College, in accordance with the terms and conditions of this MOU, shall make available to the Foundation the facilities, personnel, equipment and other support, goods and services (collectively “College Support”) listed in **Exhibit C**. Any changes to the College Support shall be made by written amendment to this MOU and **Exhibit C**, a copy of which shall be filed with the University Office of the General Counsel. Any reimbursement to the College by the Foundation for the College Support shall be consistent with the Foundation’s annual budget and the terms indicated on **Exhibit C**.

¹ In the case of a CUNY School or other unit or program, changes should be made throughout the document to refer to School and Dean, etc., as appropriate.

3. Care of Premises. The Foundation shall take good care of the Premises set forth in **Exhibit C** and shall maintain them in a clean and orderly condition. The College shall keep such 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. The Foundation shall not make alterations to the Premises without the prior written consent of the College. Any alteration or improvement to the premises, fixtures, or replacement equipment that may be paid for by the Foundation shall become the property of the University.
4. Affiliates². The parties acknowledge that the Foundation is the primary foundation within the meaning of the University's Foundation Guidelines attached as **Exhibit A**. The Foundation has established the Affiliate(s) (as defined in the Guidelines) listed in **Exhibit D**.
5. Use of the College Name and Trademarks.
 - 5.1. The Foundation may, solely in connection with the Activities, use and license its subcontractors to use, the name of the College as well as College logos, seals, and other symbols and marks of the College (collectively, the "College Marks"). Except to the extent included as part of a College Mark, the Foundation shall not use the names "The City University of New York" or "CUNY," or any logo, seal, symbol or mark of the University without the prior approval of University's Office of Communications and Marketing.
 - 5.2. Notwithstanding the foregoing, the College President may, in his/her discretion, forbid any particular use of a College Mark or, if such use has already commenced, require that such use cease. The Foundation shall not delegate the authority to use a College Mark to any person or entity without the prior written approval of the College President.
 - 5.3. The Foundation agrees to stop using the College Marks in the event (i) the Foundation dissolves, (ii) the University withdraws recognition of the Foundation, (iii) the Foundation ceases to be a not-for-profit corporation or is no longer recognized by the Internal Revenue Service as an entity described in section 501(c)(3) of the Internal Revenue Code, or (iv) the Foundation is directed to stop such use by the College President.
 - 5.4. For purposes of this Section 5, "College President" means the President of the College or his or her designee.
6. College Representation on Foundation Board.
 - 6.1. The President of the College shall be an ex-officio, voting member of the Foundation's Board of Directors [and Executive Committee].

² This section to be excluded if a Foundation has no Affiliates.

- 6.2. The following University employees shall also be ex officio [voting][non-voting] members of Foundation's Board: *Describe any other ex-officio seats held by College or other CUNY employees. In order to maintain the Foundation's independence, CUNY employees should not hold a majority of Board seats.*

7. Data and Confidentiality.

- 7.1. The College may 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") for use by the Foundation in a manner consistent with the Foundation's rights and obligations under this MOU and with College and University policies. The Foundation shall treat such records and information as confidential in accordance with FERPA and shall not disclose any or all of them to any third party without the express prior written consent of the College and subject to a written agreement with such third party that shall: (i) be subject to the terms and conditions of this MOU, including without limitation those regarding confidentiality of information; (ii) be non-transferable; and (iii) provide for its termination or assignment to the College, at the College's sole option, upon termination of this MOU. The Foundation shall provide the College with a copy of each such agreement.
- 7.2. At the College President's request, the Foundation shall make available to the College for fundraising purposes the Foundation's records and information concerning College alumni and other donors or prospective donors. To the extent that such information is non-public, the College agrees to keep it confidential.
- 7.3. If the Foundation's Activities as listed on **Exhibit B** include providing loans or other financial products (not including scholarships, awards and grants) or assisting the College with the administration of such services, the Foundation will comply with the Gramm-Leach-Bliley Act (P.L. 106-102), as amended, and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314) (collectively, "GLB Regulations"), regarding any nonpublic personal information that the Foundation receives, maintains, processes or otherwise has access to from students or others in connection with providing such services.
- 7.4. The Foundation shall comply with the provisions of the New York State General Business Law Section 899-aa regarding security breaches of personal information. 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.
- 7.5. Each party agrees to maintain network security that conforms to generally recognized "Industry Standards" and best practices that the party 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>).

- 7.6. Foundation employees and agents shall abide by all confidentiality requirements imposed by law or by College or University policy to protect the privacy of past and present College employees and students, donors and potential donors. If the Foundation sub-contracts with a third party for any of the Activities, the Foundation shall ensure that such third parties comply with all of confidentiality provisions of this MOU.
8. Coordination with the College's Office of Finance. The Foundation shall provide the College's Office of Finance with any and all financial reports otherwise provided to the Foundation's Board of Directors [and the Board's Investment Committee]. A Foundation representative shall meet at least quarterly with the College's Chief Financial Officer to discuss matters relating to interactive financial arrangements.
9. Indemnification and Liability.
 - 9.1. In the event any damage or injury is caused to the equipment or facilities provided by the College 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.
 - 9.2. In no event shall anything contained in this MOU 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 College, its officers or employees or by any third party over which the Foundation exercises no control.
10. Occupancy of Premises.
 - 10.1. The Foundation's occupancy of the Premises is that of a licensee only. The Foundation will not maintain ownership or other similar interest in the Premises, nor is there a landlord-tenant relationship between the University or the College and the Foundation.
 - 10.2. The College and the University and any of their agents may enter the Premises or any part of them at any time for the purpose of examination, supervision or audit.
 - 10.3. The Foundation has the right, subject to the College's rules regarding building access and security, to 24-hour access to the Premises for the purposes of conducting the Activities.
11. Compliance. The Foundation shall comply, and shall ensure that its Affiliates comply, with all federal, state and local laws, whether now or hereinafter in force, applicable to

the proper and lawful conduct of its Activities on the Premises, as well as the University's Foundation Guidelines, attached as **Exhibit A**, as they may be amended from time to time. The Foundation shall cooperate, and shall ensure that its Affiliates cooperate, with the University and governmental authorities regarding any investigation of the Foundation and/or an Affiliate regarding the conduct of the Foundation's and/or Affiliate's Activities.

12. Effect of MOU; Amendment. This MOU (and any attachments) contains all the terms between the parties and may be amended only in writing signed by an authorized representative of both parties. Any amendment to this MOU (or any attachment) will not become effective until it has been approved by the University's Office of the General Counsel.
13. Confidentiality. Neither the Foundation nor the College shall disclose or use any private, confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this MOU.
14. Term and Termination.
 - 14.1. This MOU shall have an initial term of one year beginning [*date*] and ending [*date*], and shall be automatically renewed for additional one-year terms unless written notice is given no later than 90 calendar days of the end of the term or renewal term by either the Foundation or the College of its desire to terminate or modify the provisions of this MOU. Any notice requesting modification shall describe the modification(s) requested. If a notice requesting modification is given, the parties shall meet within 30 calendar days to try to reach an agreement on any changes.
 - 14.2. This MOU may be terminated in whole or in part by the College upon the breach by the Foundation of one or more of its terms, including without limitation failure to comply with the Foundation Guidelines attached as **Exhibit A**. Prior to any such termination, the College shall provide a written notice of breach to the Foundation describing the nature of the breach(es). Upon receipt of the notice of breach, the Foundation shall have 30 calendar days to cure the breach(es). If the Foundation fails to do so to the satisfaction of the College, the College shall provide a written notice of termination to the Foundation, to be effective immediately. The Foundation may contest the notice of breach and/or the notice of termination by submitting a letter to the University Chancellor. The Chancellor shall review the contested notice and provide a recommendation to the CUNY Board of Trustees within 30 calendar days of submission of the Foundation's letter. The decision of the CUNY Board of Trustees shall be final.
 - 14.3. This MOU may be terminated in whole or in part by the University Chancellor or the CUNY Board of Trustees upon 30 calendar days prior written notice in accordance with the notice provisions of this MOU.

15. Notice. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be delivered either personally, by overnight delivery service, or by electronic mail or fax machine, or deposited in the United States mail, postage prepaid, registered or certified mail, addressed as set forth below. Such notices will be deemed to have been given or made when so delivered or deposited.

TO UNIVERSITY AND COLLEGE:

President
[Name of College]
[Address]

With a copy to

Office of the General Counsel
The City University of New York
205 E. 42nd Street, 11th Floor
New York, NY 10017

TO THE FOUNDATION:

[Insert]

or to such persons as may be hereafter designated by notice.

16. This MOU includes the following documents:
- 16.1. Exhibit A – CUNY Foundation Guidelines
 - 16.2. Exhibit B - Foundation Services and Activities
 - 16.3. Exhibit C - Facilities, Personnel, Equipment and Other Support, Goods and Services Provided to Foundation by the College
 - 16.4. Exhibit D - Description of Affiliates and College -provided Resources
17. In the event of any controversy of terms, the priority of the interpretation of documents comprising this MOU shall be in the following order:
- 17.1. Exhibit A - CUNY Foundation Guidelines
 - 17.2. This MOU
 - 17.3. Exhibit B - Foundation Services and Activities
 - 17.4. Exhibit C - Facilities, Personnel, Equipment and Other Support, Goods and Services Provided to Foundation by the College
 - 17.5. Exhibit D - Description of Affiliates and College -provided Resources
18. This MOU 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 MOU are hereby superseded.

This Memorandum of Understanding has been executed by and on behalf of the University (on behalf of the College) and the Foundation on this ____ day of _____, 20__.

THE CITY UNIVERSITY OF NEW YORK

By and on behalf of

[COLLEGE]

[FOUNDATION]

By: _____

President

By: _____

Approved as to Form:

The City University of New York
Office of the General Counsel

Date: _____

Exhibit A
CUNY Foundation Guidelines

Exhibit B
Foundation Services and Activities

(This language is to be modified as necessary to accurately reflect a particular Foundation's Activities and relationship with its supported college.)

List of services and activities to be provided by the Foundation:

Fundraising

1. Acting as an independent contractor, not as an agent, of the College, the Foundation shall conduct private fundraising efforts on behalf of the College.
2. The Foundation shall cooperate with the College in the development of the Foundation's fundraising programs. Among other things, the Foundation shall:
 - a. coordinate its annual giving program with the College's offices of institutional advancement and/or alumni affairs;
 - b. coordinate all special fund-raising projects with the College; and
 - c. maintain a well-coordinated donor relations program in an effort to minimize overlap and over-solicitation of current and prospective donors.

Fund Management - General

3. The Foundation shall be responsible for the management of funds that originate with its fundraising activities in accordance with the following procedures:
 - a. While the Foundation is authorized to commingle for investment purposes undesignated assets with other funds for designated uses, the Foundation shall maintain a separate accounting of undesignated funds received and gains, profits, and losses resulting from said investments.
 - b. Distributions from the designated endowment funds, at the payout rate, established by the Foundation Board of Directors, will be transferred to the appropriate College accounts [*describe schedule*, e.g., on a periodic basis, at the beginning of each quarter, semi-annually, etc.]. The Foundation, at its discretion, may create a schedule of payments for a program or project.
 - c. Distributions of restricted current-use funds will be made subsequent to approval by the Foundation's Board of Directors or committee thereof, following written request by the respective College department or program for the available funds.
 - d. The Foundation shall be a repository for current and future endowment gifts to the benefit

of the College (unless the donor specifies otherwise). Alternatively, the Foundation may deposit such gifts in the CUNY Investment Pool. The management of funds deposited with the Foundation, including investment strategies and payout rates, is the prerogative of the Foundation Board of Directors. If the Foundation is the intended recipient of funds made payable to the College, the funds shall be transferred to the Foundation.

- e. The Foundation is authorized to accept restricted gifts on behalf of the College. However, the Foundation agrees, before accepting gifts with any restrictive terms and conditions or gifts of real estate, to obtain written College permission, and the College and the Foundation both agree to advise donors that a restricted gift for the benefit of the College may not be accepted without College and Foundation approval.
- f. The College agrees through the Office of the President to provide the Foundation annually with a list of private gift funding priorities. The Foundation will then pursue funding for the priorities on the basis of funding realities. The Foundation agrees not to solicit or accept gifts for any use specified by a donor that is inconsistent with the College's mission, goals, or objectives. When a question exists as to the acceptability of an offered gift, the Foundation will confer with the College President or his or her designee before directing a response to the donor.
- g. Notwithstanding anything to the contrary in this Section 3, in the event of financial exigency or other special need, the College may request an increase in the payout rate, which request shall not be unreasonably denied by the Foundation.
- h. The College President shall submit a plan to the Foundation by [*month*] of each year for utilization of unrestricted gifts received by the Foundation in the following fiscal year, including discretionary support of the office of the College President. The Foundation will take into account the College's priorities when pursuing private gifts.
- i. Any plan for utilization of unrestricted gifts that includes allocation of funds to the College President's discretionary fund shall include the categories of such discretionary expenditures (faculty recognition, travel, entertainment, etc.) as well as the relative percentage of the plan for each category. The Foundation's Board of Directors will review the submitted request and act on it accordingly. Upon approval, the Foundation will either transfer to the College the entire authorized sum for the year or reimburse approved expenses as they are submitted by the College President. If the Foundation provides the payment as a lump sum, on a periodic basis the College President will provide the Foundation with an accounting of expenditures made from the discretionary fund. All discretionary fund expenditures must comply with State law and institutional policies and guidelines of the University, as well as applicable provisions of the Internal Revenue Code pertaining to the Foundation's status as a §501(c)(3) supporting organization, and be consistent with the Foundation's mission. Such funds will be audited as part of Foundation audits.

List and describe any other services, which might include: acquisition of real and personal property to supplement State of New York resources; real property management, including

student or faculty housing; investment management, including endowment fund management with asset allocation, investment manager selection and spending formula; providing student loans; administering scholarship programs; borrowing or guaranteeing debt on behalf of the College; etc.

B. If any of the services and activities listed in A are to be provided by subcontractors of the Foundation, indicate below.

Exhibit C
Facilities, Personnel, Equipment and Other Support, Goods and Services
Provided to Foundation by the College

A. Description of space utilized for each service provided (collectively, the “Premises”):

Service	Building Name	Square Ft	Space Description
<i>Example: Administrative Office</i>	<i>Old Main</i>	<i>500 sq ft</i>	<i>office</i>

B. College personnel assigned:

C. Description of equipment and other support, goods and services provided:

- office furniture, including: *[list]*
- office equipment, including: *[list]*
- ordinary and necessary utilities for the Premises
- support services of the type provided to College departments including, but not limited to: access to the College’s telephone system and internet; janitorial services; maintenance of the Premises from the College’s physical plant; duplicating, printing and mail services.
- payroll services for Foundation employees, including the allocation of related benefits, accounting services, and other administrative services
- technology support services, as well as online access to such College files as the Foundation deems, and the College agrees, to be relevant and necessary to the activities and purpose of the Foundation.
- access to College’s fundraising software system and donor/prospect database

D. Description of reimbursement for the items listed in A - C:

Exhibit D

Description of Affiliates and College-provided Resources

A. Name and address of each Affiliate

B. Description of services and activities

C. Description of space utilized for each service provided:

Service	Building Name	Square Footage	Space Description

D. College personnel assigned:

E. Description of equipment and other support, goods and services provided:

F. Description of reimbursement for the items listed in C - E: