

MODEL
MEMORANDUM OF UNDERSTANDING

By this Memorandum of Understanding, THE UNIVERSITY OF TEXAS _____
("University") and _____ ("Foundation") agree as follows:

1. The University and the Foundation deem it appropriate to, and do hereby, memorialize the relationship between the Foundation and the University, and agree mutually for the future regarding the respective roles, rights and obligations of the University and the Foundation in this relationship.

[If Foundation has specialized or limited functions, those should be specified]

2. The Foundation is a nonprofit educational corporation chartered in Texas for the purposes of: supporting the educational undertakings of the University; furthering education, research and financial assistance to deserving recipients; accepting donations for particular objectives to accomplish such purposes; and cooperating with the advancement of the general welfare of the University as a whole. The policies of the Board of Directors of the Foundation include the activities of securing and administering funds for the benefit of the University.

[If Foundation has a different corporate structure or specialized duties, those should be specified]

3. The Foundation agrees that, during the term of this Memorandum of Understanding, the Foundation will:

(1) Accept gifts for the benefit of the University that may include: support for the procurement and retention of outstanding faculty members; financial support for students; the enrichment of the educational environment of the University; and, by other agreed upon activities, enhancement of the prestige of, and advancement of, the University; and utilization of its expertise, resources and personnel for such purposes;

(2) Render other assistance to the University as may mutually appear desirable, including the following:

- Develop an annual plan approved by the Foundation to raise funds and an annual plan to spend funds.
- Base its spending plan on funds on hand.

- Pay to the University all direct costs borne by University to support Foundation projects.
 - Direct its fundraising in cooperation with University fundraising efforts and in alignment with the University mission.
- (3) Recognize the University as the sole beneficiary of its development activities and its educational support. The Foundation, its officers and directors understand that the Foundation may engage in fundraising for the Foundation's support. The Foundation will not sponsor or participate in any organized fundraising effort for the benefit of the University without first consulting with and receiving the approval of the President of the University, or his/her designee.
- (4) Establish a website that provides public access to information about the Foundation's mission, a list of Foundation employees and board members, and clear contact information.
- (5) Enact and enforce records retention procedures that ensure orderly management and retrieval of documents.
- (6) Enact a policy to provide for public inspection of financial records and Foundation meeting minutes to the extent permissible by law.

[Other functions, including records and data management, or the provision of other services to University, should be specified. If the purposes of the Foundation are other than solely fundraising or if the University is not the sole beneficiary of the Foundation's activities, those modifications can be reflected in this section. For example, Sealy and Smith Foundation, Southwestern Medical Foundation and the UT Foundation have broader purposes.]

4. The University agrees that, during the term of this Memorandum of Understanding, the University may:

- (1) provide reasonable space on or near its campus, as approved by the University President, to the Foundation for the purpose of carrying out its obligations hereunder and for its general operations on behalf of the University;

- (2) provide the utilities and telephone services reasonably needed by the Foundation in carrying out its activities under this Memorandum of Understanding;
- (3) permit reasonable use of University equipment and personnel as needed to coordinate the activities of the Foundation with the operations of the University and hereby expressly recognizes that the University President, officers and the employees may reasonably assist from time to time in development programs as may be needed or helpful in coordinating those Foundation activities with the operations of the University. The primary focus of fundraising efforts by university-compensated personnel, including development professionals, deans, and faculty, should remain on funds given directly to the university. The exclusive focus of any fundraising efforts by university-compensated personnel to benefit the foundation must be for funds to directly benefit the university. Foundation employees may not be University employees, be carried on the payroll of the University or receive University employee-related benefits;
- (4) provide access to alumni data, when appropriate and consistent with all state and federal privacy laws, through the University's Office of Development or Alumni Relations and with the approval of the Vice President for Development or University Advancement, for the purposes of benefiting the fundraising efforts of the Foundation and the University.

[If University provides other support or resources, those should be specified. If the potential for conflicts of interest exist, a management plan should be specified]

Recovery of costs associated with providing such resources will be at the same rate charged to University departments and documented in separate support or service agreements.

5. The University and the Foundation are committed to transparency. All audits of the Foundation, as required by the Internal Revenue Code and as requested by the Foundation, shall be provided to the University as requested and to the public to the extent permissible by law. The University and the Foundation will provide information to the public, on each website, the nature of the relationship between the two entities and explain the difference between contributions to the two entities. Further, the University and the Foundation will establish a practice to provide routine reports to donors.

6. It is mutually agreed that the University and the Foundation will use separate computers and computer systems to avoid the intermingling of data and information. If it is mutually agreed that a database should be shared for purposes of maximizing efficiency, accuracy of data, and prospect management, the rationale for sharing such database should be documented and approved in accordance with Rules and Regulations of the Board of Regents Rule 10501.
7. It is mutually agreed that the University and the Foundation will not share staff. **[If shared staffing does occur, the following language should be added: The University and the Foundation find that there are extraordinary circumstances that require the existence of shared staff. University employees authorized to provide foundation support shall report to _____. Further, such employees may assist in foundation functions and operations only to the extent as outlined below:]**
8. It is mutually agreed that the University and the Foundation will execute an annual written agreement by August 1 of each year for the next fiscal year (September 1 through August 31) specifying a “Management and Use Fee” to compensate the University for the utilization by the Foundation of equipment, utilities and office space and for the time spent by any University employees on Foundation matters authorized under Section 7, attached as Exhibit 1. (For purposes of the Annual Agreement, such time will be estimated based on the previous year’s actual time commitment.) Any direct costs beyond those covered by the Annual Agreement shall be agreed to in advance between the presidents of the Foundation and the University, or their designees.
[Other reporting obligations of the Foundation, including fundraising, funds transfer, expenditures, etc. should be specified.]
9. To protect any University of Texas System trademarks, Foundation may use the University trademarks specified in and subject to the restrictions contained in the attached trademark license, Exhibit 2.
10. Foundation shall comply with all applicable laws regarding privacy of student, alumni and donor records and shall also comply with all requirements of the Texas Public Information Act that may be applicable to Foundation due to its relationship with University.
[Applicability of the Texas Public Information Act (TPIA) to the Foundation will depend on specific factors, including the use by the Foundation of University resources or funds, and specific language may be tailored or added here to clarify

the separate nature of the Foundation. However, the Office of the Attorney General has ultimate authority to determine the applicability of the TPIA.]

11. The University enters this arrangement with the Foundation with the expressed understanding that the University is not responsible for any debt, obligation or liabilities of the Foundation, its officers and/or trustees.

12. It is mutually agreed that the University and the Foundation will operate proactively to identify and appropriately manage potential conflicts of interest involving institutional officers and employees, foundation staff, and foundation board members. The conflict of interest provisions of both the University's policies and the Foundation's policies are expressly applicable to all interactions between the University and the Foundation. In cases where the conflict of interest policies of the University and the Foundation conflict, the more restrictive policy will control.

This agreement is effective immediately upon execution by the parties, and it shall remain in effect from year to year unless modified in writing by mutual agreement of the Foundation and the University or terminated by either the Foundation or the University upon giving written notice six (6) months prior to the end of a fiscal year of the University (by August 31).

Effective on this ____ day of _____, 20--.

The _____ Foundation

By: _____
President

Date: _____

The University of Texas _____

By: _____
President [or designee]

Date: _____

Exhibit 1 - [Annual Agreement Template](#)

Exhibit 2 - [Trademark License Agreement Template](#)