

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE UNIVERSITY OF NORTH ALABAMA AND THE UNIVERSITY OF NORTH ALABAMA FOUNDATION**

THIS AGREEMENT was entered into as of this 19 day of December, 20 16, by and between the University of North Alabama (UNA) and the University of North Alabama (UNA) FOUNDATION.

The UNA Foundation was organized and incorporated in 1980 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University of North Alabama.

The UNA Foundation exists to raise and manage private resources supporting the mission and priorities of the University of North Alabama, provide opportunities for students, and contribute to institutional excellence.

The UNA Foundation is dedicated to assisting UNA by fostering a culture of philanthropy, growing the endowment, and providing financial and other support for long-term academic and other institutional priorities. The Foundation is formed to promote, sponsor, foster and carry out activities to broaden educational opportunities exclusively for and services to the students and alumni of UNA.

As stated in its articles of incorporation, the UNA Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of UNA; soliciting cash, securities, real and intellectual property, and other private resources for the support of UNA; and acknowledging and stewarding such gifts in accordance with donor intent and fiduciary responsibilities.

UNA designates the UNA Foundation as the repository of private gifts made in support of UNA unless otherwise specified by the donor.

In connection with its fundraising and asset-management activities, the UNA Foundation has access to 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 UNA to assist and advise in such activities.

The UNA Foundation and UNA 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 University of North Alabama, the UNA Foundation is allowed to associate the name "UNA" 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. 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:

## **UNA RESPONSIBILITIES**

The UNA Board of Trustees is responsible for overseeing the mission, leadership, and operations of UNA.

The UNA Board of Trustees is responsible for determining philanthropic and strategic priorities.

The UNA Board of Trustees is legally responsible for the performance and oversight of all aspects of UNA operations.

The UNA Board of Trustees is responsible for the employment, compensation, and evaluation of all UNA employees, including the President.

The UNA President is responsible for communicating on a regular basis the priorities and long-term plans of UNA, as approved by the Governing Board, to the Foundation.

UNA 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 University shall serve as an ex-officio member of the Foundation Board of Directors with voting privileges, serve on the Foundation Executive Committee, and shall assume a prominent role in fundraising activities.

The Executive Director of the Foundation shall be included as a member of the President's senior administrative team.

UNA shall include the Foundation as an active and prominent participant in strategic planning for UNA.

UNA shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.

UNA recognizes that the Foundation bears major responsibility for fundraising. University representatives will coordinate fundraising initiatives, including major gifts solicitations with the Foundation.

The President and other senior administrators of UNA will work in conjunction with the leadership of the Foundation Board of Directors and the Foundation Executive Director to identify, cultivate, and solicit prospects for private gifts.

UNA is responsible for the employment, compensation, and evaluation of employees designated to work with the Foundation, including the Foundation Executive Director. The UNA President will be the prominent participant in discussion and decision making regarding the hiring, assessment, and termination of the Foundation Executive Director. Input from the Foundation Executive Committee is expected. The Foundation Executive Committee will conduct an annual assessment of the Executive Director and share the results with the UNA President.

## **FOUNDATION RESPONSIBILITIES**

The UNA 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 UNA.

The UNA 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 UNA 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 UNA of significant changes made to the bylaws.

The UNA 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 may earmark a portion of its unrestricted funds to a discretionary fund for the President of UNA and will reimburse appropriate presidential expenditures. 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. This fund will be approved in advance by the Foundation Board, along with the entire budget.

### ***Fundraising***

- The UNA Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of UNA.
- The UNA Foundation is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the strategic priorities identified by the President and UNA Board of Trustees. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- The UNA 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 UNA 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.
- The UNA Foundation shall establish and enforce policies to protect donor confidentiality and rights.
- 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 UNA 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 UNA Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide UNA with a copy of the annual audited financial statements, including management letters.
- The UNA Foundation will establish internal controls and other enterprise risk management practices commensurate with the Board's fiduciary responsibility.

### ***Entrepreneurial Activities***

- The UNA Foundation will explore current opportunities, including acquisition and management of real estate or personal property on behalf of UNA, for future allocation, transfer, or use.
- The UNA Foundation may serve as an instrument for entrepreneurial activities for UNA 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 UNA. 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 UNA Foundation will transfer funds to the designated entity within UNA in compliance with applicable laws, UNA and Foundation policies, and gift agreements.
- The UNA Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. UNA will abide by such restrictions and provide appropriate documentation.
- The Foundation's disbursements on behalf of UNA must be reasonable business expenses that support UNA, are consistent with donor intent, and do not conflict with the law.
- All requests for Foundation funds other than regular disbursements and expense reimbursements must be submitted to the Foundation by the President of UNA or his or her designee.

### ***Funding***

- The UNA Foundation, in collaboration with UNA, 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, UNA will provide the Foundation with fair and reasonable compensation or payment for services. This would include providing salaries and benefits for full-time employees.
- In consideration of UNA Foundation services, UNA will also provide in-kind support including: staff salaries and benefits, facility to house employees and costs therein including utilities, building maintenance/repairs, technology, phone systems, etc.
- The UNA 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.

- The UNA 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 UNA Foundation will provide access to data and records to UNA 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.

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

This Memorandum of Understanding, made this 19 [day] of December [month], 2016[year], by and between the UNA Board of Trustees and the UNA 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, UNA and the UNA 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. UNA and the UNA Foundation will review and amend, if applicable, this agreement at least every five years.


Either party may, upon 90 days prior written notice to the Executive Director and Chair of the Board of Trustees, terminate this agreement. The party initiating termination of the agreement must act in good faith to provide an opportunity for a meeting to include UNA and UNA 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 Executive Director and Chair of the Board of Trustees of the defaulting party.

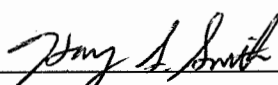
Should UNA choose to terminate this agreement, the UNA Foundation may require UNA to pay, within 180 days of written notice, all debt incurred by the Foundation on the UNA's behalf, including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the UNA Foundation choose to terminate this agreement, UNA 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 UNA 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 UNA, to a reincorporated successor Foundation, to another 501(c)(3) organization affiliated with UNA, or to the state or federal government for public purposes, in accordance with the law and donor intent.

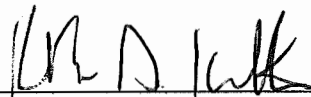
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

  
\_\_\_\_\_  
Martin R. Abrams  
President Pro Tempore  
Board of Trustees, University of North Alabama

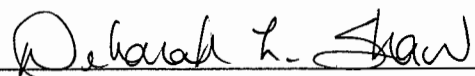
Date: DEC 19, 2016

  
\_\_\_\_\_  
Harry L. Smith  
Chair  
University of North Alabama Foundation

Date: December 23, 2016

  
\_\_\_\_\_  
Kenneth D. Kitts  
President  
University of North Alabama

Date: December 19, 2016

  
\_\_\_\_\_  
Deborah L. Shaw  
Executive Director  
University of North Alabama Foundation

Date: 12.19.16

**Approved by UNA Foundation Board of Directors: November 15, 2016**  
**Approved with minor edits by UNA Board of Trustees: December 19, 2016**