

**MEMORANDUM OF UNDERSTANDING
MINOT STATE UNIVERSITY AND MINOT STATE UNIVERSITY
DEVELOPMENT FOUNDATION**

INTRODUCTION

This Agreement is between Minot State University (MiSU or University) and the Minot State University Development Foundation (Foundation). The parties hereby agree as follows:

- A. MiSU is a state institution of higher learning, established under the laws of the state of North Dakota, and governed by the North Dakota State Board of Higher Education (SBHE).
- B. The Foundation was organized in 1978 and exists for the purpose of offering support and assistance to MiSU in the development and furtherance of its mission, and to provide opportunities for both students and the University which are not funded through state appropriations.
- C. The Foundation is a separate, independent, non-profit corporation, and recognized as having tax-exempt status under Sec. 501(C)(3) of the Internal Revenue Code (IRC) of the United States.
- D. The Foundation is responsible for identifying and nurturing relationships with potential donors and friends of the University, soliciting cash, securities, real and intellectual property, and other private resources for the support of the University, and acknowledging, stewarding and responsibly growing such gifts in accordance with donor intent and its fiduciary responsibilities.
- E. Except as otherwise expressly stated in this Agreement, the University and the Foundation do not wish to delegate any of the authority of each to the other, nor does the Foundation wish to exercise public authority or to perform any governmental function on behalf of the University.
- F. To achieve clarity and foster their mutually supportive goals, MiSU and the Foundation desire to formalize the relationship between them as required by ND SBHE Policy 340.2.

1.0 DESCRIPTION OF SERVICES AND BENEFITS PROVIDED BY MINOT STATE UNIVERSITY TO THE FOUNDATION.

University support of the Foundation may include the following:

- 1.1 Payroll services, at no cost to the Foundation
- 1.2 Telecommunications and technology support services, at no cost to Foundation.
- 1.3 Full accounting services cost shared equally between the Foundation and University.
- 1.4 Office space and utilities adequate for the performance of services, at no cost to the Foundation.
- 1.5 Buildings and grounds maintenance services, at no cost to the Foundation.
- 1.6 Access—at nominal rates—to MiSU's auxiliary services, including printing, duplicating, mailing, audiovisual services, events scheduling and related facilities.
- 1.7 Access to MiSU files and data relevant to Foundation business, subject to applicable federal and state law and State Board of Higher Education (SBHE) policies and procedures.
- 1.8 Rental of MiSU-owned land and facilities to the Foundation.
- 1.9 Contracting for use of movable personal property for use at events.
- 1.10 Allowing access to and use of its historical archives.
- 1.11 Providing referrals of qualified students for scholarship assistance.
- 1.12 Providing referrals of qualified employees or students for housing in facilities owned and/or managed by the Foundation.
- 1.13 Providing information concerning students, faculty and staff that may be useful to the purposes of the Foundation (subject to restrictions applicable to release or disclosure of student information according to the federal Family Educational Rights and Privacy Act and compliance with other federal and state laws governing disclosure of other confidential information).
- 1.14 Ensuring cooperation and coordination between its departments, divisions, students, athletic booster organizations and clubs with the activities of the Foundation.

MiSU hereby retains all of its reporting and appointing authority over any MiSU employee who may provide services and benefits to the Foundation. The fulfillment of MiSU responsibilities to the Foundation does not create any employment relationship between MiSU employees and the Foundation.

2.0 DESCRIPTION OF SERVICES AND BENEFITS PROVIDED BY THE FOUNDATION TO MINOT STATE UNIVERSITY

- 2.1 MiSU delegates its authority to the Foundation to act—consistent with applicable laws, policies and regulations—for MiSU and its departments, divisions, students, athletic booster organization and clubs, by:
- 2.1.1 Serving as paying and receiving agent for gifts to MiSU and to its departments, divisions, students, athletic booster organization and clubs.
 - 2.1.2 Conducting fundraising for capital projects, subject to the restrictions of SBHE Policy 902.1.
 - 2.1.3 Holding, lending, preserving, insuring and/or selling personal property donated to MiSU (or to its colleges, departments, divisions, students, athletic booster organizations and clubs) for the benefit of the donee, and in a manner consistent with donor intent.
 - 2.1.4 Holding, managing, renting, preserving and/or insuring real property donated to MiSU (or to its colleges, divisions, departments, students or athletic booster organizations and clubs) for the benefit of the donee and in a manner consistent with donor intent.
 - 2.1.5 Except as otherwise provided in a gift instrument or by law other than N.D.C.C. ch. 59-21, holding, managing and investing an institutional fund of MiSU. As used in this Agreement, the term “institutional fund” means any fund received by the university through gift, donation or endowment and held by MiSU for the advancement of education or for its own benefit where the donor does not express a contrary intent in the gift instrument. The term also includes donations or gift funds and endowment funds whereby, according to the terms of a gift instrument, the funds are not wholly expendable by MiSU on a current basis. It is the intent of MiSU that the Foundation act as its agent pursuant to SBHE Policy 810 and N.D.C.C. ch. 59-21 with respect to all institutional funds currently held by MiSU or that it may hereafter be entitled to hold.

With respect to the delegation of government functions contained in subparagraphs 2.1.1 through 2.1.5, the Foundation acknowledges and agrees that MiSU retains ultimate authority regarding them.

The foregoing does not limit the authority of MiSU and the Foundation to enter into written agreements concerning the exercise of additional governmental functions by the Foundation. However, MiSU and the Foundation acknowledge and agree that they will jointly seek the approval of the SBHE or the Chancellor, as the same may be required by SBHE policy or implementing procedure, prior to beginning a formal fundraising campaign for specifically identified new building construction, major renovations or major building additions; prior to requesting legislative authorization for the issuance and sale of revenue bonds; or prior to use of donated funds, gifts or grants, in whole or in part, to construct buildings and other improvements.

2.2 In addition to the duties delegated to it as set forth previously in this section, the Foundation's support of MiSU and its departments, divisions, students, athletic booster organizations and clubs may include:

- 2.2.1 Soliciting and accepting gifts of real and personal property and of cash and negotiable instruments or marketable securities for which the donor restricts use for the benefit of MiSU or for which the Foundation may establish such a restriction.
- 2.2.2 Investing, managing, preserving, administering and disbursing funds donated to it for the benefit of MiSU in a manner consistent with donor intent.
- 2.2.3 Maintaining a searchable database that includes reasonably accurate mailing addresses, telephone numbers, e-mail addresses and other pertinent information for all alumni and friends of MiSU, and for all donors to the Foundation and to the university's departments, divisions, athletic booster organizations and clubs.
- 2.2.4 Applying for grants—and managing grant funds—in its own name.
- 2.2.5 Holding, lending, preserving, insuring or selling real or personal property donated to it in a manner consistent with donor intent.
- 2.2.6 Funding student scholarships.
- 2.2.7 Funding faculty or staff/employee development grants.
- 2.2.8 Recognizing faculty and staff achievement/service.
- 2.2.9 Providing grant funds for MiSU projects.

2.2.10 Promoting and assisting in the overall development of MiSU.

2.2.11 Providing annual institution discretionary funds.

The Foundation provides the services and benefits to MiSU in the preceding paragraph without exercising public authority or performing any governmental function on behalf of MiSU, and without receiving any authority to act for or on behalf of MiSU, and without receiving public funding—or expending public funds, to further the mission, objectives and functions of MiSU.

2.3 Except as otherwise stated in the Agreement, the Foundation retains all reporting and appointing authority over any Foundation employee who may provide the services and benefits to MiSU in paragraphs 2.1 through 2.3. The fulfillment of Foundation responsibilities to MiSU does not create any employment relationship between a Foundation employee and MiSU, except as explicitly stated in this Agreement.

2.4 MiSU acknowledges and agrees that its authority with respect to delegated government functions enumerated in paragraph 2.1 is not intended to infringe upon or limit the separate, non-governmental functions and activities of the Foundation. MiSU acknowledges and agrees that such non-governmental functions and activities include:

2.4.1 Except as otherwise stated in this Agreement, all employment decisions concerning Foundation employees, including decisions related to appointment, compensation and benefits, dismissal, discipline and terms and conditions of employment;

2.4.2 Determining Foundation needs and priorities;

2.4.3 Buying, selling, donating, investing and managing real and personal property owned by the Foundation.

2.4.4 The means and methods of distributing and determining the amount of Foundation assets made available to MiSU, its students, staff, faculty and officers;

2.4.5 The means and methods of distributing and determining the amount of Foundation support for MiSU extracurricular, instructional, programmatic or department activities;

2.4.6 The means and methods used by the Foundation in cultivating and soliciting potential individual, corporate or government donors and raising funds;

- 2.4.7 The means and methods of accepting donations of any type and properly accounting for them;
- 2.4.8 The means and methods of recognizing students, staff, faculty, alumni, donors and persons of interest to the Foundation;
- 2.4.9 Collecting, creating databases and using information about current and former students, alumni, staff, faculty, donors and persons of interest to the Foundation;
- 2.4.10 The means and methods of marketing the Foundation and its functions; and
- 2.4.11 Participating in or supporting the social, cultural and athletic activities of MiSU or its departments, divisions, students, athletic booster organizations and clubs.

3.0 DESCRIPTION OF SERVICES AND BENEFITS PROVIDED BY EACH PARTY TO THE OTHER.

Each party to this Agreement supports the other by:

- 3.1 Fostering a cooperative relationship.
- 3.2 Consistently promoting the welfare and future development of each.
- 3.3 Performing other appropriate acts and providing other appropriate services to carry out the mission, objectives and functions of each.
- 3.4 The MiSU Vice President for Advancement shall serve as the Executive Director of the Foundation and a member of the President's staff and/or senior management team. MiSU is the appointing authority for the position. MiSU shall pay salary and benefits for the Executive Director.
- 3.5 The parties agree that the value of annual services and benefits, including financial support provided by the Foundation to MiSU, exceeds the value of services provided by MiSU at no cost to the Foundation.

4.0 MISSION AND PURPOSE CONSISTENT WITH STRATEGIC PLAN OF MINOT STATE AND ND STATE BOARD OF HIGHER EDUCATION

The Foundation hereby acknowledges that it does not adopt or embrace a mission or purpose that conflicts with the long-term strategic plan of MiSU or the SBHE.

This Agreement complies with the policies of the SBHE, which may hereafter issue policies applicable to the relationship between MiSU and the Foundation or

other affiliated organizations. Changes in such policies may affect the terms of this Agreement. The President of MiSU and the Executive Director of the Foundation will meet as soon as is practical after any such change to modify the terms of this Agreement to comply with such policies.

5.0 FOUNDATION AUDITS

On or before September 15 of each year, the Foundation shall furnish MiSU's President:

- 5.1 A financial statement, compliant with Generally Accepted Accounting Principles (GAAP), including separately reported current assets, non-current assets, current liabilities and non-current liabilities.
- 5.2 An annual (GAAP compliant) audit of the Foundation or a draft of an audited financial statement submitted for—but pending—Foundation board approval.
- 5.3 The Foundation's Gift Acceptance Policy (copy attached), fully describing how donations, endowments, gifts and grants are accepted and accounted for, including circumstances where institution approval is required.

6.0 FOUNDATION INVESTMENT POLICY/SPENDING POLICY

- 6.1 The Foundation has adopted a Statement of Investment Policy (copy attached), setting forth fiduciary responsibilities of the Board in accordance with the Uniform Prudent Management of Institutional Funds Act (UPMIFA). The policy describes the Foundation's investment philosophy, investment objectives, risk tolerance and asset allocation criteria, as well as policies dealing with portfolio diversification and periodic asset rebalancing.
- 6.2 Incorporated within the Statement of Investment Policy is the Foundation's Spending Policy, including the annual spending rate for scholarship/endowment payments.

7.0 JOINT FUNDRAISING, NEW BUILDING CONSTRUCTION AND RENOVATIONS

Nothing contained in this Agreement limits the authority of MiSU and the Foundation to enter into written agreements concerning the exercise of additional governmental functions by the Foundation. However, MiSU and the Foundation acknowledge and agree that they will jointly seek the approval of North Dakota State Board of Higher Education or the Chancellor, as the same may be required by ND SBHE policy or implementing procedure, prior to beginning a formal fundraising campaign for specifically identified new building construction, major renovations or major building additions, in accordance with SBHE Policy 902.1.

8.0 OPEN RECORDS LAWS, SECURITY OF CONFIDENTIAL INFORMATION AND OTHER PROVISIONS

8.1 Pursuant to N.D.C.C. § 44-04-18, all records of the University are public records, open and accessible for inspection by anyone, except as otherwise specifically provided by law. Records of the Foundation are private, except as otherwise provided by law. The Foundation acknowledges that according to applicable law and SBHE Policy 340.2, Foundation records relating to government functions that may be delegated to the Foundation or supported by public funds as set forth in this Agreement are public records and may be subject to open records requests. The parties agree to cooperate in identifying records to which access must be provided or copies made in response to public records requests, identifying confidential or exempt records that may be excluded, and responding to such requests within a reasonable time as required by law.

This Agreement may not be interpreted to: 1) infringe upon the authority of either party to maintain custodial responsibility for its own confidential information or relieve either party from the duty to keep the confidential information secure, 2) make payment of a fee by MiSU for services provided by the Foundation in exchange for value received public support of the Foundation, or 3) provide that use of those funds received by the Foundation gives rise to a claim that the Foundation expends public funds.

8.2 Nothing in this Agreement or any obligation accepted by any party under it shall be interpreted in a manner that disqualifies or threatens the 501(C)(3) status of the Foundation.

8.3 Nothing in this Agreement or any obligation accepted by either party relieves MiSU or the Foundation from compliance with applicable federal or state laws, applicable policies of the SBHE or to applicable governing athletic association, athletic conference or other athletic regulatory entities.

- 8.4 The parties may not bind the other without written consent of the other. Without limiting the generality of the preceding sentence, before accepting any gifts for which the donor has imposed restrictive terms or conditions that may become binding upon MiSU, the Foundation will obtain written approval of the University.

9.0 INTELLECTUAL PROPERTY, INSTITUTION NAME & TRADEMARK

- 9.1 Except as otherwise as may be provided in this Agreement, the Foundation will provide to MiSU—on or before September 15 of each year—proper disclosure, reporting and accounting relating to any intellectual property assigned by MiSU to the Foundation under SBHE Policy 611.2, including, but not limited to, narrative disclosures of patents, patent applications, licensing and licensing agreements.
- 9.2 MiSU grants to the Foundation a limited, non-exclusive, royalty-free license to use the MiSU name, logotype, seal(s), trademark(s), trade name(s), service mark(s) and other symbols or marks previously created, which may include copyrightable work as the same is defined by ND SBHE Policy 611.2 (collectively, “Symbol” or “Symbols”) whether already created or to be developed. The Foundation may use Symbols in connection with its lawful business and activities. The Foundation may not delegate authority to use MiSU’s Symbols to any person or entity or enter into agreements with other persons and entities to market and/or sell materials or products bearing a Symbol for sale, except as agreed to in writing by MiSU.

10.0 CONFLICT OF INTEREST POLICY

The Foundation shall adopt and maintain a Conflict of Interest Policy (copy attached), which policy shall be applicable to the Foundation’s governing Board and Foundation staff.

11.0 REPORTING RELATIONSHIPS & UNIVERSITY REPRESENTATION ON FOUNDATION BOARD OF DIRECTORS

- 11.1 The Executive Director for the Foundation shall report to the President of the University and shall be evaluated by the President of the University and the Foundation Board Chair, with input from the Board of Directors.
- 11.2 Staff members of the Foundation and Advancement office shall report to the Executive Director of the Foundation, who in turn shall evaluate staff members on a yearly basis.

11.3 The President of the University shall be seated as an ex-officio, non-voting member of the Foundation's Board of Directors. The University's chief financial officer shall be the Treasurer of the Board, and shall also be seated as an ex-officio, non-voting member. The University's Vice President for Advancement shall serve as Executive Director of the Foundation, and shall be seated as an ex-officio, non-voting member. The Foundation will solicit input from the University through these ex-officio positions, as it defines its major needs and priorities.

12.0 EFFECT OF AGREEMENT AND MODIFICATIONS

This Memorandum of Understanding contains all the terms of agreement between the parties and may be amended only in writing when signed by an authorized representative of both parties.

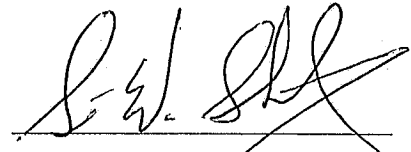
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers on this 1st day of JUNE, 2020.

Minot State University Development Foundation



Jon Backes, President

Minot State University



Dr. Steven Shirley, President