Policy Number: **FB-IV.(4)a**

University of Louisiana System

Title: **POLICY ON UNIVERSITY FOUNDATIONS & OTHER AFFILIATE ORGANIZATIONS**

Effective Date: ***April 23, 2015***
Cancellation: ***July 1, 2007***
Chapter: **Finance and Business**

Policy and Procedures Memorandum

The purpose of this memorandum is to define the University of Louisiana System's policy and expectations relating to the relationship between its universities, their foundations and other affiliate organizations. This policy shall not be construed in any way as to jeopardize an affiliate's private, non-profit, tax-exempt status.

The University of Louisiana System recognizes that university affiliates provide benefits to its member universities, including raising private dollars for enhancing academic programs, constructing and improving facilities, providing scholarships, promoting athletics, building alumni relations and advancing other programs that assist the universities in achieving their missions.

Affiliated non-profit organizations that exist to serve and benefit universities must make it clear that they are separate and independent from the public universities they support. Yet, these organizations must remain accountable to the citizens, alumni, and contributors that support the university's institutional goals and initiatives. To ensure that the universities and their affiliated organizations have a clear understanding of their legal, moral, and financial responsibilities, each university and affiliate shall enter into a memorandum of understanding or affiliation agreement that will be approved by the UL System Board of Supervisors.

Continued compliance with the affiliation agreement, state law [including R.S. 17:3390], and Federal Internal Revenue Service regulations for 501(c)(3) corporations (as applicable) is considered necessary for foundations and other affiliated support organizations to maintain their non-profit, tax-exempt status and be recognized by the Board of Supervisors for the University of Louisiana System. Accordingly, each university shall ensure compliance with the following:

1. The university must enter into an Affiliation Agreement with each foundation or other affiliated non-profit organization. The recommended Affiliation Agreement for alumni, athletic, and other developmental organizations is found in *Attachment 1* of this Policy and Procedures Memorandum; the agreement for organizations that are created to assist the University with its capital projects or facilities program construction, finance, acquisition, etc.) is found in *Attachment 2*.
    a. Affiliation Agreements and any addendums must be approved by the University of Louisiana System Board of Supervisors.
    b. The Affiliation Agreement should contain, at a minimum, all applicable provisions of the agreement found in *Attachment 1*, except in special circumstances, which shall be approved by the System Vice President of Facilities and Operations.
2. The University may choose to use the Affiliate's management expertise regarding the maintenance of investment portfolios to assist the University with its Endowed Chair and Endowed Professorships Program. Should the University and the Affiliate agree to this arrangement, they must enter into a Funds Management Agreement. This agreement will ensure that the funds will be invested, accounted for, expended, and audited in accordance with the policies of the University of Louisiana System Board of Supervisors and the Louisiana Board of Regents, and with all applicable state laws and regulations. The Funds Management Agreement is *Attachment 3*.
3. Except for those public funds related to the Endowed Chair and Endowed Professorships Program or to a project supported by a cooperative endeavor agreement [see *A.G. Opinion 01-40*], affiliated organizations may not maintain public funds for university departments and organizations.
    a. Consistent with statutory and audit requirements, such deposits will be maintained in university-controlled accounts.
    b. Affiliated organizations may maintain private donations that they receive on behalf of such departments and organizations.
4. Each affiliated organization must be under the management and control of a board of directors elected by the contributing members or shareholders of the corporation. University employees may not comprise a voting majority of the affiliate's board [R.S. 17:3390(B)(1)]. In addition, University employees should not serve as officers of the Affiliate.
5. The university president may allow designated university employees to perform financial work (managing accounts, processing payments, preparing bank reconciliations, etc.) for affiliates and other support organizations when all of the following conditions are met:
    a. Management ensures that the work assigned to such employees does not create even the appearance of a conflict of interest; i.e., whether they are working on behalf of the Affiliate or the University.

b. Such employees' job descriptions identify them as having affiliated organization responsibilities.

6. As part of normal university financial and non-financial functions, specifically those related to student activities and athletic events, university employees may work on projects with affiliated-organization employees. In such cases, the job descriptions of university employees shall fully disclose that their normal duties for the university include coordinating university events and functions with employees of affiliated organizations.

7. In accordance with Article 7, Section 14 of the Louisiana Constitution, no funds or property of the university may be donated, loaned, or pledged to any affiliated organization unless the parties have entered into a cooperative endeavor agreement that is specific to the joint project. The cooperative endeavor agreement must be in accordance with state laws and regulations and/or approved by the UL System Board of Supervisors and the Division of Administration, as required.

8. University management shall monitor the affiliate's use of institutional employees, facilities, equipment and supplies in order to compare such expenses against funds and in-kind gifts transferred from the affiliate to the institution. This accounting will ensure that the university and affiliate are engaged in a mutually beneficial partnership. [R.S. 17:3390(B)(3)]

9. The university will require reimbursement within 90 days of any amounts due from an affiliated organization.

10. The Affiliation Agreement with each non-profit organization shall require an annual, independent audit [R.S. 17:3390(D)(1)]. The audit shall be conducted in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to the University and the legislative auditor copies of his annual audit and management letter (including supplemental assurances) within three months of the fiscal year end. However, any information needed for the System's financial report must be provided to the university within 60 days of the fiscal year close. If the engaged CPA cannot issue the report timely, then the CPA is not meeting the terms of the contract, and should not be considered for selection in the next fiscal year.

    a. For those affiliated organizations included in the ULS reporting entity, the audit engagement letter must be presented to the ULS System President for approval prior to the commencement of the audit.

    b. The affiliate's engagement agreement with the CPA shall also require positive audit assurances that the affiliate has substantially complied with its Affiliation Agreement and Funds Management Agreement (where applicable) with the university.

c. University management shall obtain and review a copy of the audit report, along with any management letters and/or separate agreed-upon procedures reports.

1. An example of supplemental assurances relating to compliance with the Affiliation Agreement is found in *Attachment 4.*

2. Supplemental assurances relating to compliance with the Funds Management Agreement and the Endowed Chair and Endowed p rofessorships Program are found in the Board of Regents' *Statement of Investment Policy and Objectives*. These supplemental assurances are required by the Board of Regents and should not be altered without written consent from that agency.

d. University management shall obtain and review the affiliate's corrective action plans for each audit finding or audit exception.

e. University management shall send a copy of the audit report(s) and any management letters to the System's Director of Internal Audit. The university's transmittal letter will identify any significant findings and/or concerns disclosed in the Affiliate's audit report or management letter and provide a summary of university management's discussions about the issues with the Affiliate's management.

11. The Affiliate's audit report shall include a supplementary schedule of all revenues, expenses, and capitalized expenditures made to or on behalf of the University's intercollegiate athletics program, if applicable.

12. In case of dissolution of an affiliated organization, its assets shall become the property of the university or other university-affiliated organizations approved by the university in accordance with donor intent. Furthermore, failure to maintain an affiliation agreement with the university will result in the de-certification of a foundation or other university affiliated non-profit entity, and all affiliate assets will become the property of the university or other university-affiliated organizations approved by the university in accordance with donor intent.

NOTE: *Attachment 5* contains a checklist of important documents, PPMs, procedures, etc. that are associated with universities and their affiliated organizations.

Policy References:

R.S. 17:3390 - Private nonprofit corporations that support public higher education institutions

La Constitution, Article 7, Section 14(A) – Donation of public funds

R.S. 17:3390(F) - Act 710 of 2004 – see PPM FB-IV.-6a –

Non-profit corporation payments to or on behalf of an employee

A.G. Opinion 01-40 – Discussion of the circumstances under which a university can loan or advance public funds to a university foundation, alumni association or non-profit

Review Process:

Presidents
Vice Presidents for Business & Finance
Chief Institutional Advancement Officers
Board Legal Counsel

Distribution:

Presidents
Vice Presidents for Business & Finance
Chief Institutional Advancement Officers

ATTACHMENT 1

AFFILIATION AGREEMENT

THIS AGREEMENT made and entered into this_____day of_____20 ,

by and between

NAME OF UNIVERSITY
(herein called "University")

and the

NAME OF AFFILIATE
(herein called "Affiliate");

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

WHEREAS, this Affiliate is often closely identified with the University, if not in fact, at least in the perception of citizens, alumni, and contributors to the support and development of the University; and

WHEREAS, the University recognizes that gifts coming to the Affiliate are made with thoughtful care and with great affection for and devotion to the University for the purpose of supporting the University's institutional goals, including its instruction, research and public service missions and its students, faculty and staff; and

WHEREAS, the Affiliate renders invaluable support to and works very closely with the University; and

WHEREAS, the Affiliate and the University recognize their mutual interest in guarding against even the appearance of impropriety in their activities; and

WHEREAS, it is, therefore, prudent and beneficial for the University and this Affiliate to document clearly their relationship and their respective responsibilities and authority.

NOW, THEREFORE, recognizing the importance of an agreement between the parties on acceptable standards and procedures for the accounting and auditing of accounts of the Affiliate, while at the same time preserving the private and independent status of the Affiliate, the University and the Affiliate agree as follows:

The Affiliate's Relationship to the University

1. The Affiliate is a separately incorporated 501(c)(3) non-profit organization created to raise, manage, distribute, and steward private resources to support, advance, and promote the various missions of the University.

2. The Affiliate's board of directors is responsible for the control and management of all assets of the affiliate, including the prudent management of all gifts consistent with donor intent.

3. The Affiliate is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

4. The Affiliate shall not engage in activities contrary to the objective of providing support to the University. Nothing herein is intended to limit the ability of the Affiliate to expend funds on its behalf to achieve the mutual goals of the Affiliate and the University.

The University's Relationship to the Affiliate

1. The University President or his/her designee should communicate the university's priorities and long-term plans to the Affiliate. The chief executive of the Affiliate should have regular, reasonable access to the University President or his/her designee and to other members of the President's senior administrative team for the purpose of being an active and prominent participant in strategic planning for the University.

2. The University recognizes that the Affiliate is a private corporation with the authority to keep all records and data confidential consistent with state and federal law, University policy or as mutually agreed-upon within this document.

Affiliate Responsibilities

Fund Raising

1. The Affiliate shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.

2. The Affiliate, in consultation with the University President or his/her designee, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate. The Affiliate will also assist and coordinate with the University's development office for the operation, development, accounting, management, and marketing activities of these programs.

Asset Management

1. The Affiliate will receive, hold, manage, invest, and disperse contributions of cash, securities, and things of economic value of all kinds, including property, both real and

intellectual, whether principal or income, tangible or intangible, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

2. The Affiliate may serve as an instrument for entrepreneurial activities for the university and engage in such activities as purchasing, developing, or managing real estate for university expansion, student housing, or retirement communities. 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 a university purpose.

3. The books and records of the Affiliate shall be kept in accordance with generally accepted accounting principles.

4. When the Affiliate has funds in excess of $250,000 not needed for current year's operations, the Affiliate's board of directors will establish asset investment policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act (UPIA).

    a. Donations that have specific directions or investment restrictions shall be invested by the Affiliate in its sole discretion, subject only to the specific directions or restrictions of the particular donation.

    b. In accordance with Article 7, Section 14 of the Louisiana Constitution, no funds or property of the university may be donated, loaned, or pledged to any Affiliate, unless the parties agree to a cooperative endeavor for a specific, defined project. In such an instance, the parties will enter into a cooperative endeavor agreement, which must be approved by the UL Board of Supervisors and, if applicable, the Division of Administration.

c. The University may choose to use the Affiliate's management expertise regarding the maintenance of investment portfolios to assist the University with its Endowed Chair and Endowed Professorships Program. Should the University and the Affiliate agree to this arrangement, they will enter into a Funds Management Agreement. In accordance with the Funds Management Agreement, the Affiliate shall comply with the Board of Regents' Statement of Investment Policy and Objectives, which also includes specific audit requirements.

Affiliate Funding and Administration

1. The Affiliate has the right to use a reasonable percentage of the annual unrestricted funds and assess fees for services to support its operations.

2. The Affiliate shall reimburse, either directly or through in-kind services, the cost of housing, personnel, which personnel shall remain public servants for all purposes, and other support furnished to the Affiliate by the University, if any, pursuant to R.S. 17:3390(B)(3). Reimbursement of any amounts due to the University shall be remitted within 90 days of the date of purchase or services rendered. Amounts payable to the University at June 30th shall be remitted within 30 days to allow the University to accomplish timely fiscal year-end accounting close-outs.

3. Under no circumstances shall any of the net earnings or assets of the Affiliate inure to or be distributed to the benefit of its directors, officers, or other private persons, except that the Affiliate shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the overall purpose of the Affiliate.

4. The Affiliate shall be responsible for establishing and implementing a system of controls that ensure compliance with all applicable laws and regulations, specifically including state and federal laws regarding the non-profit, tax-exempt status of the entity.

    a. Approved Expenses

        1) All disbursements by Affiliate for administrative and operating expenses shall be in accordance with policies adopted by its governing board previously or within 120 days of this agreement (if no such written policy exists). Such policies shall provide for sound and prudent business practices, the payment or reimbursement of ordinary, necessary and reasonable business expenses, and the avoidance of conflicts-of-interests.

        2) Any supplemental compensation and/or benefits for a University employee must be approved by the Board of Supervisors, upon recommendation of the University and System Presidents, before they are paid. Absent exceptional circumstances and approval by the System President, such compensation or benefits shall be paid through the University, not directly to the employee by the Affiliate. For purposes of this paragraph, supplemental compensation or benefits shall mean all compensation or benefits in addition to the base University compensation and benefits approved by the Board of Supervisors for duties performed for the University.

        3) Reasonable travel, entertainment, educational benefits or reimbursements may be paid to a University employee (or authorized traveler, if applicable) in accordance with University policies and procedures. Payments may be made for such expenses within and above state limits when specifically approved by appropriate University administrators in accordance with University policy. Pending further specification of University policy, such expenses require approval of the employee's dean, vice president or other equivalent administrative official.

        4) Reasonable moving or relocation expenses of a University employee may be paid only upon recommendation of the University President.

        5) Any single payment of $1,000 or more made to or on behalf of a university employee must be reported to the university on a quarterly basis. Supporting documentation must be made available to the university upon request.

    b. Prohibited Expenses

        1) Fines, forfeitures or penalties of a University employee may not be paid.

        2) The Affiliate may not present gifts on behalf of a university employee nor reimburse university employees for gifts that are represented as having personally come from the employee.

        3) Political contributions prohibited by applicable Internal Revenue Service Regulations or state laws and regulations may not be made or reimbursed.

Accordingly, the Affiliate will not provide funds in any manner for university employees to endorse political parties or candidates, attend political fund-raisers, participate in lobbying activities, etc.

4) Any expense or reimbursement that would create, under all the circumstances, a reasonable conclusion on behalf of the Affiliate that the benefit to the individual University employee outweighs the benefit to the University may not be paid.

5) Any expense or reimbursement that would create, under all the circumstances, a reasonable conclusion on behalf of the Affiliate that the amount is extravagant or lavish beyond the appropriate University purpose may not be paid. While not necessarily controlling, reference should be made to regulations adopted by the Internal Revenue Service in connection with allowed business expenses.

6) Funds shall not be disbursed in connection with contracts (or other agreements) between the Affiliate and a University employee unless justified in writing and with specificity demonstrating, among other justifications, that the proposed contractual duties with the Affiliate are not those which the employee should perform directly for the University. All such contracts must be approved by the University President in accordance with PPM FS-III.VII.-1. The requirements of the *Louisiana Code of Governmental Ethics* must also be considered by the Affiliate if the University employee (or a related person) has an ownership interest in a legal entity with which the Affiliate is considering contracting.

7) Any expense or reimbursement request not described above as authorized (or through written joint amendment or clarification of this Agreement) shall not be paid to or on behalf of a University employee without specific recommendation of the University President.

5. The Affiliate's financial statements shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to the University and the legislative auditor copies of his annual audit and management letter (including supplemental assurances) within six months of the Affiliate's fiscal year end. [R.S. 17:3390(D)(1)]. However, any information needed for the System's financial report must be provided to the university within 60 days of the fiscal year close. If the engaged CPA cannot issue the report timely, then the CPA is not meeting the terms of the contract, and should not be considered for selection in the next fiscal year.

6. For those affiliated organizations included in the ULS reporting entity, the audit engagement letter must be presented to the ULS System President for approval prior to the commencement of the audit.

    a. The Affiliate's engagement letter with the independent CPA will require that the auditor provide supplemental assurances that the Affiliate has complied with specific requirements of the Affiliation Agreement that will be determined by the University President.

    b. The National Collegiate Athletic Association (NCAA) requires that the University President submit a report that includes all athletic financial activity (both internal and external) to assist him/her in maintaining adequate oversight of and in exercising control over financial activity of or on behalf of the University's intercollegiate athletics program. Therefore, the Affiliate's audited annual financial statements will include a supplementary schedule in a format provided by the University of all revenues, expenses and capitalized expenditures made to or on behalf of the University's intercollegiate athletics program.

        1) The independent auditor's report will include assurances that this schedule is fairly stated in relation to the Affiliate's financial statements taken as a whole.

        2) If the Affiliate has no transactions relating to the University's athletics program, the notes to the financial statements will include a statement to this effect.

        3) The Affiliate will make available to the University's independent auditor any documentation that is required to enable that auditor to perform the supplemental procedures that are required by the NCAA for affiliated organizations.

        4) Any audit findings, audit exceptions, or any misuse of funds shall be reported to the Affiliate's Board of Directors, who shall maintain a written corrective action plan regarding the handling and resolution of such occurrences. A copy of this corrective plan shall be provided to the University President. The Affiliate shall take appropriate corrective action to remedy such occurrences.

7. The Board of Supervisors for the University of Louisiana System may, at any time, review all accounting records, files, and documentation of the Affiliate that pertain to payments made to or on behalf of university employees and/or university programs/projects. Notwithstanding the preceding requirements, the identity of donors to the Affiliate shall be exempt and not available for disclosure.

a. Should the Board of Supervisors determine that a more in-depth review or audit of the Affiliate's records is necessary, the Affiliate will be instructed to contract for agreed-upon procedures engagement with a CPA that is mutually acceptable to both the Affiliate and the Board. The ULS Board's Finance Committee Chairman will select the CPA to perform the engagement in the event that a CPA acceptable to both parties has not been identified within 60 days of the Board's initial written request for the agreed-upon procedures engagement.

b. The Board's Finance Committee Chairman (or the System President, if so designated by the Board) will identify the agreed-upon procedures that will be performed and will approve the engagement agreement between the Affiliate and the CPA.

University Responsibilities

1. The University President will work in conjunction with the leadership of the Affiliate to identify, cultivate, and solicit prospects for private gifts.

2. The University shall accept funds from the Affiliate for the purpose of promoting the well-being and advancement of the University and to develop, expand, and improve the University's curricula, programs, and facilities so as to provide greater educational advantages and opportunities; encourage teaching, research, scholarship, and service; and increase the University's benefits to the citizens of the State of Louisiana and the United States of America.

3. The University shall use such funds in accordance with the terms and conditions as may be imposed by testators and donors, within the limits of the law.

4. The University and the Affiliate shall have open communication regarding both the application of the policies set forth herein and mechanisms that would allow each party to better accomplish their common goals. The University President will bring any recommendations that arise from such discussions to the University of Louisiana System President for further consideration.

Terms of the Affiliation Agreement

1. This Affiliation Agreement is intended to set forth policies and procedures that will contribute to the coordination of mutual activities of the University and the Affiliate.

2. Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the foregoing, either party may terminate this agreement 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.

3. Should the University choose to terminate this agreement, the Affiliate may require the University to pay, within 180 days of written notice, all debt incurred by the Affiliate on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Affiliate choose to terminate this agreement, the University may require the Affiliate to pay debt it holds on behalf of the Affiliate in like manner.

    a. Should the University choose to terminate this agreement, the agreement shall continue in full force and effect until receipt by the Affiliate of the notice of termination, and any transactions entered into by the Affiliate prior to the receipt of such notice shall be binding upon the University. In such case, the Affiliate shall be prohibited from using the University's name to solicit donations or for any other purpose and shall not in any way represent to alumni, contributors, or the general public that said Affiliate is affiliated with the University.

    b. Should any substantial misuse of funds or fraudulent activity on the part of the Affiliate be discovered, the University may, at its discretion, immediately terminate this agreement. In such case, the Affiliate shall be prohibited from using the University's name to solicit donations or for any other purpose and shall not in any way represent to alumni, contributors, or the general public that said Affiliate is affiliated with the University.

4. Should the Affiliate cease to exist, fail to maintain an affiliation agreement with the University, or the affiliation agreement is terminated by either party, all Affiliate funds will become the property of the University or other University-affiliated organizations approved by the University in accordance with donor intent. The Affiliate will remit the funds to the University or to another Affiliate approved by the University using the timeline or schedule of transfers to be provided by the University.

5. Nothing in this Agreement shall be construed as to invalidate or restrict the Affiliate's private and independent status.

6. Whenever any notice or demand is required or permitted under this Agreement, such notice or demand shall be given in writing and delivered in person or by certified mail to the following addresses:

   University: _____

   _____

   _____

   Affiliate: _____

   _____

7. This agreement constitutes the entire agreement between the parties and shall be amended in writing, executed by all parties hereto.

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

WITNESSES: (Indicate Name of University Here)

_____

_____ By:_____
[Title]

WITNESSES: (Indicate Name of Affiliate Here)

_____

_____ By:_____
[Title]

ATTACHMENT 2

AFFILIATION AGREEMENT

THIS AGREEMENT made and entered into this _____day of _____,_____by and between Insert University Name Here (herein called "University"), represented by Insert University President, and Insert Non-Profit Org Name Here, a non-profit organization (herein called choose either "Affiliate" or "Facilities Corp."), whose address is Insert Address Here, herein represented by Name of Representative;

WHEREAS, the Non-Profit Nickname renders invaluable support to and works closely with the University; and

WHEREAS, the Non-Profit Nickname, uses the University's name in carrying out its functions, and in some cases, uses University facilities and personnel, or resources in raising funds for and otherwise supporting the University and its programs; and

WHEREAS, because of the close association of this Non-Profit Nickname with the University, it is prudent and beneficial to have a clear statement, agreed upon by the parties, of the responsibilities, authority, and the relationship of the University and this related Non-Profit Nickname; and

WHEREAS, it is therefore, appropriate that the University and this Non-Profit Nickname document clearly the relationship between the University and the Non-Profit Nickname and their respective responsibilities and authority; and

WHEREAS, because this Non-Profit Nickname is often closely identified with the University, if not in fact, at least in the perception of citizens, alumni, and contributors to the support and development of the University, it is important that the University and the Non-Profit Nickname agree to the standards and procedures for accounting for and auditing accounts of the Non-Profit Nickname while at the same time preserving the private and independent status of the Non-Profit Nickname.

NOW, THEREFORE, the parties agree as follows:

A. The purpose of the Non-Profit Nickname shall be to acquire, renovate, rehabilitate, repair, construct, develop, manage, lease as lessor or lessee, mortgage, and/or convey residential, classroom, administrative and other facilities on the campus of the University. In carrying out this objective and purpose, the Non-Profit Nickname shall have and enjoy every power and authority granted by the Louisiana Nonprofit Corporation Law.

B. The Non-Profit Nickname shall have the following duties and responsibilities:

(1) Receive, hold, invest, and administer property and to make expenditures to support programs and activities designed to advance, promote, or otherwise benefit the University. The Non-Profit Nickname has been formed for non-profit activities and not for pecuniary profit or financial gain.

(2) Provide support to the University. Therefore, the Non-Profit Nickname may not engage in activities contrary to this objective. In addition, the acts, deeds, functions, and activities of the Non-Profit Nickname shall in no way conflict with the authority of the University.

(3) Expend funds for establishment and operation of the Non-Profit Nickname and for any expenses incidental to the conduct of the affairs of the Non-Profit Nickname.

(4) Reimburse, either directly or through in-kind services, the cost of housing, personnel, which personnel shall remain public servants for all purposes, and other support furnished to the Non-Profit Nickname by the University pursuant to La. R.S. 17:3390B(3).

(5) Under no circumstances shall any of the net earnings or assets of the Non-Profit Nickname inure to or be distributed to the benefit of its directors, officers, or other private persons, except that the Non-Profit Nickname shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the overall purpose of the Non-Profit Nickname.

(6) Establish and implement a system of controls that ensures compliance with all applicable laws and regulations, specifically state and federal laws regarding the non-profit, tax-exempt status of the entity.

C. Duties, functions, and responsibilities of the University include:

(1) The University shall accept assets from the Non-Profit Nickname for the purpose of promoting the well-being and advancement of the University and all the colleges, schools, departments, and divisions comprising it and to develop, expand, and improve the University's curricula, programs, and facilities so as to provide greater educational advantages and opportunities; encourage teaching, research, scholarship, and service; and increase the University's benefits to the citizens of the State of Louisiana and the United States of America.

(2) The University shall use such assets in accordance with the terms and conditions as may be imposed by the University, bond covenants, testators and donors, within the limits of the law.

D. Services to be performed:

(1) By the Non-Profit Nickname:

(a) The Non-Profit Nickname agrees to perform services consistent with its mission generally and as specifically set forth in this Agreement.

(b) May lease property from the University in accordance with La. R.S. 17:3361 for the advancement of the University's mission.

(c) In addition, the Non-Profit Nickname may perform other services consistent with its overall purpose for the benefit of the University.

(2) By the University:

(a) The University agrees to make available to the Non-Profit Nickname, whenever feasible, facilities, personnel, or other support provided that the University is reimbursed directly or in kind for any costs associated with these items.

E. The books and records of the Non-Profit Nickname shall be kept in accordance with generally accepted accounting principles and shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to the University and the legislative auditor copies of the annual audit. All audit findings, audit exceptions, or any misuse of funds shall be reported to the Board of Directors of the Non-Profit Nickname, who shall maintain a written policy regarding the handling and resolution of such occurrences. A copy of the resolution of the problem shall be provided to the Board of Supervisors for the University of Louisiana System. The Non-Profit Nickname shall take appropriate corrective action to remedy such occurrences. The Non-Profit Nickname must submit audited financial statements and management letter to the University within 120 days of its year-end.

F. In the case that the Non-Profit Nickname is acting as a depository for public funds, said funds shall be audited annually by an independent professional auditor in accordance with generally accepted auditing standards and other agreed upon procedures, if any, as required by the legislative auditor, the Board of Supervisors, and the Board of Regents. The professional auditor shall furnish the University and the Board of Supervisors, as well as the legislative auditor and the Board of Regents, if necessary, copies of the annual audit. All audit findings or exceptions involving public funds or the misuse of public funds, shall be reported without delay to the Board of Supervisors for appropriate action, with a copy to the President of the University, and to the Applicable Parish District Attorney's Office. The Board of Supervisors may require specific corrective action as it deems necessary in order to protect the integrity of public funds held by the Non-Profit Nickname. The Board

may also demand the immediate withdrawal of some or all public funds on deposit with the Non-Profit Nickname.

G. Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the foregoing, either party may terminate the Agreement 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.

H. Should any substantial misuse of funds or fraudulent activity on the part of the Non-Profit Nickname be discovered, the University may at its discretion, terminate this Agreement. In such case, the Non-Profit Nickname shall be prohibited from using the University's name to solicit donations, enter into any real estate transaction, or used for any other purpose and shall not in any way represent to alumni, contributors, and the general public that the Non-Profit Nickname is affiliated with the University or any of the colleges, schools, departments, and divisions comprising it.

I. If this Agreement is terminated by the University or by operation of law, any transactions entered into by the Non-Profit Nickname prior to the receipt of such notice shall be binding upon the University. Should the Non-Profit Nickname choose to terminate this agreement, the university may require the Non-Profit Nickname to pay debt it holds on behalf of the Non-Profit Nickname in like manner.

J. Nothing in the Agreement shall be construed as to invalidate or restrict the Non-Profit Nickname's private and independent status.

K. The initial term of this Agreement shall be from date to date. Thereafter, this Agreement shall be subject to annual review and approval by the president of the university, who shall make known any objections or recommended changes no later than 30 days prior to the current expiration date. Under such given notice, the Agreement will continue on a month-to-month basis until accord is reached by the parties or the Agreement is terminated as provided herein. If no changes are recommended, the terms of this Agreement shall be extended automatically without further action by the parties for the ensuing 12-month period.

L. Should the Non-Profit Nickname cease to exist, fail to maintain an affiliation agreement with the University, or the affiliation agreement is terminated by either party, all Affiliate funds shall become the property of the University or other University affiliated organizations approved by the University in accordance with donor intent.

M. Whenever any notice or demand is required or permitted under this Agreement, such notice or demand shall be given in writing and delivered in person or by certified mail to the following addresses:

University: University Name
Office of the President
Address
City, State, Zip Code

Non-Profit Nickname: Non-Profit Full Name
Non-Profit Address
Non-Profit City, State, Zip Code

N. This Agreement constitutes the entire Agreement between the parties and shall be amended in writing, executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WITNESSES:

_____

_____ By: _____
President
University Name

WITNESSES:

_____

_____ By: _____
President or the like
Non-Profit Full Name

ATTACHMENT 3

FUNDS MANAGEMENT AGREEMENT

THIS AGREEMENT made and entered into this_____day of_____2___,

by and between

NAME OF UNIVERSITY
(herein called "University")

and the

NAME OF AFFILIATE
(herein called "Affiliate");

WHEREAS, the Affiliate is a tax exempt 501(c)(3) non-profit corporation, one of whose purposes is to receive and manage donations in the form of endowments, grants, and unrestricted gifts from private sources (hereinafter "Donations"), for the support of the University; and

WHEREAS, the Louisiana Board of Regents receives annual appropriations from the Louisiana Quality Education Support Fund ("Support Fund") to be expended for the purposes cited in Constitution Article 7, Section 10.1(D)(1) (currently collectively referred to as the "Endowed Chair and Endowed Professorships Program");

WHEREAS, the University receives Donations and Support Fund monies from the Louisiana Board of Regents for the Endowed Chair and Endowed Professorships Program;

WHEREAS, the Endowed Chair and Endowed Professorships Program provides permanent endowments created by private contributions to the University that equals 60 percent of each endowment, matched by 40 percent of Support Fund monies from the Board of Regents (collectively, "Program Assets"); and

WHEREAS, the Affiliate is capable of providing management and investment services and acting as a depository for such Program Assets;

NOW, THEREFORE, the parties agree as follows:

1. The University and the Affiliate have a current Affiliation Agreement that has been approved by the Board of Supervisors for the University of Louisiana System.
2. At its discretion, the University may deliver Program Assets for deposit with the Affiliate.
3. The Affiliate acknowledges that the Program Assets being delivered belong to the University and the use of the revenues generated by the investment of these Program Assets is the sole responsibility of the University.
4. The Affiliate, on behalf of the University, shall account for, maintain, and invest the Program Assets in accordance with the Board of Regents' *Statement of Investment Policy and Objectives*.
5. The Affiliate shall use its management expertise and best efforts to analyze the portfolio and earnings potential of Program Assets investments to ensure their adequate maintenance and performance and shall make such investments thereof as are consistent with prudent investment management principles.
6. The Affiliate shall furnish to the University and the Board of Regents an annual accounting of all Program Assets and will recognize the Board of Regents' right, at its discretion, to audit the books and records of account of any institution's endowment fund and any segregated account thereof in accordance with the Board of Regents' *Statement of Investment Policy and Objectives*.

7. The Affiliate may charge an investment/management fee not to exceed the maximum fee allowed by the Board of Regents' *Statement of Investment Policy and Objectives.* Such fee shall be reported to the Board of Regents in the year-end report.
8. In accordance with the Affiliation Agreement between the University and the Affiliate, the Affiliate's financial statements shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor.
    a. The Affiliate's engagement letter with the independent CPA will require that the auditor provide supplemental assurances that the Affiliate has complied with this Funds Management Agreement, which includes compliance with the Board of Regents' *Statement of Investment Policy and Objectives*.
    b. The Affiliation Agreement requires the independent professional auditor to furnish copies of his annual audit and management letter, if any, to the University and the legislative auditor. A copy of the annual audit and management letter, if any, shall also be submitted to the Board of Regents.
    c. When the Affiliate becomes aware of potential audit findings or exceptions involving Program Assets or the misuse of Program Assets, regardless of the status of any audit that may be in progress, such information shall be reported without delay to the Board of Supervisors for the University of Louisiana System and to the University President. The Board of Supervisors or University President may require specific corrective action as deemed necessary in order to protect the integrity of public funds held by the Affiliate. Such corrective action may include the immediate withdrawal of some or all Program Assets held by the Affiliate.

9. This Funds Management Agreement shall continue in full force and effect until terminated by 120 days written notice by either party or by operation of law.
    a. Should the University choose to terminate this agreement, the agreement shall continue in full force and effect until receipt by the Affiliate of the notice of termination, and any transactions entered into by the Affiliate prior to the receipt of such notice shall be binding upon the University.
    b. Should any substantial misuse of funds or fraudulent activity on the part of the Affiliate be discovered, the University may, at its discretion, immediately terminate this agreement.
    c. Immediately upon termination of this agreement, the Affiliate will provide the University with complete documentation of the Program's investment portfolio. The Affiliate will then transfer Program Assets back to the University based on the time schedule to be determined by the University.
10. Whenever any notice or demand is required or permitted under this Agreement, such notice or demand shall be given in writing and delivered in person or by certified mail to the following addresses:

    University: _____

    _____

    _____

    Affiliate: _____

    _____

    _____

11. This Agreement constitutes the entire agreement between the parties for funds management services and shall only be amended in writing, executed by all parties hereto.

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

WITNESSES: [Indicate Name of University Here]

_____

_____ By:_____
[Title]

WITNESSES: [Indicate Name of Affiliate Here]

_____

_____ By:_____
[Title]

Attachment 4

Example Supplemental Assurances/Procedures for
Annual Audit of Financial Statements

1. The (name of affiliated organization) did not make loans to or allocate any net earnings or assets to the benefit of its directors, officers, or other private persons. Any payments made to these persons were for reasonable compensation for services rendered or reimbursement for reasonable travel expenses.
2. The (name of affiliated organization) made no political contributions nor reimbursed any employee for politically-related expenses that would violate IRS guidelines for 501(c)(3) organizations [for example, IRS Fact Sheet 2006-17]. Accordingly, the Affiliate did not provide funds to or on behalf of university employees to endorse political parties or candidates, attend political fund-raisers, participate in lobbying activities, etc.
3. The (name of affiliated organization) preserved, in accordance with donor intent, the principal of any endowments, and disbursements from the expendable portion of those funds were made in compliance with donor intent and to eligible recipients or for eligible purposes.
4. Donations were properly recorded in the accounting records in accordance with donor intent (i.e. unrestricted vs. restricted funds/endowments).
5. The (name of affiliated organization) did not deposit or hold public funds at any time during (the period under audit), except for 1) Endowed Chair and Endowed Professorships Program funds held in accordance with a Funds Management Agreement [if applicable] or 2) project funds held in accordance with a cooperative endeavor agreement.
6. All contracts between the (name of affiliated organization) and any member of its Board of Directors, any member of the UL System Board of Supervisors, any UL System employee, or any university employee have been individually disclosed in the notes to the financial statements, regardless of the significance of the contract payments to total Affiliate expenses. The applicable Related Parties note includes the names of the parties to the contract, the services provided, the amount paid as of the date of the financial statements, and the maximum amount of the contract.
7. Funds for supplemental compensation and/or benefits for a UL System or University employee were paid to the System Office or University for disbursement to the employee; no supplemental payments were made directly to an employee unless specifically approved by the Board Office or University.
8. On a quarterly basis, the (name of affiliated organization) reported to the University all single payments of $1,000 or more made to or on behalf of any individual university employee.
9. A sample of disbursements less than $1,000 made to or on behalf of university employees has been reviewed for compliance with the policies contained in the Affiliation Agreement, “Affiliate Funding and Administration,” Section 4.

10. The accompanying financial statements include a supplementary schedule of all revenues, expenses and capitalized expenses made to or on behalf of the university's intercollegiate athletics program. This schedule is fairly stated in relation to the financial statements taken as a whole.

ATTACHMENT 5

General Checklist of Required Agreements, Reports, and Audit Information

1. **Affiliation Agreement** (with alumni and other non-profit organizations) [Attachment 1]

   A) Authorization for Affiliate to manage Endowed Chair and Endowed Professorships Program assets

      1) "Affiliate Responsibilities, Asset Management," Section 4.d. requires that Affiliate and University enter into a Funds Management Agreement

      2) See Checklist section on Funds Management Agreement

   B) Payments made to or on behalf of University employees

      1) "Affiliate Responsibilities, Affiliate Funding and Administration," Section 4.a.2) requires that the Affiliate ensure that supplemental compensation and/or benefits for university employees must:

         a. have advance approval from the Board of Supervisors and

         b. must be paid to the University, **not** directly to the employee unless express approval has been obtained from the University President through the Board of Supervisors

      2) "Affiliate Responsibilities, Affiliate Funding and Administration," Section 4.a.3) permits that travel, entertainment, educational benefits and other reimbursements may be made to a University employee with the approval of the appropriate University administrator

      3) "Affiliate Responsibilities, Affiliate Funding and Administration," Section 4.a.5) requires that the Affiliate report all single payments of $1,000 or more made to or on behalf of a University employee – the report will be made on a quarterly basis on the timeline established by the university

      4) "Affiliate Responsibilities, Affiliate Funding and Administration," Section 5.c. requires the Affiliate to include in its annual financial statements a supplemental schedule of all payments, regardless of amount, made to or on behalf of the University's intercollegiate athletics program.

         a. Supplemental Assurances – The Affiliate's auditor will perform supplemental procedures on the schedule and provide assurances that the schedule is fairly stated in relation to the financial statements. [Attachment 4]

      5) "Affiliate Responsibilities, Affiliate Funding and Administration," Section 4.b.6) requires that contracts between the Affiliate and University employees must first be approved by the University President.

   C) Contracts with Related Parties

      1) "Affiliate Responsibilities, Affiliate Funding and Administration," Section 5.a. regarding supplemental assurances and Attachment 4 require the Affiliate to include a note in its annual financial statements to disclose information on any contracts with

members of the Affiliate's Board of Directors, members of the UL System Board of Supervisors, and any university or System Office employees.

a. Supplemental Assurances – The Affiliate's auditor will perform supplemental procedures to provide assurances that the note is reliable. [Attachment 4]

D) Affiliate's Annual Audit

1) Affiliate shall be audited annually in accordance with generally accepted auditing standards.

2) Copies of the audit and management letter (with supplemental assurances on agreed-upon procedures) shall be furnished to the University and the legislative auditor within six months of the fiscal year-end.

3) Audits shall include the performance of agreed-upon procedures that will be determined by the University President.

2. **Affiliation Agreement** (with Facilities Corporations) [Attachment 2]

A) Affiliate's Annual Audit [Section E]

1) Affiliate shall be audited annually in accordance with generally accepted auditing standards.

2) Copies of the audit and management letter shall be furnished to the University and the legislative auditor within 120 days of the fiscal year-end.

3) The performance of agreed-upon procedures is not mandatory but may be requested or required by the legislative auditor, Board of Supervisors (through the University President), or the Board of Regents. [Section F]

B) Payments to or on behalf of University employees

1) Criteria for approving payments to university employees and reporting such payments to the Board of Supervisors have not been included in this generic affiliation agreement since few facilities corporations would make such payments in their normal course of operations.

2) Should conditions change and/or a special project allows for payments of any kind to be made directly to or on behalf of university employees, the affiliation agreement should be amended to include the related requirements (found in the generic agreement for alumni and developmental organizations – Attachment 1).

3. **Funds Management Agreement**

A) Relates only to Endowed Chair and Endowed Professorships Program assets – affiliate is not allowed to hold any other types of public funds

B) Requires Affiliate to comply with the Board of Regents' *Statement of Investment Policy and Objectives* - this policy applies only to the Endowed Chair and Endowed Professorships Program

C) The BOR policy requires the preparation of an annual report on each endowment

D) The BOR policy also requires that agreed-upon procedures audit report be issued on the Affiliate's compliance with BOR's investment policy (which also covers expenditure of the funds) – the agreed-upon procedures are included in the *Statement of Investment Policy and Objectives*

E) Funds Management Agreement must be approved by the UL System Board of Supervisors