North Dakota University System Foundation
Meeting Notice and Agenda

The North Dakota University System Foundation will meet Thursday, April 14, 2016 at 1:00 p.m. CST. The meeting will originate at the State Capitol, Ground Floor, Missouri River Room, 10th floor, 600 East Boulevard Avenue, Bismarck, ND, 58505.

1. Call to Order
2. *#Agenda
3. Welcome and Introductions
4. * Open Meeting/Records Law Presentation – Nick Vaughn
5. *#February 8, 2016, Meeting Minutes
6. *#NDUS Foundation Bylaws
7. * Vision, Purpose and Direction of the NDUS Foundation
8. *#President of NDUS Foundation
9. *#Vice President of NDUS Foundation
10. *#Executive Vice President of Foundation
11. *#Policies and Procedures
12. *#NDUS Foundation MOU
13. * Vision, Purpose and Direction of the NDUS Foundation Cont.
14. * Growth/Visibility of NDUS Foundation
15. *#Future Meeting Dates
16. Questions/Comments
17. Adjournment

* See supporting document  # action required  + discussion needed  = information only

Contact Rebecca Wimer (701) 328-2974 or rebecca.wimer@ndus.edu prior to the scheduled meeting date if auxiliary aids or services are needed.
Open Record & Meetings
2015
North Dakota Attorney General’s Office
Sandra DePountis
Open Records

- All records
- Possession of public entity
- Regarding public business
- OPEN
Definition of “RECORD”

- Recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced.

N.D.C.C. 44-04-17.1(16)
“Public Business”

- “all matters that relate or may foreseeably relate in any way to …the performance of the public entity’s governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or…the public entity’s use of public funds.”

N.D.C.C. § 44-04-17.1(12)
Unless specifically provided by law…

- There has to be a law that specifically says the record is protected.

- The law will say the record is “not subject to Article XI of the ND Constitution,” “not an open record,” “exempt,” or “confidential.”
Exempt vs. Confidential

- Exempt records may be released.
- Discretion is with the public entity.
- May be called a “closed” record.
- Not against the law to release an exempt record.

- Confidential records cannot be released.
- No discretion.
- Can only release pursuant to the statute.
- Class C felony to knowingly release. §12.1–13–01

N.D.C.C. §§ 44–04–17.1(2) (“closed record”); (5) (“exempt record”)
Examples

- Exempt
- § 44-04-18.1
- Home address
- Home phone number
- Photograph
- Payroll deduction info
- § 44-04-26 security system plans

- Confidential
- Social security numbers
- Employee medical records
- Computer passwords
- Employee use of EAP records
The basic rules:

- Every person has the right to inspect or make a request for a public record.
  - The request DOES NOT have to be in writing.
  - The requester DOES NOT have to give their name or reason for the request.
- You must provide records – not opinions or explanations.
  - Do not have to create new records
  - You only have to provide one copy of the record, once.
The basics continued...

- You only have to provide records you have in your possession.
  - Requests should reasonably identify the record – you can ask for clarification, but cannot intimidate.
- Give a legal reason for any denial of records.
- Review and redact for confidential information. (N.D.C.C. § 44-04-18.10)
- Communicate with requester – give estimate of time, costs, etc.
- Provide records within a reasonable time.
“Reasonable Time”

- Provide records within a “reasonable time.”
- Several factors used to determine appropriate length of any delay, including:
  - need to consult with attorney if reasonable doubt exists on whether the record is open
  - excising confidential information
  - bulk of request and volume of documents reviewed
  - accessibility of documents
  - office staff and availability, workload, balancing of other responsibilities
Generally Open:

- Personnel file
  - Job performance
  - Evaluations
- Business related records
- E-mails and text messages that are relate to public business
- Computer records
- Contracts with a public entity – prices, costs
Basics of charging:

- 25 ¢ per copy for 8x11 or 8x14 page.
- Locating records, *even electronic records* – first hour free, thereafter $25/hour.
- Actual cost of postage, maps, color photos.
- Can ask for money up front.
- NEW LEGISLATION:
  - May withhold records for subsequent requests until you receive payment for any outstanding balance
  - 5 or more requests from same requestor w/in 7 days, may treat as one request when computing time to locate/excise records
- Access is free!!!

*N.D.C.C. § 44–04–18*
Electronic records

- Must provide reasonable access to electronically maintained records.
- Can’t impair ability to access records by contracting with a third party.
- No charge for electronic copy unless it takes IT longer than one hour to produce.
- If longer than 1 hour – charge actual cost of IT resources.
Basics of Open Meetings

- Quorum of
  - Governing body
  - Of a public entity
  - Discussing public business
  - Is a meeting

_N.D.C.C. § 44–04–17.1(9)_ definition of “meeting”
There are no exceptions for:

- **Committees**: two or more people acting collectively pursuant to authority delegated to that group by the governing body.
- Did the governing body delegate any sort of authority?
- Is the committee doing something the governing body could do itself?
It doesn’t matter.....

- If the committee doesn’t have final authority;
- If the committee is just “brainstorming” or “factfinding;”
- If the committee is only going to recommend something to the governing body.
A meeting can happen...

- By conference call;
- At a restaurant;
- On very short notice;
- Over video conference.
Exceptions:

- Meetings of national, regional, or state associations.
- Chance or social gatherings.
- Delegation to one person – one person is not a committee.

*N.D.C.C. § 44–04–17.1(9)(b)*
Common Violations

- Using technology to circumvent open meeting laws

PUBLIC MEETINGS (BEHIND CLOSED DOORS)

THEN

NOW
Common Violations

- Using emails or other electronic devices involving a quorum of a governing body to discuss public business
  - Permissible:
    - Provide information for members to review before a meeting
    - Ministerial matters – setting a meeting date
  - Violations:
    - Sharing thoughts, ideas, opinions, to a quorum
    - Hitting “reply all” and holding discussions via email
Common Violations

- Telephone straw polling.
- Serial meetings – smaller gatherings collectively constitute a quorum and public business is discussed.
Not to worry....
Posting notice is easy!
What the notice should say:

- Time, date, and location of the meeting;
- Topics to be discussed;
- Notice of any executive session.

The public should be able to read the notice and understand what the governing body is planning to discuss. Don’t be vague.

N.D.C.C. § 44–04–20
Where to put the notice:

- At the main office;
- Appropriate central location: city auditor, county auditor, secretary of state OR put on public entity’s website;
- Location of the meeting;
- Give to anyone who has requested it.

*Myth: publishing of notice*
Two kinds of meetings:

- **Regular**
  - Agenda should contain all topics known at the time of drafting the notice
  - May discuss items not on the agenda at the meeting

- **Special**
  - Can only discuss the items on the notice
  - Provide notice to the official newspaper
Executive Sessions

**N.D.C.C. § 44-04-19.2**

- Must be legally authorized
  - Most common: Attorney consultation and negotiation. ([N.D.C.C. § 44-04-19.1](#))
  - Most common violation: closing meeting to discuss personnel matters!
Executive session procedure:

- Convene in open meeting;
- Announce in open meeting the topics to be discussed and legal authority;
  - NOTE: To discuss confidential information – no motion necessary. To discuss exempt/closed information, need a motion to enter into the executive session.
- Record the session (keep for 6 months);
- Note time of executive session and who attended in minutes;
- Only discuss topics in announcement;
- Final action in open meeting.

N.D.C.C. § 44–04–19.2(2)
Minutes of Meetings

Must contain:

- Names of members attending
- Date and time meeting was called to order and adjourned
- List of topics discussed
- Description of each motion made and whether seconded
- Results of every vote taken
- Vote of each member on every recorded roll call vote (required for all nonprocedural votes)

N.D.C.C. § 44–04–21(2)
Attorney general’s opinions under N.D.C.C. § 44-04-21.1:
- 30 days of alleged violation except meetings without notice – 90 days.
- If action isn’t taken & requester prevails in civil action requester will get attorney’s fees.
- Consequence for failure to comply with AG opinion – potential personal liability & pay for legal counsel.

AG can refer a public servant to the state’s attorney for multiple violations.

A public servant who knowingly violates the law is guilty of a class A misdemeanor.

N.D.C.C. § 44-04-21.3
N.D.C.C. § 12.1-11-06
Violations

- Violations may be subject of civil action under N.D.C.C. § 44–04–21.2.
- Action must be commenced within 60 days of the date the person knew or should have known of the violation or 30 days from issuance of AG opinion.
- Court may award $1,000 or actual damages for intentional or knowing violations.
More information

- www.ag.nd.gov
  - Manuals
  - Opinions
  - Fact Sheets
North Dakota University System Foundation
DRAFT Minutes of the February 8, 2016, 3:00 p.m. CT.
Conference Call
Originating in Chancellor’s Office, 10th Floor, State Capitol

Chancellor Hagerott called the meeting to order at 3:00 p.m. CT.

Members present:
  Ms. Kathleen Neset
  Dr. Kevin Melicher
  Senator Erin Oban
  Representative Cynthia Schreiber Beck
  Dr. Larry C. Skogen
  Mr. Mike Warner
  Chancellor Mark Hagerott (ex officio)

Members absent
  Mr. Jon Backes

NDUS senior staff present:
  Ms. Tammy Dolan, Chief Financial Officer
  Ms. Laura Schratt, Director of Audit Services
  Ms. Rebecca Wimer, Executive Assistant to the Chancellor

1. Welcome
   Chancellor Hagerott welcomed the trustees and thanked them for serving on the foundation. He said that the foundation received its first donation that morning from Bob Wefald.

2. Elect Secretary/Treasurer
   Ms. Schratt reviewed the existing foundation bylaws specifically pertaining to officers and duties.
   
   Representative Schreiber Beck moved, Melicher seconded, to elect Ms. Tammy Dolan as secretary/treasurer of the NDUS Foundation and be a designated signer on the bank account with Ms. Terry Meyer being a secondary signer.
   
   Neset, Oban, Skogen, and Warner voted yes.

3. Next Meeting
   Ms. Schratt said that at the next meeting a number of things need to be accomplished. These items include:
   - electing two officers for one year terms, president and vice president;
   - appointing a member as the executive vice president, historically this has been the chancellor; who will act on behalf of the foundation in between meeting;
   - discussing the bylaws as they exist and suggesting any changes;
   - reviewing drafted policies'
• reviewing and signing the NDUS operating agreement; and
• discussing the purpose and direction of the NDUS Foundation.

Chancellor Hagerott said that the foundation will also be reviewing the open meeting/records law at the next meeting. Dr. Melicher asked that the foundation trustees contact information be sent out the group.

The next meeting will be held face–to-face. Date and location is still TBD. A call in number will be made available for trustees that cannot attend in person. The agenda and materials will be sent in advance of the meeting.

4. Questions/Comments

Dr. Melicher said that he has already had a couple people contact him who would be willing to help lead the foundation as it develops. Dr. Melicher suggested looking at the Dakota Medical Foundation Website at www.dakmed.org. This is a great example of a thriving foundation.

Dr. Melicher said that we need to remember to make sure we have a working and understandable relationship with our campus foundations. We need to let them know that our goal is not to impede on their turf but to advance the university system as a whole.

Mr. Warner asked if the foundation had money. Chancellor Hagerott said that we have approximately $150 in the foundation.

Chancellor Hagerott adjourned the meeting at 3:18 p.m. CT.
BY-LAWS OF THE
NORTH DAKOTA UNIVERSITY SYSTEM FOUNDATION

ARTICLE I: DEFINITIONS

As used in these By-laws, the word “Foundation” shall mean the North Dakota University System Foundation; the word “Trustee” shall mean a Trustee of the North Dakota University System Foundation; the word “Board” shall mean the Board of Trustees of the North Dakota University System Foundation.

ARTICLE II: LOCATION OF OFFICE

The office of the Foundation shall be located in any place within the State of North Dakota where the Board may in its discretion direct.

ARTICLE III: PURPOSE

This Foundation is formed for exclusively charitable, scientific, and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501 (c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code and including, but not limited to, the support, enrichment, advancement, and improvement of higher education in the State of North Dakota, the assistance of students, faculty, employees and officers in public higher education in North Dakota, and support of any of the programs, activities or services of the North Dakota University System.

ARTICLE IV: MEMBERS

The Trustees of the Foundation shall consist of the President (or Chair) and Vice President (or Vice Chair) of the North Dakota State Board of Higher Education and five other Trustees appointed by the State Board of Higher Education. The Chancellor of the North Dakota University System shall serve as an ex-officio, non-voting Trustee. If any appointed Trustee by death, refusal, resignation, removal or disability fails to serve as Trustee, a replacement shall be appointed by the State Board of Higher Education to fill the remainder of the unexpired term so vacated.

ARTICLE V: TRUSTEES

Section 1. Number of Trustees. The authorized number of voting Trustees of this Foundation shall be seven which number may be changed by a By-Law duly adopted by a two-thirds majority of the Board at any regular or special meeting thereof, provided that at no time shall the Foundation have fewer than five voting Trustees.

Section 2. Selection and Terms. The terms of the President (or Chair) and the Vice President (or Vice Chair) of the State Board of Higher Education shall be concurrent with their terms as President (or Chair) and Vice President (or Vice Chair) of the State Board of Higher Education. The other five Trustees shall be appointed by majority vote of the State Board of Higher Education. The initial term of two of the other five Trustees shall be two years and the initial term of the other three Trustees shall be four years; subsequent terms of these five Trustees shall be four years. Trustees shall serve for the duration of their regular terms and until their successors have been duly appointed and qualified. Trustees may be re-appointed to additional terms.

Section 3. Quorum. The presence of a majority of the Trustees shall constitute a quorum of the Board for the transaction of business at any meeting, but less than a quorum may adjourn any meeting from time to time until a quorum is present. The affirmative vote of the majority of those in attendance when a quorum is present shall be sufficient for the transaction of any business by the Board unless the By-Laws specifically provide otherwise.
Section 4. Compensation. The Trustees shall not receive any compensation for their services as such, but may be reimbursed by the Foundation for any authorized expenses incurred by them in performance of their duties as Trustees.

Section 5: Vacancies. If any appointed Trustee, whether by nature of their position on the State Board of Higher Education, or by approval of same, by death, refusal to serve, resignation, removal or disability, fails to serve as Trustee, a replacement shall be appointed by the State Board of Higher Education to fill the remainder of the unexpired term so vacated.

Section 6. Powers and Duties. Subject to the limitations of the Articles of Incorporation and of pertinent statutes of the State of North Dakota, all corporate powers shall be exercised by or under authority of, and the business and affairs of the Foundation shall be controlled by the Board. Without prejudice to such general powers, but subject to the limitations herein set forth, the Board shall have the power:

- First: To elect and remove at pleasure all officers, agents and employees of the Foundation; to prescribe such duties for them as may be desirable and consistent with the laws of the State of North Dakota, the laws of the United States, and the Articles of Incorporation and By-Laws of the Foundation; and to fix the term of their offices and their compensation.
- Second: To appoint committees as may be needed and grant such committees power and authority of the Board as may be appropriate, except any action taken by committees shall be regularly reported to the Board. No committee may adopt, amend, or repeal these By-Laws.
- Third: Generally, to do and perform every act and thing whatsoever that may pertain to the office of a Trustee or to a Board of a charitable Foundation.
- Fourth: The Trustees shall render an accounting for each fiscal year and shall have an audit of its financial statements by a certified public accountant for each fiscal year.
- Fifth: The Trustees may accept by gift, devise, grant, bequest or in any other manner any property, real or personal, which in their opinion will help accomplish the charitable purposes of the Foundation, and may sell, exchange, lease, mortgage, or otherwise encumber any or all property held by it as they deem necessary and prudent. Funds may be commingled for investment or reinvestment by the Trustees of any securities or other property as prescribed by the laws of the Federal Government or the laws of the State of North Dakota, provided, however, that each fund or trust shall be separately reported for in all regular financial reports issued by the Trustees.

**ARTICLE VI: MEETING OF TRUSTEES**

Section 1. Place of Meetings. Notwithstanding anything to the contrary herein, any meeting (regular, special, or adjourned) of the Board may be held any place within or without the State of North Dakota, which has heretofore been designated for that purpose by resolution of the Board or by consent of the Trustees. Meetings may also be held by conference telephone call.

Section 2. Regular Meetings. Subject to the following section, regular meetings of the Board, of which notice shall be given at least five days prior to the date thereof, shall be held at any such location as may be designated. Regular meetings will be held annually on a date set by the Board.

Section 3. Special Meetings. Special meetings of the Board may be called at any time by order of the President of the Board or by three or more of the Trustees.

Section 4. Notice of Meeting. A member of the Board waives objection to notice of meeting upon attendance at the meeting.

ARTICLE VII: EXECUTIVE COMMITTEE

There shall be an Executive Committee consisting of the President, the Vice President and one other Trustee appointed by the President. The Executive Committee shall have and exercise all of the authority of the Board in the operation and management of the Foundation in intervals between meetings of the Board. The authority of the Executive Committee shall nevertheless be subject to such limitations as the Board may prescribe.

The Executive Committee shall be required to keep a record of any and all action taken by it, and report all such action to the Board.

ARTICLE VIII: ADVISORY COUNCIL

The Board may appoint an advisory council to assist it in carrying out its charitable, scientific and educational purposes. Said council shall be of a size determined by the Board and shall function in a manner described in the council By-laws as established by the Board.

ARTICLE IX: OFFICERS AND DUTIES

Section 1. Election. The officers of the Foundation shall consist of a President, Vice President and a Secretary-Treasurer. They shall be elected by the Board annually for one year terms. The officers shall be chosen from the Trustees except the Secretary-Treasurer is not required to be a Trustee.

Section 2. Compensation. Staff members as may be employed may be compensated for their services in amounts determined by the Board except that full-time employees of the North Dakota University System may only be compensated for their expenses.

Section 3. President. The duties of the President of the Board shall be to preside at all meetings of the Board; to authorize the issue and signing of notices of meetings of the Board; to execute all contracts entered into by the Board in accordance with resolutions or orders properly adopted by the Board; and to execute and acknowledge all conveyances authorized by the Board.

Section 4. Vice President. The Vice President shall act in place of the President in the President's absence, or upon the President's disqualification or inability to perform the duties of the office, and shall do and perform all the acts and duties that the President might do if present and acting, upon the above named contingencies.

Section 5. Executive Vice President. The Board shall appoint an Executive Vice President, by majority vote, to serve as chief administrative officer of the Foundation responsible for administration, management, and operation of the Foundation under the direction of the Board. The Executive Vice President is not required to be a Trustee, and is not part of the Executive Committee.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall, under the supervision and direction of the Board, have custody of and be responsible for the funds, moneys, and accounts of the Foundation and shall keep and maintain the financial records of the Foundation; sign all checks or drafts upon the funds of the Foundation and perform such other acts as are ordinarily performed by a treasurer of a corporation as well as those duties which are ordinarily performed by a secretary of a corporation.

Section 7. Removal. Officers may be removed by majority vote of the Board at any regular or specially scheduled meeting.

Section 8. Vacancies. Vacancies shall be filled in the same manner as officers are elected.
ARTICLE X: COMMITTEES

Committees of the Board may be created by the Board and shall have such membership and duties as established by the Board.

ARTICLE XI: BOOKS AND RECORDS

The Board shall provide for a system of books and records designed to give a clear, accurate, full and detailed account of all the properties and dealings of the Foundation. Such records shall be kept on file at all times in the office of the Foundation and shall be open for inspection at all reasonable times by any Trustee or officer.

The Secretary-Treasurer of the Foundation shall be in charge of the books and records. The Secretary-Treasurer shall see that all notices are duly given in accordance with these By-Laws and shall execute and sign such instruments as the Board shall direct and shall certify to the official acts of the Chair, Vice Chair, or President of the Board.

ARTICLE XII: TITLE TO ASSETS

The title to the corporate assets shall be taken and held in the name of the North Dakota University System Foundation.

ARTICLE XIII: FISCAL YEAR

The fiscal year of the Corporation shall be July 1 through June 30.

IN WITNESS WHEREOF, we have set our respective signatures this ___________ day of ________, 2016.

Signatures:

____________________________________________________________
Xxxx Xxxxxx, Trustee

____________________________________________________________
Xxxx Xxxxxx, Trustee

____________________________________________________________
Xxxx Xxxxxx, Trustee

____________________________________________________________
Xxxx Xxxxxx, Trustee
INDEX

1000 Governance
   1001 Bylaws of the NDUS Foundation
   1005 Conflicts of Interest

2000 Fundraising
   2001 Fundraising
      2001.1 Cash Gifts and Pledges
      2001.2 Gifts-in-Kind
      2001.3 Planned Gifts

3000 Fiscal Management
   3001 Routine/Small Expenditures
   3005 Payment/Reimbursement of Travel Expenses
   3010 Borrowing
   3015 Investment Policy Statement

4000 Administrative
   4001 Records Retention
   4005 NDUS and NDUS Foundation MOU
ARTICLE I: DEFINITIONS

As used in these By-laws, the word “Foundation” shall mean the North Dakota University System Foundation; the word “Trustee” shall mean a Trustee of the North Dakota University System Foundation; the word “Board” shall mean the Board of Trustees of the North Dakota University System Foundation.

ARTICLE II: LOCATION OF OFFICE

The office of the Foundation shall be located in any place within the State of North Dakota where the Board may in its discretion direct.

ARTICLE III: PURPOSE

This Foundation is formed for exclusively charitable, scientific, and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501 (c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code and including, but not limited to, the support, enrichment, advancement, and improvement of higher education in the State of North Dakota, the assistance of students, faculty, employees and officers in public higher education in North Dakota, and support of any of the programs, activities or services of the North Dakota University System.

ARTICLE IV: MEMBERS

The Trustees of the Foundation shall consist of the President (or Chair) and Vice President (or Vice Chair) of the North Dakota State Board of Higher Education and five other Trustees appointed by the State Board of Higher Education. The Chancellor of the North Dakota University System shall serve as an ex-officio, non-voting Trustee. If any appointed Trustee by death, refusal, resignation, removal or disability fails to serve as Trustee, a replacement shall be appointed by the State Board of Higher Education to fill the remainder of the unexpired term so vacated.

ARTICLE V: TRUSTEES

Section 1. Number of Trustees. The authorized number of voting Trustees of this Foundation shall be seven which number may be changed by a By-Law duly adopted by a two-thirds majority of the Board at any regular or special meeting thereof, provided that at no time shall the Foundation have fewer than five voting Trustees.

Section 2. Selection and Terms. The terms of the President (or Chair) and the Vice President (or Vice Chair) of the State Board of Higher Education shall be concurrent with their terms as President (or Chair) and Vice President (or Vice Chair) of the State Board of Higher Education. The other five Trustees shall be appointed by majority vote of the State Board of Higher Education. The initial term of two of the other five Trustees shall be two years and the initial term of the other three Trustees shall be four years; subsequent terms of these five Trustees shall be four years. Trustees
shall serve for the duration of their regular terms and until their successors have been duly appointed and qualified. Trustees may be re-appointed to additional terms.

Section 3. Quorum. The presence of a majority of the Trustees shall constitute a quorum of the Board for the transaction of business at any meeting, but less than a quorum may adjourn any meeting from time to time until a quorum is present. The affirmative vote of the majority of those in attendance when a quorum is present shall be sufficient for the transaction of any business by the Board unless the By-Laws specifically provide otherwise.

Section 4. Compensation. The Trustees shall not receive any compensation for their services as such, but may be reimbursed by the Foundation for any authorized expenses incurred by them in performance of their duties as Trustees.

Section 5. Vacancies. If any appointed Trustee, whether by nature of their position on the State Board of Higher Education, or by approval of same, by death, refusal to serve, resignation, removal or disability, fails to serve as Trustee, a replacement shall be appointed by the State Board of Higher Education to fill the remainder of the unexpired term so vacated.

Section 6. Powers and Duties. Subject to the limitations of the Articles of Incorporation and of pertinent statutes of the State of North Dakota, all corporate powers shall be exercised by or under authority of, and the business and affairs of the Foundation shall be controlled by the Board. Without prejudice to such general powers, but subject to the limitations herein set forth, the Board shall have the power:

- First: To elect and remove at pleasure all officers, agents and employees of the Foundation; to prescribe such duties for them as may be desirable and consistent with the laws of the State of North Dakota, the laws of the United States, and the Articles of Incorporation and By-Laws of the Foundation; and to fix the term of their offices and their compensation.
- Second: To appoint committees as may be needed and grant such committees power and authority of the Board as may be appropriate, except any action taken by committees shall be regularly reported to the Board. No committee may adopt, amend, or repeal these By-Laws.
- Third: Generally, to do and perform every act and thing whatsoever that may pertain to the office of a Trustee or to a Board of a charitable Foundation.
- Fourth: The Trustees shall render an accounting for each fiscal year and shall have an audit of its financial statements by a certified public accountant for each fiscal year.
- Fifth: The Trustees may accept by gift, devise, grant, bequest or in any other manner any property, real or personal, which in their opinion will help accomplish the charitable purposes of the Foundation, and may sell, exchange, lease, mortgage, or otherwise encumber any or all property held by it as they deem necessary and prudent. Funds may be commingled for investment or reinvestment by the Trustees of any securities or other property as prescribed by the laws of the Federal Government or the laws of the State of North Dakota, provided, however, that each fund or trust shall be separately reported for in all regular financial reports issued by the Trustees.
ARTICLE VI: MEETING OF TRUSTEES

Section 1. Place of Meetings. Notwithstanding anything to the contrary herein, any meeting (regular, special, or adjourned) of the Board may be held any place within or without the State of North Dakota, which has heretofore been designated for that purpose by resolution of the Board or by consent of the Trustees. Meetings may also be held by conference telephone call.

Section 2. Regular Meetings. Subject to the following section, regular meetings of the Board, of which notice shall be given at least five days prior to the date thereof, shall be held at any such location as may be designated. Regular meetings will be held annually on a date set by the Board.

Section 3. Special Meetings. Special meetings of the Board may be called at any time by order of the President of the Board or by three or more of the Trustees.

Section 4. Notice of Meeting. A member of the Board waives objection to notice of meeting upon attendance at the meeting.


ARTICLE VII: EXECUTIVE COMMITTEE

There shall be an Executive Committee consisting of the President, the Vice President and one other Trustee appointed by the President. The Executive Committee shall have and exercise all of the authority of the Board in the operation and management of the Foundation in intervals between meetings of the Board. The authority of the Executive Committee shall nevertheless be subject to such limitations as the Board may prescribe.

The Executive Committee shall be required to keep a record of any and all action taken by it, and report all such action to the Board.

ARTICLE VIII: ADVISORY COUNCIL

The Board may appoint an advisory council to assist it in carrying out its charitable, scientific and educational purposes. Said council shall be of a size determined by the Board and shall function in a manner described in the council By-laws as established by the Board.

ARTICLE IX: OFFICERS AND DUTIES

Section 1. Election. The officers of the Foundation shall consist of a President, Vice President and a Secretary-Treasurer. They shall be elected by the Board annually for one year terms. The officers shall be chosen from the Trustees except the Secretary-Treasurer is not required to be a Trustee.

Section 2. Compensation. Staff members as may be employed may be compensated for their services in amounts determined by the Board except that full-time employees of the North Dakota University System may only be compensated for their expenses.

Section 3. President. The duties of the President of the Board shall be to preside at all meetings of the Board; to authorize the issue and signing of notices of meetings of the Board; to execute all
contracts entered into by the Board in accordance with resolutions or orders properly adopted by the Board; and to execute and acknowledge all conveyances authorized by the Board.

Section 4. Vice President. The Vice President shall act in place of the President in the President's absence, or upon the President's disqualification or inability to perform the duties of the office, and shall do and perform all the acts and duties that the President might do if present and acting, upon the above named contingencies.

Section 5. Executive Vice President. The Board shall appoint an Executive Vice President, by majority vote, to serve as chief administrative officer of the Foundation responsible for administration, management, and operation of the Foundation under the direction of the Board. The Executive Vice President is not required to be a Trustee, and is not part of the Executive Committee.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall, under the supervision and direction of the Board, have custody of and be responsible for the funds, moneys, and accounts of the Foundation and shall keep and maintain the financial records of the Foundation; sign all checks or drafts upon the funds of the Foundation and perform such other acts as are ordinarily performed by a treasurer of a corporation as well as those duties which are ordinarily performed by a secretary of a corporation.

Section 7. Removal. Officers may be removed by majority vote of the Board at any regular or specially scheduled meeting.

Section 8. Vacancies. Vacancies shall be filled in the same manner as officers are elected.

ARTICLE X: COMMITTEES

Committees of the Board may be created by the Board and shall have such membership and duties as established by the Board.

ARTICLE XI: BOOKS AND RECORDS

The Board shall provide for a system of books and records designed to give a clear, accurate, full and detailed account of all the properties and dealings of the Foundation. Such records shall be kept on file at all times in the office of the Foundation and shall be open for inspection at all reasonable times by any Trustee or officer.

The Secretary-Treasurer of the Foundation shall be in charge of the books and records. The Secretary-Treasurer shall see that all notices are duly given in accordance with these By-Laws and shall execute and sign such instruments as the Board shall direct and shall certify to the official acts of the Chair, Vice Chair, or President of the Board.

ARTICLE XII: TITLE TO ASSETS

The title to the corporate assets shall be taken and held in the name of the North Dakota University System Foundation.
ARTICLE XIII: FISCAL YEAR

The fiscal year of the Corporation shall be July 1 through June 30.

IN WITNESS WHEREOF, we have set our respective signatures this __________ day of __________, 2016.

Signatures:

____________________________________________________________
Xxxx Xxxxxx, Trustee

____________________________________________________________
Xxxx Xxxxxx, Trustee

____________________________________________________________
Xxxx Xxxxxx, Trustee

1005: Conflicts of Interest

As soon as duality of interest or possible conflicts of interest on the part of any member of the Board is known, or reasonably should have been known, any such conflict shall be disclosed to the Executive Committee and other members of the Board and made a matter of record.

Action by the Executive Committee in connection with such interest shall also be disclosed in writing and made a matter of record.

Any member of the Board having a duality of interest or possible conflict of interest on any matter shall not vote or use his or her personal influence on the matter whenever such duality or possible conflict of interest shall arise.

The minutes of that meeting shall reflect that the conflict was disclosed; the party, who is the subject of the conflict, abstained from voting on the matter; and a quorum was present.

If requested by a majority of the Executive Committee, the foregoing requirements shall not be construed as preventing the member who is the subject of the conflict from briefly stating his or her position in the matter, nor from answering pertinent questions from other members of the Executive Committee since his or her knowledge may be of assistance.

2001: Fundraising

1. Any proposed solicitation of private resources by individual trustees, faculty, staff, and/or university system employees on behalf of the Foundation must be coordinated with and
approved by the Executive Committee of the Foundation. This policy is not intended to be restrictive, but rather to insure efficient and effective fundraising by all involved.

2. Gifts in any form, with the exception of in-kind gifts of equipment, etc., obtained and accepted on behalf of the Foundation are to be transmitted to the Foundation, within five days of receipt.

3. The Foundation is responsible for developing, coordinating and approving all gift agreements, and will be responsible for depositing gifts into the Foundation checking account.

4. Gifts will be subject to the policies of both the Foundation and the NDUS State Board of Higher Education.

5. The Foundation is vested with the authority to accept and dispose of gifts in accordance with Foundation policy, and to accept or reject the terms of any gift in the best interest of the NDUS and/or the Foundation. All proposed gifts and agreements must be reviewed by the Foundation and may be referred to the ND Attorney General’s office as needed.

2001.1 Cash Gifts and Pledges

1. All gifts of cash and checks received by any party on behalf of the Foundation shall be forwarded directly to the Foundation, and will include original documentation, including envelopes and corporate matching gift forms that accompany the gift.

2. Pledges for cash gifts should be reported using a Pledge Form available from Foundation.

3. While most cash gifts can be accepted, there are occasions when a donor places restrictions on a gift that would preclude its acceptance by the Foundation. Questions concerning such restrictions should be directed to the Secretary/Treasurer before acceptance of the gift is completed.

2001.2 Gifts-in-Kind

1. When any party receives a proposal from a donor to transfer ownership of equipment, library collections or similar property to the Foundation, the proposal and necessary background information shall be provided to the Secretary/Treasurer. If there are special costs or space requirements associated with the gift, these shall be noted, along with the proposed plan for covering such costs or arranging for additional space. The Secretary/Treasurer will consult with the Foundation President or other appropriate parties when there are unusual restrictions or requirements associated with an in-kind gift.

2. The Foundation's acknowledgment letter shall not place a dollar value on the gift. Donors may contribute in-kind gifts and have them qualify for a charitable deduction. IRS requirements for gift substantiation note that the donor has the responsibility for valuing in-kind gifts for tax deduction purposes. Even in cases where the donor's intention is to not
claim the in-kind gift as a charitable donation, the Foundation's policy will be to ask the donor to place a value on the in-kind gift.

3. When the Foundation receives a gift that has been appraised in excess of $5,000, the Secretary/Treasurer will send the donor Form 8283, Non-Cash Charitable Contributions. After the donor resubmits Form 8283, with the proper information on the donated property, the Foundation President will sign Part IV and return the form to the donor. In signing the form, the Foundation, as the recipient of the gift, agrees to file an information return (Form 8282), with the IRS if the property is sold, exchanged, or otherwise disposed of within two years after receipt of the gift.

4. If the Foundation cannot accept an in-kind gift, the Secretary/Treasurer will confer with the appropriate parties before making arrangements for the donor to be notified.

2001.3 Planned Gifts

1. Planned giving vehicles such as charitable trusts, bequests, pooled income funds, life insurance and charitable gift annuities may have very specific tax consequences. If a donor expresses an interest in making a gift in this manner, the Secretary/Treasurer should be brought into the discussion at the earliest possible stage and will work with the donor and with the donor's financial and legal advisors in an effort to meet the needs of the Foundation. The gift information will be reviewed for acceptance and then forwarded to the donor.

2. Gifts of land, buildings, and closely held stock or limited partnerships must have the review and approval of the Secretary/Treasurer. Once the donor accepts the terms and conditions of the gift agreement, copies of the signed agreement will be kept in the donor's file maintained by the Foundation.

3. Proceeds of a bequeathed estate are designated per the instruction of the estate. If the Foundation is unable to follow the bequest exactly as stipulated under the will, the Secretary/Treasurer will, after consultation with the President of the Foundation, contact the executor to obtain a mutually acceptable designation. Undesignated bequests will be created as unrestricted bequests and will be used at the discretion of the Foundation.

3001: Routine/Small Expenditures of Foundation Funds

1. Foundation funds may be used only to further the overall purposes of the Foundation. The Secretary-Treasurer must sign all checks or drafts upon Foundation funds. Except as provided in section 2 of this Policy, Board of Trustees or Executive Committee approval is required for all expenditures.

2. The President or the Executive Vice President may approve routine expenditures in amounts not in excess of $750.00, including reimbursement of reasonable travel and other expenses of Foundation Trustees or staff for Foundation meetings, payment for telephone, office equipment, office supplies and other routine office expenses, payment for services or other reasonable and routine expenses associated with Foundation activities, and payment or
reimbursement of meals, lodging or other reasonable expenses incurred in support of the programs, activities or services of the North Dakota University System.

Effective: September 27, 2005
Revised:

3005: Payment/Reimbursement of Travel Expenses

1. Trustees and staff are entitled to payment or reimbursement of travel expenses incurred in connection with Foundation meetings and other Foundation business, from Foundation funds, according to this Policy.

2. Foundation Trustees or staff who are also members of the State Board of Higher Education or NDUS employees are not entitled to reimbursement from Foundation funds for travel expenses paid or reimbursed by the NDUS; for travel in connection with both NDUS and Foundation business, only expenses not paid or reimbursed by the NDUS (including authorized expenses that exceed state reimbursement rates) shall be paid or reimbursed by the Foundation.

3. Mileage for travel in a personal vehicle shall be reimbursed at the rate established for State of North Dakota officials and employees. Actual cost of meals and reasonable lodging expenses shall be paid or reimbursed by the Foundation.

4. Trustees and staff are entitled to payment or reimbursement of expenses for necessary travel to and from Foundation meetings. Other travel expenses incurred in connection with Foundation business may be paid or reimbursed: 1) within the limits of travel budgets for Trustees or staff approved by the Board or the Executive Committee; or 2) for Trustees, as approved in advance by the Executive Committee; for the Executive Vice President, as approved in advance by the President; and, for staff, as approved in advance by the Executive Vice President.

5. Reimbursement shall be made upon submission of a signed expense statement listing mileage and other expenses and including receipts for lodging or any other expense that exceeds $25.00.

Effective: September 27, 2005
Revised:

3010: Borrowing

The Foundation may not incur liabilities in excess of routine timing differences for previously approved expenditures. Any plan to incur indebtedness or loans for any purpose other than previously mentioned must be approved by the Foundation Board and the North Dakota State Board of Higher Education.
3015: Investment Policy Statement

1. The overall investment objective for the portfolio is to maximize total return consistent with risks that the Foundation is willing to accept. The stated risk tolerance level is low.

2. The Foundation is authorized to hire Investment Managers once the assets under management reach a level that the Foundation agrees warrants the cost of said professional services.

3. Prior to the retention of any Investment Manager, formal guidelines and limitations for the Investment Managers will be developed which ensure that the assets are being managed in accordance with the investment objectives.

4. A total return strategy will be utilized in meeting the investment objectives. Total return is defined as the combination of interest and dividends, plus capital appreciation (or less capital depreciation) for the period. The Foundation recognizes that fluctuations in market value will occur and that negative returns in any year are possible.

5. The investment of the assets will be diversified in order to minimize the risk of losses, unless under particular circumstances it is clearly prudent not to do so.

4001: Records Retention

The Foundation shall collect and retain appropriate records, in any format deemed appropriate, and maintain same in compliance with SBHE Policy 1912.

4005: NDUS Foundation and NDUS Memorandum of Understanding

WHEREAS, the North Dakota University System Foundation (NDUS Foundation) is a separate 501(c)(3) organization and was organized and incorporated in 1991 under the laws of the State of North Dakota. It is formed for exclusively charitable, scientific, and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future tax code including, but not limited to, the support, enrichment, advancement, and improvement of higher education in the State of North Dakota; assistance of students, faculty, employees and officers in public higher education in North Dakota; and support of any of the programs, activities or services of the North Dakota University System (NDUS).

WHEREAS, recognizing that such activities support and assist the development and advancement of the NDUS; and, having the authority to enter into contracts which support and assist the development and advancement of the NDUS;

NOW, THEREFORE, in consideration of the premises, mutual covenants, and agreement contained herein, NDUS Foundation and the NDUS agree as follows:
1. Use of the North Dakota University System Name. The NDUS Foundation is granted the use of the name North Dakota University System and NDUS Foundation and is authorized to use NDUS logos, facsimiles, and other identifying marks in the promotion of its business and activities.

2. NDUS Foundation Budget. All NDUS Foundation budget decisions are within the purview of the NDUS Foundation Board of Trustees, consistent with the Foundation By-Laws and policies.

3. Foundation Resources. Any NDUS commitments which involve or obligate NDUS Foundation resources shall first be approved by the Foundation Board of Trustees, consistent with Foundation By-Laws and policies.

4. Foundation Funding for the NDUS. NDUS Foundation will provide funds for program services which benefit the NDUS, including:
   a. Student scholarships
   b. Recognition of deserving students
   c. Recognition of employees
   d. Grants for worthy projects
   e. Development and promotion of the NDUS

5. Funding for Foundation Operations. NDUS recognizes that fund raising and program services have both current and long-range financial advantages to the NDUS, its member institutions, and its students and employees. The NDUS recognizes that it has an obligation to support the NDUS Foundation operations in consideration of the program services provided to the NDUS by the NDUS Foundation, and agrees that the value of NDUS Foundation services and contributions, including funding described in section 4, is significantly greater than the value of NDUS support provided for NDUS Foundation operations. Therefore, NDUS will annually contribute the following to the NDUS Foundation:
   a. Accounting services, at no cost;
   b. Technology support service, storage of electronic records & online access at no cost;
   c. Access to files that are relevant to the business and purpose of the NDUS Foundation;
   d. Administrative (i.e., secretarial) support, at no cost.

6. Bequests and Donations to the NDUS. NDUS agrees to assist NDUS Foundation fundraising activities and encourage donors and prospective donors to make donations and bequests to the NDUS Foundation and not directly to the NDUS. However, NDUS must retain ownership and control of donations and bequests made to the NDUS and may not transfer ownership or title to NDUS donations and bequests to the NDUS Foundation.

7. NDUS Representation on the NDUS Foundation Board of Trustees. The NDUS Chancellor shall be seated as an ex officio, nonvoting member of the NDUS Foundation Board of Trustees.
8. Reporting Relationships and Appointing Authority.
   a. Executive Vice President. The NDUS Foundation Board of Trustees appoints an Executive Vice President, responsible for administration, management and operation of the Foundation, under the direction of the Board of Trustees. The duties and responsibilities of this position are set forth in the Foundation By-Laws. It is hereby agreed that the NDUS Chancellor shall serve as the Executive Vice President of the Foundation Board and will so serve in an ex officio, non-voting capacity, until such time that the Foundation Board of Trustees terminates this appointment of NDUS Chancellor as Executive Vice President for the Foundation, in its sole discretion. The NDUS Foundation Executive Vice President is directly accountable and responsible to the State Board of Higher Education.
   b. Secretary-Treasurer. Tradition is that the Secretary-Treasurer of the NDUS Foundation is the Chief Financial Officer of the NDUS. This position is directly accountable and responsible to the Chancellor. The appointment of the Secretary-Treasurer is determined by the NDUS Foundation Board of Trustees. The duties and responsibilities of this position are set forth in the Foundation By-Laws.

9. North Dakota Open Records. North Dakota’s open record laws apply to NDUS Foundation activities paid for in whole or in part by public funds, when expending public funds, exercising public authority or performing a government function delegated to the NDUS Foundation. However, payment of a fee by the NDUS for services provided by the NDUS Foundation that constitutes an exchange for value received does not constitute public support of the NDUS Foundation and the use of those funds does not give rise to a claim that the NDUS Foundation expends public funds. The NDUS Foundation agrees that to the extent it is determined that North Dakota’s open records laws apply to the NDUS Foundation activities, it will cooperate with NDUS and make its records related to those activities available as required by law.

10. Foundation Audit. Gifts, grants and endowments shall be accepted and accounted for using generally accepted accounting principles and FASB Standards 116 and 117 on Development Operations. The NDUS Foundation shall comply with requirements in SBHE policy 340.2 related to GAAP compliant financial statements and an annual GAAP audit, including submission by September 15 of each year.

11. Soliciting Input. NDUS and the NDUS Foundation will solicit input from each other and consider that input in good faith before defining needs and priorities that affect the other.

12. Coordination of Fundraising. The NDUS Foundation and NDUS shall foster cooperation and coordination of fund raising efforts to maintain continuity of purpose. Such coordination shall include donor relations, publications and public relations, where funds will be distributed to NDUS for expenditure. The coordination includes the use of personnel, expertise, facilities for the common interest and good faith of both parties. The NDUS Foundation shall have continuing authority and access to solicit NDUS employees for routine fund raising as well as special projects.

13. Delegation of Government Functions. It is acknowledged and agreed that NDUS retains ultimate authority regarding government functions delegated to the NDUS Foundation. It is
further agreed and understood that no government functions will be delegated to the NDUS Foundation without written agreement by both parties and such agreement must be approved by the NDUS Foundation Board of Trustees and included as part of this Agreement.

14. Conflicts of Interest. It is in the best interest of NDUS and the NDUS Foundation to be aware of and properly manage all conflicts of interest and appearances of a conflict of interest. Conflicts of interest or potential conflicts of interest involving NDUS and the NDUS Foundation Board of Trustees or employees must be disclosed in a timely manner.

15. Agreement Renewal. The term of this agreement is two years, beginning on the date signed by both parties. This agreement shall be reviewed annually and, subject to required annual review and agreement on amendments or revisions or a termination by a party with the required notice, shall be automatically renewed for a like term. The agreement may be terminated by either party with written notice of at least 60 days to the other party. A copy of the agreement shall be filed with the North Dakota Attorney General’s Office.

In WITNESS THEREOF, this agreement is first executed on behalf of North Dakota University System and the North Dakota University System Foundation on the _____ day of __________________, 2016.

NORTH DAKOTA UNIVERSITY SYSTEM FOUNDATION:

____________________________________________________________
NDUS Foundation President

NORTH DAKOTA UNIVERSITY SYSTEM:

___________________________________________________________
Chancellor
Agreement Between
North Dakota University System and
North Dakota University System Foundation

WHEREAS, the North Dakota University System Foundation (NDUS Foundation) is a separate 501(c)(3) organization and was organized and incorporated in 1991 under the laws of the State of North Dakota. It is formed for exclusively charitable, scientific, and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future tax code including, but not limited to, the support, enrichment, advancement, and improvement of higher education in the State of North Dakota; assistance of students, faculty, employees and officers in public higher education in North Dakota; and support of any of the programs, activities or services of the North Dakota University System (NDUS).

WHEREAS, recognizing that such activities support and assist the development and advancement of the NDUS; and, having the authority to enter into contracts which support and assist the development and advancement of the NDUS;

NOW, THEREFORE, in consideration of the premises, mutual covenants, and agreement contained herein, NDUS Foundation and the NDUS agree as follows:

1. **Use of the North Dakota University System Name.** The NDUS Foundation is granted the use of the name North Dakota University System and NDUS Foundation and is authorized to use NDUS logos, facsimiles, and other identifying marks in the promotion of its business and activities.

2. **NDUS Foundation Budget.** All NDUS Foundation budget decisions are within the purview of the NDUS Foundation Board of Trustees, consistent with the Foundation By-Laws and policies.

3. **Foundation Resources.** Any NDUS commitments which involve or obligate NDUS Foundation resources shall first be approved by the Foundation Board of Trustees, consistent with Foundation By-Laws and policies.

4. **Foundation Funding for the NDUS.** NDUS Foundation will provide funds for program services which benefit the NDUS, including:
   a. Student scholarships
   b. Recognition of deserving students
   c. Recognition of employees
   d. Grants for worthy projects
   e. Development and promotion of the NDUS

5. **Funding for Foundation Operations.** NDUS recognizes that fund raising and program services have both current and long-range financial advantages to the NDUS, its member institutions, and its students and employees. The NDUS recognizes that it has an obligation to support the NDUS Foundation operations in consideration of the program services provided to the NDUS by the NDUS.
Foundation, and agrees that the value of NDUS Foundation services and contributions, including
funding described in section 4, is significantly greater than the value of NDUS support provided for
NDUS Foundation operations. Therefore, NDUS will annually contribute the following to the NDUS
Foundation:
   a. Accounting services, at no cost;
   b. Technology support services, storage of electronic records, and online access, at no cost;
   c. Access to files that are relevant to the business and purpose of the NDUS Foundation;
   d. Administrative (i.e., secretarial) support, at no cost.

6. **Bequests and Donations to the NDUS.** NDUS agrees to assist NDUS Foundation fundraising
activities and encourage donors and prospective donors to make donations and bequests to the
NDUS Foundation and not directly to the NDUS. However, NDUS must retain ownership and
control of donations and bequests made to the NDUS and may not transfer ownership or title to
NDUS donations and bequests to the NDUS Foundation.

7. **NDUS Representation on the NDUS Foundation Board of Trustees.**
   The NDUS Chancellor shall be seated as an ex officio, nonvoting member of the NDUS Foundation
   Board of Trustees.

8. **Reporting Relationships and Appointing Authority.**
   a. *Executive Vice President.* The NDUS Foundation Board of Trustees appoints an Executive Vice
   President, responsible for administration, management and operation of the Foundation, under
   the direction of the Board of Trustees. The duties and responsibilities of this position are set for
   the in the Foundation By-Laws. It is hereby agreed that the NDUS Chancellor shall serve as the
   Executive Vice President of the Foundation Board and will so serve in an ex officio, non-voting
   capacity, until such time that the Foundation Board of Trustees terminates this appointment of
   NDUS Chancellor as Executive Vice President for the Foundation, in its sole discretion. The
   NDUS Foundation Executive Vice President is directly accountable and responsible to the State
   Board of Higher Education.
   b. *Secretary-Treasurer.* Tradition is that the Secretary-Treasurer of the NDUS Foundation is the Chief
   Financial Officer of the NDUS. This position is directly accountable and responsible to the
   Chancellor. The appointment of the Secretary-Treasurer is determined by the NDUS Foundation
   Board of Trustees. The duties and responsibilities of this position are set forth in the Foundation
   By-Laws.

9. **North Dakota Open Records.** North Dakota’s open record laws apply to NDUS Foundation
activities paid for in whole or in part by public funds, when expending public funds, exercising public
authority or performing a government function delegated to the NDUS Foundation. However,
payment of a fee by the NDUS for services provided by the NDUS Foundation that constitutes an
exchange for value received does not constitute public support of the NDUS Foundation and the use
of those funds does not give rise to a claim that the NDUS Foundation expends public funds. The
NDUS Foundation agrees that to the extent it is determined that North Dakota’s open records laws
apply to the NDUS Foundation activities, it will cooperate with NDUS and make its records related
to those activities available as required by law.
10. **Foundation Audit.** Gifts, grants and endowments shall be accepted and accounted for using generally accepted accounting principles and FASB Standards 116 and 117 on Development Operations. The NDUS Foundation shall comply with requirements in SBHE policy 340.2 related to GAAP compliant financial statements and an annual GAAP audit, including submission by September 15 of each year.

11. **Soliciting Input.** NDUS and the NDUS Foundation will solicit input from each other and consider that input in good faith before defining needs and priorities that affect the other.

12. **Coordination of Fundraising.** The NDUS Foundation and NDUS shall foster cooperation and coordination of fund raising efforts to maintain continuity of purpose. Such coordination shall include donor relations, publications and public relations, where funds will be distributed to NDUS for expenditure. The coordination includes the use of personnel, expertise, facilities for the common interest and good faith of both parties. The NDUS Foundation shall have continuing authority and access to solicit NDUS employees for routine fund raising as well as special projects.

13. **Delegation of Government Functions.** It is acknowledged and agreed that NDUS retains ultimate authority regarding government functions delegated to the NDUS Foundation. It is further agreed and understood that no government functions will be delegated to the NDUS Foundation without written agreement by both parties and such agreement must be approved by the NDUS Foundation Board of Trustees and included as part of this Agreement.

14. **Conflicts of Interest.** It is in the best interest of NDUS and the NDUS Foundation to be aware of and properly manage all conflicts of interest and appearances of a conflict of interest. Conflicts of interest or potential conflicts of interest involving NDUS and the NDUS Foundation Board of Trustees or employees must be disclosed in a timely manner.

15. **Agreement Renewal.** The term of this agreement is two years, beginning on the date signed by both parties. This agreement shall be reviewed annually and, subject to required annual review and agreement on amendments or revisions or a termination by a party with the required notice, shall be automatically renewed for a like term. The agreement may be terminated by either party with written notice of at least 60 days to the other party. A copy of the agreement shall be filed with the North Dakota Attorney General’s Office.

In WITNESS THEREOF, this agreement is first executed on behalf of North Dakota University System and the North Dakota University System Foundation on the _____ day of _____________________, 2016.

**NORTH DAKOTA UNIVERSITY SYSTEM:**

Chancellor

**NORTH DAKOTA UNIVERSITY SYSTEM FOUNDATION:**

NDUS Foundation President