

SECOND AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNIVERSITY OF LOUISVILLE
AND
THE UNIVERSITY OF LOUISVILLE FOUNDATION, INC.

THIS SECOND AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (the “Amended MOU”) is entered into as of the 1st day of January, 2021 by and between the University of Louisville (the “University”) and the University of Louisville Foundation, Inc. (the “Foundation”). (Each of the University and the Foundation is a “Party” and collectively are the “Parties”).

This Amended MOU amends, replaces and supersedes the Amended and Restated Memorandum of Understanding dated as of July, 2018 by and between (i) the University, and the University’s Board of Trustees, and (ii) the Foundation, and the Foundation’s Board of Directors, which Amended and Restated Memorandum of Understanding was approved by the University’s Board of Trustees pursuant to a resolution dated July 19, 2018 (the “Previous MOU”).

By signing this Amended MOU, the University and the Foundation hereby agree that the Management Representation and Indemnity Agreement between the University and the Foundation dated December 14, 2017, as amended (the “MRIA”) is terminated, null and void. The Parties have executed this Amended MOU in order to create a single document (rather than multiple documents) to govern the relationship between the University and the Foundation. Key provisions from the now terminated MRIA have been incorporated into this Amended MOU along with provisions from the Previous MOU.

In consideration of the foregoing and the agreements set forth below, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

I. Shared Mission; Separate Governance

A. Shared Mission.

1. The University and the Foundation agree to work as partners to strengthen the University through activities that support the mission and priorities of the University. Both the University and the Foundation have a shared interest in ensuring that each adheres to industry best practices as well as to a governance structure that guaranties all decisions remain free from political pressure, conflicts of interest and the disproportionate influence of any individuals(s). The underlying philosophy and belief of the Foundation and the University is that adherence to industry best practices and such governance structure will provide a “check and balance” which will work to safeguard the interest of the University and its donors, with such “check and balance” often being manifested in this Agreement through the requirement that many actions described herein must be separately

approved by each of the Foundation's Board of Directors and the University's Board of Trustees.

2. The Foundation is primarily responsible for stewarding donations received for the University's overall enhancement in accordance with donor intent and consistent with the Foundation's fiduciary responsibilities. The University (and its affiliated entities) are the sole beneficiary of the assets managed by the Foundation.
3. To ensure effective achievement of the items in this Amended MOU, the University and Foundation officers and representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

B. University Governance.

1. The University is an agency of the Commonwealth of Kentucky.
2. The University's Board of Trustees is responsible for (i) overseeing the mission, leadership, operations and performance of the University, (ii) setting priorities and long-term plans for the University and (iii) the employment and compensation of all University employees (acting directly or through designees) and for the appointment, compensation, and evaluation of the University's President.

C. Foundation Governance.

1. Unlike the University, the Foundation is not a public agency. The Foundation exists as a separate legal entity from the University and is not subject to the University's control. The Foundation is a Kentucky nonprofit corporation that has been recognized by the Internal Revenue Service as a tax-exempt charity under Section 501(c)(3) of the Internal Revenue Code, as amended (the "Code").
2. The Foundation's Board of Directors is responsible for overseeing the Foundation's operations, including control and management of its assets and prudent management of all gifts made for the benefit of the University, whether endowed or current use gifts, consistent with donor intent. This oversight is governed by a comprehensive set of articles of incorporation, bylaws, committee charters and policies that clearly address the fiduciary responsibilities of the Board of Directors, including requirements that individual board members act in good faith, on an informed basis, in a manner consistent with the Foundation's fiduciary duties and the Foundation's best interests, and in furtherance of the Foundation's commitment to the University.
3. The Foundation shall establish, maintain and enforce policies to identify and manage potential conflicts of interest among its board members and

staff. Such policies shall be reviewed on a regular basis and strictly enforced. While “direct investments” by the Foundation are prohibited (see III. B.4. below), the Foundation’s conflict of interest policies will prohibit any investment by the Foundation in a business in which any member of the University’s Board of Trustees or Foundation’s Board of Directors or any executive level employee or officer of the University or the Foundation have an ownership, employment, consulting or other financial relationship.

4. The Chair of the Foundation’s Board of Directors shall be a member of the Foundation’s Board of Directors, but shall not be the President of the University of Louisville.
5. The Foundation is responsible for employing, compensating, and evaluating all of its employees, including the Foundation’s top executive. As it relates to compensation for executive officers of the Foundation, the Foundation’s Board of Directors shall only act upon the recommendation of its Compensation Committee.
6. No officer or employee of the Foundation (including the Foundation’s chief executive), shall serve simultaneously as an officer of the University, without the prior approval of the University’s Board of Trustees and the Foundation’s Board of Directors.
7. The Foundation’s Board of Directors may choose to form an executive committee, which committee would have only such authority as is delegated in writing pursuant to a resolution approved by the affirmative vote of not less than 75% of the voting members of the Foundation’s Board of Directors. The Executive Committee, if formed, shall include at least one Trustee Director.

II. University Responsibilities

- A. The University designates the Foundation as the repository of all private gifts (including any endowed gifts from state programs) made in support of the University unless otherwise expressly specified by the donor.
- B. The University shall ensure that any allocations from the Foundation are spent in accordance with donor intent. The University shall timely sign compliance documents from the Foundation attesting to its adherence with donor intent.
- C. The funds transferred from the Foundation to the University may be used by the University to support its annual budget, subject to prior approval by the University’s Board of Trustees.
- D. The University President is responsible for communicating University priorities and long-term plans, as approved by the University’s Board of Trustees, to the Foundation.

- E. The University President controls the University's fund-raising activities. The University President and campus leadership will work, in conjunction with the Foundation, to identify, cultivate, and solicit prospects for private gifts.
- F. The Foundation's chief executive shall be invited on a regular basis to meetings of the University President's executive team.
- G. The Foundation's chief executive or his or her designee shall be included as an *ex-officio* member of any University-wide strategic or facilities planning committee.
- H. The University shall be responsible for the development and regular sequenced communication of donor stewardship letters.
- I. The University, at its option, may contract with the Foundation at fair market value rates for special services like grounds maintenance or advertising. The services, if any, and compensation amount will be negotiated on an annual basis by April 30th of the preceding fiscal year. The University agrees to provide the Foundation with access, without charge, to the University's enterprise and identity management systems, including access to University email and Ulink services and storage space on the University's shared drive or an equivalent successor. To the extent the Foundation asks the University to provide customized functionality for the Foundation or requests that University personnel provide significant support for the Foundation's e-discovery obligations, the University and Foundation will timely negotiate reasonable compensation rates for those services. The Foundation agrees that it will comply with the University's policies and procedures related to access to and use of University email and Ulink services and shared drive storage space, including University policies and procedures related to data security. The University will provide the Foundation with a shared drive exclusively for the use of the Foundation. The University will provide that shared drive with the same level of security it provides to its own shared drives and agrees that it will not access information stored on that shared drive or other information that the University clearly knows is Foundation information without the express written permission of the Foundation, except as part of normal maintenance or desktop support operations.
- J. The University's Chief Financial Officer shall serve, *ex-officio*, as a voting member of the Foundation's Finance Committee.
- K. The University President shall be an *ex-officio*, voting member of the Foundation's Board of Directors and up to five (5) members of the University's Board of Trustees shall serve as voting members of the Foundation's Board of Directors (the "BOT Foundation Board Members"). In the event that the Chair of the University's Board of Trustees requests that a fifth member of the University's Board of Trustees serve on the Foundation's Board of Directors, such fifth member shall be selected by the Chair of the University's Board of Trustees in accordance with the bylaws of the Foundation. At no time shall the University President (serving in an *ex officio* capacity on the Foundation's Board) together with the BOT Foundation Board

Members collectively comprise more than 40% of the membership of the Foundation's Board of Directors.

III. Foundation Responsibilities. Consistent with the purposes stated in its Articles of Incorporation, the Foundation exists to promote the interest and welfare of the University and provide it with a margin of excellence by providing the maximum level of sustainable financial support.

A. Fundraising and Stewardship

1. The Foundation will maintain, adhere to, and periodically assess, its gift-management and acceptance policies and will make the University aware of any proposed changes to such policies.
2. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation's Board of Directors and the governmental agency and only after consultation with the University.
3. The Foundation shall be responsible for (and custodian of) donor records related to the gifts received by the Foundation for the University's benefit and shall make those records available to the University upon reasonable request (excluding the records created and maintained by the University's Office of Advancement for fundraising purposes).
4. The Foundation may hold licensing agreements and other forms of donated intellectual property.
5. The Foundation may borrow money or guarantee debt or engage in other activities to further the purpose of the University. The Foundation may use donor gifts as collateral for the purposes described in this paragraph unless expressly prohibited by such donor.
6. The Foundation receives, invests, encourages, manages, and administers private gifts and bequests donated for the benefit of the University and, if designated by a donor, directs them to specific areas or projects within the University. The Foundation acts in a fiduciary capacity, distributing money as required by the terms of the gift and consistent with the donor's intent. The Foundation acts as custodian for endowed funds and serves in other fiduciary capacities when gifts are made through bequests and other planned giving arrangements.

B. Asset Management

1. The Foundation's investment objective is to protect the corpus of permanently endowed gifts in perpetuity and preserve the purchasing power of its assets, while providing a continuing, stable and sustainable funding source to support the current and future mission of the University. To

accomplish this, the Foundation seeks to generate a total return that will exceed not only its spending rate, but also all expenses and inflation. It is the intention that all total return (interest income, dividends, realized gains, and unrealized gains), above and beyond the amount approved for expenditure or distribution, will be reinvested by the Foundation. The Foundation's assets will be managed on a total return basis, consistent with the applicable standard of conduct set forth in the Kentucky Uniform Prudent Management of Institutional Funds Act (KRS 273.600 to 273.645) ("KY UPMIFA"). The Foundation will employ an outside third party as its outsourced investment office to provide expertise in the management of its assets ("Outsourced Investment Office"). The Foundation shall memorialize its investment objectives and performance standards in a written Investment Policy Statement ("IPS") which shall be reviewed not less than every four years by the Foundation's Investment Committee and Board of Directors. The Foundation's IPS shall be made available to the University.

2. The Foundation agrees to provide the University with timely information (but in no event less than quarterly) about investment performance and the current market value of endowments, as requested to allow the University to provide donors with this information.
3. The Foundation will establish prudent asset-allocation, disbursement, and spending policies that are consistent with its IPS and adhere to applicable federal and state laws, including the Kentucky Principal and Income Act (KRS 386.450 to 386.504) and KY UPMIFA.
4. Unless requested by the University in writing (and previously approved by the University's Board of Trustees), and excluding investments managed by its Outsourced Investment Office, the Foundation shall not invest in start-up businesses or real estate nor make any other "direct" investments (i.e., shall not invest directly in any entity or business or real estate venture).
5. The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments. The Foundation will maintain separate accounts for (a) endowment funds, (b) current use gifts, and (c) operating cash.

C. Transfer of Funds

1. The Foundation is the depository of private gifts made for the University's benefit. It will transfer funds from endowment earnings to the designated entity within the University in compliance with applicable laws, University and Foundation policies, the Foundation's current budget, and gift agreements, and in keeping with its obligation to provide the University

with the maximum level of sustainable support. Such transfers will occur on a timely basis based on an agreed schedule of disbursements.

2. The Foundation will transfer current use funds to the University (upon request by the University) in accordance with the Foundation's current budget to support University initiatives and make disbursements on the University's behalf, subject to applicable gift agreements. The Foundation's disbursements on behalf of the University must be for reasonable business purposes that support the University, are consistent with donor intent, and in compliance with all applicable laws and Foundation policies. All requests for Foundation fund transfers to the University or disbursements on behalf of the University, in addition to the endowment support discussed in Section III.C.1 above, should be communicated to the Foundation by the University President, University Chief Financial Officer, applicable School Dean or University Chief Advancement Officer.
3. All transfers of funds from the Foundation to the University must be documented in writing or electronically in a form that has a retrievable transaction trail.
4. The Foundation shall not process any request to process the liquidation or transfer of any quasi-endowed account, in whole or in part, without the prior approval of the University's Board of Trustees and the Foundation's Board of Directors. As it relates to testamentary gifts, the Foundation shall automatically quasi-endow any gift of more than \$100,000 unless otherwise requested in writing by the University's Board of Trustees.
5. The Foundation shall not make funds available for spending at the sole discretion of the Foundation President, the University President or any other officer of the Foundation or the University.
6. The Foundation shall not request or accept loans from the University without the approval of the University's Board of Trustees.
7. Unless requested by the University's Board of Trustees in writing (and such request identifies an available source of funding), the Foundation shall not become obligated to pay (nor shall it pay) salary, bonuses, deferred compensation, tax gross-ups or any other compensation to University employees (whether directly or through subsidiaries or affiliates).
8. At the time it requests a transfer of funds, the University will provide the Foundation with appropriate documentation establishing that the University is adhering to terms, conditions or limitations imposed by the donor on the gift. The Foundation and the University will work together to maintain a set of form documents and procedures that implement this obligation in an efficient and effective manner.

D. Foundation Funding and Administration

1. The Foundation will use its best efforts to assure that the activities of the Foundation align with the mission and goals of the University and meet applicable accreditation standards (and the University will use its best efforts to notify the Foundation of such applicable accreditation standards).
2. The Foundation will maintain its tax-exempt status under Section 501(c)(3) of the Code and carry on its work exclusively for the charitable and educational purposes of the University of Louisville.
3. Not less than three months prior to the beginning of the Foundation's fiscal year, and at least two weeks before submitting same to the Foundation's Finance Committee, the Foundation shall prepare a complete annual line item budget (including the President's Initiative Spending Allocation and the Advancement Spending Allocation) and an Annual Spending Policy, and shall submit such budget and the Annual Spending Policy to the University's President and Chief Financial Officer for review and comment.
4. Each year the Foundation holds "budget workshops" for the members of the Foundation's Board. These are working meetings where the budget for the upcoming fiscal year is discussed in detail. The members of the University's Board of Trustees shall be invited to attend the Foundation's "budget workshops". The Foundation shall consider in good faith all recommendations and advice relative to the budget made by any member of the University's Board of Trustees, and any reasonable request made by a member of the University's Board of Trustees shall be included in the Foundation's annual budget.
5. In establishing an annual operations and capital budget, the Foundation has the right to use a reasonable percentage of funds to support its operations. In addition, the Foundation may use payments received from the University, whether direct (e.g., administrative fees) or in-kind, under the terms of any annual service contract with the University.
6. In establishing a financial plan, the Foundation will provide for necessary office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.
7. The Foundation shall maintain copies of the plans, budgets, and donor records developed in connection with the performance of its obligations in compliance with system-wide policies for records retention. Such policies shall include the implementation of litigation holds, a prohibition on destruction of data in connection with the repurposing of computers, telephones and other devices and shall be consistent with the policies of the University.

8. The Foundation and the University shall coordinate with each other on public policy questions such as Open Records and Open Meetings issues and on fundraising and public relations/marketing.
9. On an annual basis, the Foundation's Board of Directors will select and engage an independent accounting firm to conduct an audit of the Foundation's financial and operational records.
10. The Foundation shall provide the University with a copy of the Foundation's annual audited financial statements, including management letters and responses to management letters within 30 days of receipt. Within 90 days of the issuance of an audit report with audit findings, the Foundation shall demonstrate to the University that satisfactory progress has been made to implement a corrective action plan. If the University recommends that specific actions be included in the corrective action plan, the Foundation Chief Executive shall promptly communicate the University's recommendations to the Foundation's independent accounting firm and the Foundation's Board of Directors for their consideration.
11. The Foundation shall provide the University and the University's Board of Trustees with detailed quarterly financial reports, including, without limitation, information on all assets held and investments managed by the Foundation, the amount of the Endowment Pool, the status of gift accounts (including any carryover amounts) and budget-to-actual comparisons.
12. The Foundation and the University will share access to donor data and records in accordance with established University and Foundation policies and procedures and mindful of applicable laws.
13. The Foundation shall (i) maintain a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the Foundation's financial management, which will always include coordination with and the right to access the University's procedures and mechanics to report inappropriate activities, and (ii) prohibit punishment of or retaliation against any employee for reporting problems.
14. Officers and employees of the Foundation who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Foundation's Board of Directors after consultation with the University.
15. The Foundation's Board of Directors shall evaluate the potential risks arising from the Foundation's operations and obtain commercially reasonable amounts of general liability and directors/officers' insurance.

IV. License to use University Marks

- A. During the term of this Amended MOU only, and consistent with its mission to help advance the plans and objectives of the University, the Foundation is granted a royalty-free, non-exclusive, non-transferable license to use the name, “University of Louisville”, the name “U of L”, and the University of Louisville cardinal bird (registration number 2007784) (the “University Marks”). The Foundation will operate under its own seal and logotype, which, during the term of this Amended MOU, shall include the University Marks or any combination thereof.
- B. All Foundation use of or materials containing the University Marks shall be well suited in accordance with the purposes of this Amended MOU and shall be of a high quality that does not derogate from or adversely affect the University Marks or the goodwill and reputation associated therewith or with the University. The Foundation will conform its uses to quality standards approved by the University in its reasonable discretion, which may be changed by the University periodically with written notice to the Foundation and which shall, in no event, be lower than the standards the Foundation applies to maintaining its own trademarks. The Foundation agrees that the University Marks are the University’s exclusive property, have acquired secondary meaning and that all related rights and goodwill in the University Marks shall inure solely to the University’s benefit. The Foundation shall not acquire any rights or interest in the University’s Marks, nor shall the Foundation challenge, attack or contest the ownership or validity of the University’s rights in the University Marks.

V. Miscellaneous Terms

- A. The University and the Foundation agree to review this Amended MOU (i) at least every two years, and (ii) as necessary in connection with any amendment by either Party of its bylaws or other written agreements or policies that impacts such Party’s relationship with the other Party, with any necessary changes to be documented with written amendments.
- B. Either Party may terminate this Amended MOU, upon the affirmative vote of not less than 75% of the members of its governing body and 180 days’ prior written notice to the chief executive officer and board chair of the other Party. The Party initiating the Amended MOU’s termination must act in good faith to schedule and participate in a meeting to resolve differences (the “Initial Meeting”), which meeting (i) shall include, at a minimum, the chair of the governing body of each Party as well as the top executive from each Party, and (ii) shall be held within 30 days of the initial written notice of intention to terminate this Amended MOU. At the Initial Meeting, the Parties shall use their best efforts to resolve all differences.
- C. If, after the Initial Meeting, differences remain, the Parties shall mutually select a neutral mediator to facilitate a dispute resolution process. Both Parties, as represented by their top executives and board chairs, shall participate in good faith in such mediation and use their respective best efforts to resolve all differences. If

a neutral mediator has not been selected or the mediation is not successful within 60 days after the Initial Meeting, the Parties shall continue to cooperate in good faith to resolve differences. On the date which is 90 days after the Initial Meeting, the Parties' top executives and board chairs shall once again meet – including with the mediator if one has been selected. If, at the conclusion of that meeting the Parties agree that a resolution is possible they shall agree on a path for achieving such resolution. If, however, at the conclusion of that meeting either or both of the Parties do not believe a resolution is possible, the Parties shall work together in good faith over the next 60 days to formulate a plan of termination, which plan shall govern their separation and their relationship after termination of this Amended MOU. If the Parties have not agreed on a plan of termination within that 60-day period, then this Amended MOU shall terminate at the end of such 60-day period.

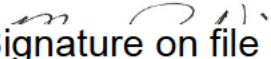
- D. Notwithstanding the foregoing, either Party may terminate this Amended MOU upon the affirmative vote of not less than 75% of the voting members of its governing body in the event the other Party materially defaults in the performance of its obligations under this Amended MOU and fails to cure such default within a reasonable period (not less than 90 days) after receiving written notice from the other Party of intention to terminate this Amended MOU (which notice shall describe the material default in reasonable detail).
- E. Notwithstanding the foregoing, both Parties recognize that, whether this Amended MOU has been terminated or remains in full force and effect, the Foundation has a fiduciary duty to fulfill its responsibilities to donors under the terms of the gifts it has received to distribute and expend funds for the University's benefit. That obligation continues after the termination of this Amended MOU.
- F. The Foundation agrees to comply with all state and federal laws applicable to it and to maintain its tax-exempt status at all times. Consistent with provisions appearing in the Foundation's Articles of Incorporation, should the Foundation cease to exist or cease to be recognized under Section 501(c)(3) of the Code, the Foundation will transfer its assets and property to the University, or if the University is not then in existence or otherwise competent to receive them, to those entities provided for in Kentucky Revised Statutes Section 273.303 or its successor statute, in accordance with law and donor intent.
- G. The Parties' obligations under Section IV, Section V.E, and Section V.F of this Amended MOU shall survive any termination of this Amended MOU.
- H. This Amended MOU (i) terminates the MRIA effective as of the date first written above, and (ii) supersedes and replaces the Previous MOU, as amended, as well as all prior Agency Agreements between the University and the Foundation, including the Agency Agreements entered into in 1985, 1996, and 2001. The Previous MOU and any such Agency Agreements shall be void and of no further force and effect.

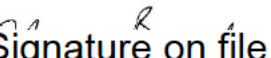
- I. This Amended MOU may be amended only by a written document signed by both Parties and approved by the University's Board of Trustees and the Foundation's Board of Directors.
- J. This Amended MOU may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Amended MOU and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amended MOU and of signature pages by email transmission shall constitute effective execution and delivery of this Amended MOU as to the Parties and may be used in lieu of the original Amended MOU for all purposes. Signatures of the Parties transmitted by email shall be deemed to be their original signatures for any purposes whatsoever.

This Second Amended and Restated Memorandum of Understanding, made as of the date first written above, between the University and the Foundation. is intended to set forth policies and procedures that will contribute to the coordination and understanding of their mutual activities and responsibilities. It shall, subject to the provisions above, remain in effect until September 30, 2022 and shall automatically renew for successive additional two year terms unless amended by the Parties under Section V, Paragraph I, above, or terminated pursuant to the provisions of Section V, Paragraphs B, C and D, above.

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

UNIVERSITY OF LOUISVILLE

By:  Signature on file _____
Mary Nixon, Chair, Board of Trustees

By:  Signature on file _____
Neeli Bendapudi, President

UNIVERSITY OF LOUISVILLE FOUNDATION, INC.

By: Signature on file _____
Earl Reed, Chair, Board of Directors

By: Signature on file _____
Keith Sherman, COO and Executive Director

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Neeli Bendapudi, President

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Signature on file
By: _____
Directors

Signature on file
By: _____
Executive Director

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