

Agreement between the College of DuPage and the College of DuPage Foundation

THIS AGREEMENT (hereinafter, "Agreement") is entered into as of this 15th day of March 2018 ("Effective Date"), by and between the College of DuPage ("College") and the College of DuPage Foundation ("Foundation") (collectively, the "Parties").

WHEREAS, the Foundation was organized and incorporated in 1967 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the College; and

WHEREAS, the Foundation exists to raise and manage private resources supporting the mission and priorities of the College, and provide opportunities for students and a margin of institutional excellences unavailable with state funds; and

WHEREAS, the Foundation is dedicated to assisting the College in the building of an endowment and in addressing, through financial support, the long-term academic and other institutional priorities of the College; and

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

WHEREAS, the College and the Foundation are parties independent of one another, and desire to set forth the basic terms of their relationship in order to make clear the support they provide one another, in order to state their cooperative, operational relationship, and in order to provide binding commitments upon which each can rely. Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the College and the Foundation, nor to create any fiduciary duties on the part of either party, it being understood and agreed that the relationship of the Parties is that of contracting entities.

NOW, THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Foundation Name, Seal, and Logotype

The Parties agree that the College is the sole and exclusive owner of trademark rights to the name "College of DuPage," and that the College has the power and authority to grant the Foundation the right, privilege, and license to use the name "College of DuPage" in a manner consistent with the Foundation's mission to help to advance the plans and objectives of the College. Accordingly, in consideration of the promises and agreements set forth in this Agreement, the College grants the Foundation a nonexclusive, nontransferable license to use the name "College of DuPage" for the duration of this Agreement. The Foundation will operate under its own seal and logotype and shall not use the College seal or other identifying marks of the College in the promotion of the Foundation's business and activities without the College's agreement.

College Governance

1. The Board of Trustees of the College is responsible for overseeing the mission, leadership, and operations of the College.
2. The Board of Trustees is responsible for setting priorities and long-term plans for the College.
3. The Board of Trustees is legally responsible for the performance and oversight of all aspects of College operations.
4. The Board of Trustees is responsible for the employment, compensation, and evaluation of all College employees, including the President.

Foundation Governance

1. The Foundation is a private, separately incorporated, 501(c)(3) nonprofit organization created to raise, manage, distribute, and steward private resources to support the mission of the College and for the benefit of its students.
2. The Foundation Board of Directors is responsible for the control and

management of all employees and assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

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

The Relationship of the Parties

1. The College and the Foundation are separate, independent and autonomous entities that intend, by and through this Agreement, to coordinate their common purposes, goals, and activities in regards to one another, and to set forth policies and procedures that will contribute to the coordination of their mutual activities. While the College recognizes that the Foundation bears major responsibility for fund-raising, College representatives will help establish fund-raising initiatives including major gift solicitations with the Foundation; and the President will work with the Foundation leadership to identify, cultivate, and solicit appropriate prospects for private gifts.
2. The President of the College shall serve as a non-voting, *ex-officio* member of the Foundation Board and shall maintain a prominent role in fund-raising activities.
3. The College shall include the Foundation as an active and prominent participant in the strategic long range planning for the College. The Chairman of the Board of Trustees of the College shall designate a College Trustee as a liaison to the Foundation Board.
4. The College President shall be responsible for communicating College priorities and long-term plans, and its fund-raising priorities, to the Executive Director of the Foundation and the Foundation Board.
5. The Executive Director of the Foundation is employed by the Foundation as the chief executive officer of the Foundation, and reports directly to the Foundation Board.
6. The College President and the Executive Director of the Foundation shall meet directly and as frequently as reasonably necessary to ensure appropriate, quality lines of communication. The College President and the

Executive Director shall collaborate in setting the fundraising priorities of the Foundation. As an essential part of this collaboration, the Executive Director shall each year provide to the President the Foundation's annual budget, and shall maintain and make available to the President the Foundation's plans and records developed in connection with the performance of its obligations. The Executive Director shall also provide quarterly written reports to the President.

Transparency

7. The Parties recognize the College's public nature and the importance of public transparency. Accordingly, the Parties shall comply with any applicable transparency policies and open records obligations, and the Parties shall, in a manner consistent with the Protocol set forth in Exhibit A, coordinate compliance with open records laws to the extent applicable to Foundation records.
8. The Foundation is a private corporation with the authority to keep certain records and data confidential consistent with its fiduciary and legal responsibilities. The College, recognizing that the Foundation is a private corporation, shall cooperate with the Foundation in supporting the Foundation's fiduciary obligations and its responsibility to respect the privacy and confidentiality of donor records. The Foundation shall likewise support the principles of transparency in its operations and shall cooperate with the College in supporting those principles, subject to the Foundation's fiduciary duties concerning, among others, the privacy and confidentiality of donor records, and its other fiduciary duties.
9. The College and the Foundation agree that, should a member of the Foundation Board (and/or the Board member's immediate family or spouse) seek or otherwise possess a legal or pecuniary interest in College activities (*e.g.*, as a vendor to the College), such interest shall be disclosed to the College President, Board of Trustees, Treasurer, and General Counsel within 24 hours of the Foundation and/or the Foundation Board member's becoming aware of such interest.

Foundation Responsibilities

1. Fundraising

- a. The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College.
- b. The Foundation, in consultation with the College President and the Office of Institutional Advancement at the College, is responsible for executing a comprehensive fund-raising and donor acquisition programs in support of the College's mission.
- c. The Foundation will establish, adhere to, and periodically assess its gift management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the college and provide appropriate recognition and stewardship of such gifts.
- d. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Directors and the governmental agency.
- e. The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

2. Asset Management

- a. The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Management of Institutional Funds Act (UMIFA).
- b. The Foundation will receive, hold, manage, invest, and disperse 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.
- c. The Foundation will engage an independent accounting firm to conduct an annual audit of the Foundation's financial and operational records and will provide the College with a copy of the annual audited

financial statements.

3. Institutional Flexibility

- a. The Foundation may serve as an instrument for entrepreneurial activities for the College and engage in such related activities as may be appropriate to that purpose. The Foundation may also hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issues, or engage in other activities to increase Foundation revenue with no direct connection to a College purpose.
- b. When distributing restricted gift funds to the College, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The College will abide by such restrictions and provide appropriate documentation.
- c. The Foundation has the right to use unrestricted gift funds to support its annual operations, and will comply with the Asset Management policies specified in paragraph 2 above.

4. Transfer of Funds

- a. The Foundation is the primary depository of private gifts and will transfer funds to the College in compliance with applicable laws, College policies, and gift agreements.
- b. The Foundation's disbursements on behalf of the College must be reasonable business expenses that support the College, are consistent with donor intent, and do not conflict with the law.

College Responsibilities, Funding and Administration

In consideration for Foundation services, including the performance of its commitments and responsibilities herein, the College will perform its commitments and responsibilities herein, and is obligated to compensate the Foundation as follows:

1. During the term of this Agreement, the College will provide services to the Foundation through its employees, as in-kind compensation to the Foundation, under the terms and conditions set forth in the Services

Agreement attached hereto as Exhibit B. This in-kind compensation shall be reflected as such in the College's and the Foundation's financial statements.

2. During the term of this Agreement, the College will provide office space and utility services to the Foundation, as in-kind compensation, under the terms and conditions set forth in the License Agreement attached hereto as Exhibit C. This in-kind compensation shall be reflected as such in the College's and the Foundation's financial statements.
3. During the term of this Agreement, the College will also provide the Foundation with computer, technology, and office equipment and supplies, as in-kind compensation, under the terms and conditions set forth in the License Agreement (Exhibit C). This in-kind compensation shall be reflected as such in the College's and the Foundation's financial statements.
4. During the term of this Agreement, the College will pay the Foundation a sum each year to defray Foundation operational expenses, payable bi-annually, in equal installments, on the first business day after January 1 and July 1 of each year. The Foundation may request, and College may in its sole discretion make, additional cash contributions to fund specific Foundation projects.

Miscellaneous

1. The initial term of this Agreement shall be ten (10) years ("Initial Term") commencing on the Effective Date, unless sooner terminated as herein provided. The Parties shall provide mutual written notice of any intent not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the then-current term.
2. Either party may, upon one year's prior written notice to the other, terminate this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement upon forty-five (45) days written notice in the event the other party defaults in the performance of its obligations and fails within thirty (30) days to cure the default. The College shall continue to provide in-kind compensation and make stipend payments during the notice and cure periods.
3. Upon termination of the Agreement, all Exhibits shall also terminate contemporaneously with the Agreement.

4. Should the Foundation cease to exist or cease to be an organization described in Internal Revenue Code section 501(c)(3), the Foundation will transfer its assets and property to or among the College or any one or more foundations affiliated with the College that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). If none of the College or its affiliated foundations are then so described, the Foundation will distribute its assets and property to one or more organizations that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). The Foundation agrees to transfer such assets and property in a manner that furthers the best interests of the College, as determined in consultation with the College.
5. This Agreement may be amended only upon the written agreement of the College and the Foundation.
6. As of the Effective Date of this Agreement, the Interim Memorandum of Understanding, entered into by the Parties on June 15, 2017, shall expire.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

ATTEST:

**Board of Trustees of
College of DuPage**

By: Frank S. Napolitano
Chair (Vice Chair)

By: Mr. Lordeau
College President

By: Christine M. Fenme
Secretary

ATTEST:

**Board of Trustees of
College of DuPage Foundation**

By: [Signature]
President

By: Karen M. Kue
Executive Director

EXHIBIT A

PROTOCOL REGARDING FOIA REQUESTS

This Protocol memorializes the agreement between the College of DuPage Foundation and the College of DuPage concerning the manner in which the parties will address FOIA requests directed to the College that seek Foundation documents. To the extent that the terms of the Agreement or this letter conflict with the Illinois Freedom of Information Act (the "Act"), the College of DuPage Foundation and the College of DuPage (collectively, the "Parties") shall comply with the requirements of the Act.

In the event of future FOIA requests that are directed to the College but seek documents that, in the College's view, may be in the Foundation's possession, custody, or control, the College shall timely notify the Foundation's Executive Director (or his or her designee) of the request and shall also provide a copy of the request to the Foundation. The parties shall assess the FOIA request(s) in accordance with applicable law, including whether the record(s) requested are exempt in whole or in part under the Act. The parties will timely advise each other of their respective positions with respect to the given requests, and they shall cooperate with and provide any needed assistance to one another regarding the search for such records, the response, and any production of such records to the FOIA requester.

If the Foundation disagrees with the College's position that compliance with the FOIA request is required, it shall notify the College in writing, and the Foundation may (at its own expense) intervene in any legal proceedings. In the event the Foundation declines to provide the requested documents to the College, whether or not it intervenes in the proceedings, the Foundation shall indemnify the College against all costs, fees (including reasonable attorneys' fees), fines, penalties and judgments against the College that in any way arise from the Foundation's refusal to produce.

The College agrees that Foundation records containing material donor identification information and material donor history information are exempt from the disclosure requirements of the Act, and the College will undertake, to the

extent permitted by law, to protect against the disclosure of such information via FOIA or other means.

The Foundation shall institute and maintain a conflict of interest policy to identify any donors who have past or existing business relationships with the College. This policy will not require any public disclosure of such donors. The College shall annually provide the Foundation with a list of persons who have a prior or existing business relationship with the College for whom the College believes there to be a potential conflict of interest. The Foundation shall annually provide the College with a list of persons who are on its Board and a list of persons who are Foundation employees.

EXHIBIT B

SERVICES AGREEMENT

This Services Agreement ("**Services Agreement**") is entered into as of March 15, 2018 (the "Effective Date") by and between the College of DuPage ("College") and the College of DuPage Foundation ("Foundation"). The College and the Foundations are sometimes individually referred to herein as a "Party," and collectively as "Parties."

WHEREAS, the College is a public community college in Illinois that employs certain individuals ("Employees"); and

WHEREAS, the Foundation is a non-profit organization that is dedicated to assisting the College in the building of an endowment and in addressing, through financial support, the long-term academic and other institutional priorities of the College; and

WHEREAS, the Foundation wishes for the College to provide certain services to the Foundation, and the College is willing to provide those services on the terms and conditions set forth herein.

NOW, THEREFORE, the College and the Foundation, in consideration of the mutual promises contained herein, agree as follows:

Article I. Cooperative Agreement

Section 1.01 The College and the Foundation have entered into a cooperative agreement dated March 15, 2018, to confirm their relationship, and advance the purposes of the Foundation and the plans and objectives of the College (the "Agreement").

Section 1.02 Under the Agreement, the Parties have agreed that the College, through its Employees, will provide certain services to the Foundation as in-kind compensation to the Foundation, under the terms and conditions set forth in this Services Agreement.

Section 1.03 The relationship of the College and the Foundation is established in the Agreement, such that they are independent contractors, and nothing in this Services Agreement shall be construed: (1) to give either Party the

right or power to direct or control the daily activities of the other Party; (2) constitute the Parties as principal and agent, employer and employee, partners, joint ventures, co-owners or otherwise as participants in a joint undertaking; or (3) to allow either Party (a) to create or assume any obligation on behalf of the other Party for any purpose whatsoever or (b) to represent to any person, firm or entity that such Party has any right or power to enter into any binding obligation on the other Party's behalf.

Section 1.04 This Services Agreement is binding upon the Parties to the Services Agreement only. Nothing in this Services Agreement shall be construed as entitling the College's Employees to any third party benefits or privileges whatsoever under this Services Agreement.

Article II. Provision of Services

Section 2.01 The College hereby agrees to provide the services of its Employees to the Foundation for the term of the Service Agreement (the "Services Period").

Section 2.02 Services and Status of the Employees.

- 1) The College's Employees may provide services to, or staff the operations of, the Foundation if such services relate directly to the fundraising activities of the College. Employees of the College, including the individuals performing services under this Services Agreement, shall solely be considered the employees of the College and shall not be considered the employees of the Foundation for any purposes relating to the provision of Foundation services. This Services Agreement shall not be considered a hiring by either Party or a contract of employment. The College shall be considered the employer of the Employees providing the services under this Services Agreement for all purposes, including but not limited to, salaries or wages, employment related taxes, bonuses and other incentive payments, employee benefits, welfare benefits (health, life, disability, etc.), vacation and sick pay, workers' compensation premiums, and unemployment compensation benefits.
- 2) College Employees providing services to the Foundation under this Services Agreement shall be covered by and subject to the College's

employment policies and procedures, as set forth in applicable employee handbooks including, *e.g.*, the College's employment classifications, compensation system, performance evaluation and discipline procedures, vacation, holiday and leave policies, and employee benefit programs.

Article III. Employee Compensation

Section 3.01 It is the intention and agreement of the Parties that the College shall compensate its Employees who provide services to the Foundation and be responsible for the withholding and payment of all payroll taxes (including, but not limited to, individual income, self-employment, employment and withholding taxes), fines, penalties and assessments imposed on or related to the College's business activities or the provision of the Foundation services. The College shall be solely responsible for compliance with all state, local and federal laws, orders, codes and ordinances applicable to the performance of the College's obligations under this Services Agreement, including, but not limited to, any obligation to withhold or report any local, state or federal individual income, employment or withholding tax from any payment made by the College to the College's agents, Employees or subcontractors, if applicable. The Parties agree they will file all tax returns consistent with the foregoing. If it is determined at any time that the College (or any of its agents or Employees) is not an independent contractor under this Agreement, the College agrees to indemnify the Foundation for all taxes, interest, penalties, expenses and any other costs resulting from or arising out of such determination.

Article IV. Insurance

Section 4.01 The College shall maintain adequate liability insurance, errors and omissions insurance, and other insurance, as determined by the College, covering the College's Employees who provide services to the Foundation. Such insurance shall name the Foundation as an additional insured, shall be written with carriers that are satisfactory to the College, and shall be the primary coverage with respect to these Employees (*i.e.*, claims shall not be made against the Foundation). The Foundation shall indemnify and hold the College, its trustees, officers, employees and agents, harmless from and against any and all liability, loss, damage and expense (including reasonable attorney's fees) that any of them may incur or suffer as a result of a claim, demand, action, cause or action, or judgment arising out of or alleged to have arisen in connection with the College's Employees providing services to the Foundation under this Services Agreement. The

Foundation's obligation to indemnify pursuant to this paragraph shall exist even though the liability, loss, damage, or expense is also covered by insurance maintained by the College.

Article V. Equal Opportunity

Section 5.01 The Foundation shall comply with the College's equal opportunity, affirmative action, and non-discrimination rules and regulations in carrying out its responsibilities under this Services Agreement, as well as all applicable federal and state laws and regulations covering equal opportunity, affirmative action, and non-discrimination.

Article VI. Term and Termination

Section 6.01 Term and Termination. The term of this Services Agreement shall commence on the Effective Date and shall remain in full force and effect until termination pursuant to the terms of the principal Agreement.

Section 6.02 Consequences of Termination. If this Services Agreement is terminated pursuant to the terms of the principal Agreement, (1) the Foundation shall submit to the College, within thirty (30) calendar days of such termination, a written statement of all amounts paid to governmental tax authorities by the Foundation on the College's behalf, but not yet reimbursed by the College, in connection with services performed by the Employees prior to the termination date; and (2) within forty-five (45) calendar days of termination, the Foundation shall pay the College any service fees that have accrued through the termination date, subject to an offset for amounts withheld and submitted to tax authorities by the Foundation on the College's behalf.

IN WITNESS WHEREOF, the Parties have caused this Services Agreement to be executed by their duly authorized representatives, effective as of the day and year first written above.

COLLEGE OF DUPAGE

FOUNDATION

By: Frank S. Napolitano

By: Sherman L. Neal

Name: Frank S. Napolitano

Name: SHERMAN L. NEAL

Title: Vice Chair

Title: PRESIDENT

EXHIBIT C

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“License”) is made and entered into this 15th day of March 2018, by and between the College of DuPage (“the College”) and the College of DuPage Foundation (“the Foundation”).

WHEREAS, the College is a community college in Illinois and owns the property and improvements identified as:

Berg Instructional Center
Suites 1520 and 1525
College of DuPage
425 Fawell Blvd.
Glen Ellyn, IL 60137

hereinafter referred to as the “Premises”; and

WHEREAS, the Foundation is a non-profit organization that is dedicated to assisting the College in the building of an endowment and in addressing, through financial support, the long-term academic and other institutional priorities of the College; and

WHEREAS, the College and the Foundation have entered into a cooperative agreement dated March 15, 2018 to confirm their relationship, and to advance the purposes of the Foundation and the plans and objectives of the College (the “Agreement”); and

WHEREAS, the College has agreed to provide the Foundation, during the term of the Agreement, with office space and utility services, as well as computer, technology, and office equipment and supplies, as in-kind compensation, on the terms and conditions set forth under the Agreement and its related Exhibits.

NOW, THEREFORE, in consideration of, and subject to, the terms and conditions contained in the Agreement and in this Exhibit C to the Agreement, the College and the Foundation agree as follows:

1. TERM. This license shall run concurrently with the term of the Agreement.

2. LICENSE FEE. The Foundation shall pay the College the sum of \$10.00 per year, payable for the first year of this Agreement within 10 business days of execution; and on January 10th of each year thereafter.

3. USE OF THE PREMISES. The College shall provide and the Foundation shall use the Premises, or other office space of comparable size, location and quality as the Premises, acceptable to the Foundation, solely for the purposes of conducting Foundation business. Such other comparable office space, if any, shall then be deemed the "Premises" for purposes of this Agreement.

4. EQUIPMENT AND SUPPLIES. During the term of this License, the College will provide the Foundation, in addition to the Premises, with computer, technology, and office equipment and supplies in good working condition, as listed or identified on Addendum A to this Exhibit to this Exhibit C.

5. SURRENDER AND HOLDOVER. Upon termination of this License by expiration or sooner, the Foundation will surrender the Premises, as well as any equipment and supplies provided by the College to the Foundation as listed or identified on Addendum A to this Exhibit to this Exhibit C, to the College broom-clean and in the same order and condition in which the Foundation received them. If the Foundation remains in possession of all of any part of the Premises after the expiration of the term of the Lease, with consent of the College, then the Foundation shall hold a license from month-to-month at a fee to be mutually agreed upon by the College and the Foundation. If the College and the Foundation cannot mutually agree, then the Foundation shall vacate the Premises within 30 days after notice to vacate by the College. Such month-to-month license shall continue until either party gives the other party 30 days' notice of their intention to terminate the month-to-month license.

6. INDEMNIFICATION. The Foundation agrees to indemnify and hold the College, including its agents, servants, employees, members, officers, and trustees, harmless from and against any and all claims, demands, expenses, and liabilities arising, or which may arise, from the use and operation of the Premises, including, but not limited to, claims based on trespass and/or the Foundation's negligence.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date set forth above.

College of DuPage

College of DuPage Foundation

By: Frank S. Napolitano

By: [Signature]

Addendum A

(In-Kind Computer, Technology, and Office Equipment and Supplies)

- **Photocopier**
- **Printer (b/w & color and one designated for printing checks)**
- **File cabinets, worktables and general office furniture (desks, chairs, cabinets, lamps, clocks, coat hooks, dry erase boards**
- **Coffee maker, microwave, refrigerator, garbage and recycling containers**
- **Laptops and computers, monitors**
- **Telephones**
- **Scanners**
- **Safe (for cash & checks)**
- **Calculators**
- **General office supplies including but not limited to: pens, paper, markers, pencils, envelopes, folders, files, staples, staplers, glue, label makers, binders, and similar items**
- **Meeting tables/chairs**
- **Various computer software including but not limited to: Microsoft suite products, Adobe reader/writer, internet access/browsers**