



## **MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING is entered into between Washburn University Foundation, 1729 SW MacVicar, Topeka, KS 66604, a not-for-profit 501(c)(3) corporation organized and existing under Kansas law, hereinafter “the Foundation”, and Washburn Law School Foundation, 1700 SW College, Topeka, KS 66621, a not-for-profit 501(c)(3) corporation organized and existing under Kansas law, hereinafter “LSF”, to memorialize the agreement of the parties concerning their ongoing relationship.

IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties agree as follows:

### **1. PURPOSE**

The parties agree the purpose of the Memorandum of Understanding is to delineate the respective rights and obligations of the parties and define the relationship between the parties.

### **2. PREVIOUS AGREEMENTS SUPERSEDED**

The parties agree this Memorandum of Understanding supersedes any and all previous agreements and amendments thereto between the parties.

### **3. RELATIONSHIP BETWEEN THE PARTIES**

The parties agree the relationship of the parties is between two separate and independent entities. There is not a joint venture, partnership, employer-employee relationship or, except as provided in Section 7 regarding the management of the LSF-owned funds, any principal-agent relationship.

A. LSF is a foundation supervised, operated and controlled as provided by the laws of the state of Kansas and having as its purpose the promotion, maintenance, improvement and support of the School of Law of Washburn University of Topeka and providing scholarships for students attending said law school..

B. The Foundation is a not-for-profit corporation organized and existing under Kansas law having as its purpose: (a) identifying and soliciting support for the benefit of University, its programs, staff and students; and (b) management of corporate and endowment assets.

C. The parties agree each shall be solely responsible for all its respective operational aspects, including, but not limited to

1. Budgeting and financial decisions;
2. Setting priorities and long-term plans for the entity;
3. Employment, compensation and evaluation of employees;
4. Management and oversight of all operations

#### **4. COMMUNICATIONS**

##### **A. Joint Committee**

1. The parties agree there shall be a joint committee comprised of:
  - a. the President of the Foundation;
  - b. the President of LSF;
  - c. the Chairperson and Chairperson-Elect of the Foundation's Board of Directors;
  - d. the Treasurer of LSF;
  - e. the Dean of the School of Law; and
  - f. the President of Washburn University.
2. The duties of the Joint Committee shall include, but not be limited to:
  - a. an annual review of this Memorandum of Understanding to discuss and/or propose improvements in the relationship or revisions to this Memorandum of Understanding;
  - b. monitoring the relationship of the parties;
  - c. resolving questions and concerns of the respective entities; and
  - d. reviewing approved fundraising priorities for the School of Law.

##### **B. Ex-Officio Appointments**

To better ensure close communication between the parties to facilitate activities of the Foundation for the benefit of University, the parties agree the following ex-officio appointments shall be made as provided for in the Foundation bylaws:

1. LSF's President, who shall be a member of the Board of Directors of LSF, shall be an ex-officio member of the Board of Trustees and the Board of Directors of the Foundation with the right to vote and to make or second motions;
2. LSF's President, or his designee who shall also be a Foundation Trustee and Director, shall be a member of the Foundation's Board of

Directors' Investment Committee with the right to vote and to make or second motions.

## **5. THE FOUNDATION RESPONSIBILITIES**

The primary functions of the Foundation under this Memorandum of Understanding and under the Memorandum of Understanding with Washburn University as it applies to the School of Law are identifying and soliciting financial support and effectively managing its endowment and other assets designated for the benefit of University, its programs, staff and students. The Foundation agrees it shall:

- A. create an environment conducive to increasing levels of private support for the mission and priorities of Washburn University;
- B. be responsible for advising, planning, coordinating and executing comprehensive development activities in support of the University's mission, its units and departments consistent with University priorities established by its Board of Regents;
- C. establish, adhere to, and periodically assess its gift-management and acceptance policies;
- D. acknowledge and issue receipts for all gifts for Washburn University, except for gifts to the Law School Foundation funds for which the Foundation will provide assistance in acknowledging appropriate recognition and stewardship of such gifts;
- E. provide resources and support for donor database administration, donor records, gift processing, fund documentation, stewardship and reporting to support all fundraising activities;
- F. provide accounting and financial expertise to include but not be limited to the following:
  - a. compile the rollforward spreadsheet of all LSF accounts at the Foundation to include beginning balance, all activity in detail by type, and ending balance, separated by classification (UR, TR, PR);
  - b. obtain a General Ledger history of the LSF account held at Washburn University and code the income and expense items by type;
  - c. compile an adjusted trial balance that includes accounts designated for the benefit of the Washburn University School of Law from both the Washburn University and the Foundation balances and transactions; and

- d. coordinate with LSF auditors to draft financial statements and footnotes.
- G. receive the written approval of a duly authorized University representative before accepting gifts with restrictive terms requiring
- additional allocation of University resources to maintain the gift or satisfy the restriction,
  - placement on the Washburn University campus,
  - departure from established or required University policies and procedures;
- H. not accept grants from state or federal agencies requiring any act or performance by University or its governing board and/or employees without express written approval of University's governing board;
- I. not accept or deposit in a Foundation fund, or fund managed by the Foundation, revenue received from a University activity other than through normal development activities;
- J. establish and enforce policies to protect donor confidentiality and rights;
- K. establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) (K.S.A. 58-24a 01 et seq.) and the Uniform Management of Institutional Funds Act (UMIFA) (K.S.A. 58-3601 et seq.); and,
- L. receive, hold, manage, invest and disburse contributions of cash, securities, and other forms of property investing gifts contributed in the form of planned and deferred gift instruments according to established policies.

## **6. THE FOUNDATION DISBURSEMENT OF FUNDS TO LSF**

The parties agree:

- A. The Foundation is the primary depository of private gifts for the benefit of University, its programs, staff and students and will disburse funds to the designated entity within the University in compliance with applicable laws, university and the Foundation policies, and gift agreements;
- B. The Foundation's disbursements from LSF assets must be reasonable business expenses which:
- support Washburn University School of Law ;
  - are consistent with donor intent; and,
  - comply with applicable law;

C. The Foundation will make available for distribution computed earnings, as determined according to the approved the Foundation Investment Policy, from the endowed funds at least annually on or before the first day of March or other date(s) in a manner consistent with the availability to Washburn University;

D. Distributions from restricted expendable or endowment funds must be expended by LSF in accordance with the terms of the gift agreement creating the endowment. Appropriate documentation and authorization supporting the restricted spending are required for disbursement and/or transfer of restricted funds;

E. The Foundation shall disburse funds from LSF funds to reimburse appropriate expenditures in a manner consistent with disbursement of funds from the Foundation and WU owned funds. However, the Foundation may reimburse board authorized operating and administrative expenses of the LSF without transfer of funds to Washburn University School of Law accounts.

F. All disbursement of funds from LSF funds or requests for funds, with the exception of scholarships approved by the Dean of the Law School and LSF's proportionate share of the operating and administrative costs of the Foundation as approved by the Foundation's Board of Directors, shall require the approval of the LSF Board of Directors.

## **7. MANAGEMENT OF LSF-OWNED ENDOWED FUNDS**

A. The parties agree the Foundation shall act as an agent of the LSF only to invest and manage such LSF-owned endowed funds as are placed with it in conformance with applicable federal and state law, including but not limited to the UMIFA and the UPIA in accordance with the Foundation Investment Policy.

B. The parties agree that either party may terminate the management by the Foundation of all or part of the University-owned endowed funds by providing written notice to the other. Upon receipt of notice under this section or section 19 of the Memorandum of Understanding, the parties shall create an ad hoc committee which shall, within fifteen (15) days of the notice, develop and prepare a plan for the transfer of the fund(s) identified in the notice. Such plan shall include, the transfer date, and the procedure for the transfer or payment of the principal balance of such fund(s) realizing capital appreciation/loss attributable to such funds, together with all interest, dividend or other income attributable to such fund(s).

C. The Foundation shall administer LSF-owned funds in accordance with policies and procedures for administering the Foundation funds as provided under this section, section 5 and section 6 of this agreement.

## **8. THE FOUNDATION OPERATIONAL FUNDING AND ADMINISTRATION**

The parties agree:

A. In accordance with the approved Memorandum of Understanding between Washburn University and the Foundation, the Foundation has the right to use a reasonable amount of income and realized and unrealized capital gains from all restricted and unrestricted endowed funds and all other funds held by the Foundation, whether endowed or expendable, for the Foundation operations and services subject to the provisions of the approved Memorandum of Understanding with Washburn University.

This provision will apply in the same manner to all funds managed and invested for the benefit of LSF. The Foundation's annual operating budget is approved annually by the Board of Directors of the Foundation and all funds bear a proportionate share of the operating and administrative costs as approved.

## **9. LSF RESPONSIBILITIES.**

LSF agrees it shall:

A. Coordinate LSF gift acknowledgment, gift documentation, fund documentation, deposits and donor recognition with the Foundation in accordance with the Memorandum of Understanding between the Foundation and Washburn University;

B. Adhere to established gift management and acceptance policies of the Foundation;

C. Adhere to and enforce policies to protect donor confidentiality and rights;

D. Expend restricted expendable or endowment funds in accordance with the terms of the gift agreement creating the endowment and create appropriate documentation and authorization supporting the restricted expenditures.

## **10. AUDITS, RECORDS AND REPORTING**

A. Each party agrees it shall have a certified public accounting firm perform a full and complete annual audit of its finances and operations and shall provide the other party a copy of such annual audit not later than six (6) months following the close of the party's fiscal year.

B. Each party agrees that representatives of the other may inspect its records and accounts at reasonable times during regular business hours.

C. The Foundation will provide LSF access to its LSF data and records in accordance with applicable laws, the Foundation policies, and guidelines. The Foundation and LSF agree that the University or anyone employed by Washburn University at no time shall possess, keep, or maintain any the Foundation or LSF record information except those records or information which the Foundation and the LSF designate for public release.

D. The Foundation will provide LSF quarterly reports of the investment performance of all pooled funds through the Investment Committee.

E. Each party shall make available to the President of the other party a current list of its respective governing board members, its officers and its administrative employees who report to the respective President.

## 11. CONFIDENTIALITY

A. The parties agree that, except as provided otherwise in section 10 of this Memorandum of Understanding , the Foundation records, particularly records pertaining or relating to donors, are private and confidential and shall be maintained by the Foundation.

B. Because the Kansas Open Records Act requires public entities to provide access to any records it makes, possesses, maintains or keeps, University or anyone employed by the University shall not accept any record from the Foundation or the LSF which pertains or relates to any donor unless such donor expressly has consented to disclosure of any part of such Foundation or LSF records. University shall establish procedures to ensure its officers, agents and employees are aware of this provision.

C. The Foundation and LSF agrees it shall:

1. keep confidential any information, data or record it receives from University, including but not limited to University employees and students;
2. not re-disclose any such information pertaining to students it may be entitled to receive under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g) to any person or entity except as is permitted under FERPA or which may be obtained as directory information under FERPA; and,
3. not disclose to any person or entity any information, data or record it may have pertaining or relating to University employees.

## 12. NONDISCRIMINATION

A. The Foundation agrees that, when acting as an agent for the LSF and University it shall:

1. not discriminate upon the basis of race, color, sex, religion, creed, handicap/disability, national origin, sexual orientation or any basis as may be proscribed by federal, state or local law;
2. shall comply with all non discrimination laws to which University is or may become subject; and,
3. comply with University's Equal Educational and Employment Opportunity Policy statement now in force of which may hereafter be promulgated.

B. This non discrimination provision is inapplicable to any action the Foundation takes at its own initiative rather than at the request of University.

C. The parties understand and agree that LSF shall not participate in any way, directly or indirectly, any activity which is in violation of federal, state, or local law, including, but not limited to:

1. the Age Discrimination in Employment Act of 1967, 29 USC § 621 et seq., as amended by the Older Workers Benefit Protection Act, 29 USC § 623(f)(1) et seq.;
2. Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq., as amended by the Civil rights Act of 1991, 42 USC §1981 et seq.;
3. Title IX of the Education Amendments of 1972, 20 USC §1681 et seq and amendments thereto; and,
4. the Kansas Acts Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto.

## 13. INDEMNIFICATION

The parties agree to indemnify and hold harmless the other party, its governing board, officers, agents, employees and students in their official capacities from and against any and all claims, damage, liability, injury, expense, demands, causes of actions, judgments, including court costs and attorney's fees (hereafter "loss") arising out of or resulting from the gross negligence of its officers, agents or employees. In the event such loss is proximately caused by the acts of both parties or their officers agents or employees, each shall be responsible for its proportionate share of claimant's damages under the laws of the state of Kansas. The parties agree this provision shall survive the termination of this Memorandum of Understanding.



#### **14. NOTICE**

The parties agree that notice to either party of this agreement must be in writing signed by the party giving it and shall be deemed given when mailed postage prepaid by U.S. Postal Service, first class, certified or express mail, or other overnight mail service or hand delivered when addressed as follows:

To Washburn University  
Law School Foundation  
President  
Washburn University of Topeka  
1700 College  
Topeka, KS 66221

To Foundation  
President  
Washburn University Foundation  
1729 SW MacVicar  
Topeka, KS 66604

with a copy to:  
Stephen W. Cavanaugh  
Cavanaugh, Smith & Lemon, P.A.  
2942A S.W. Wanamaker Drive, Suite 100  
Topeka, KS 66614

or to such other addressee as may be hereafter designated in writing or made by amendment to this Memorandum of Understanding. All such notices shall be effective only when received by the addressee.

#### **15. GOVERNING LAW**

The parties agree the laws of the state of Kansas shall govern this Memorandum of Understanding and that any suit or cause of action by either party against the other shall be filed in the Third Judicial District of the state of Kansas.

#### **16. AGREEMENT COMPLETE**

The parties agree that this Memorandum of Understanding constitutes the entire agreement of the parties and that no prior agreement or representation, written or oral, shall be binding or of any force or effect. Further, this Memorandum or Understanding may not be amended, modified, altered or enlarged except by a writing signed by the duly authorized representatives of the parties hereto.

#### **17. AGREEMENT BINDING**

The parties agree that this agreement shall be binding upon the successors and legal representatives of the parties hereto. Neither party shall assign this Agreement nor any of their respective rights, obligations or interest in it.

**18. TERM**

The parties agree the term of this Memorandum of Understanding shall be indefinite.

**19. TERMINATION**

The parties agree this Memorandum of Understanding may be terminated with or without cause upon sixty (60) day written notice to the other. Sixty (60) days following notice of termination, this Memorandum of Understanding shall terminate as though such date were originally fixed as the date of termination. Upon receipt of notice of termination, the parties shall form an ad hoc committee in the manner and with the duties provided in section 7 of this Agreement.

IN WITNESS HEREOF, the duly authorized representatives of the parties have hereunto set their hand on the date and year written.

LSF

Foundation

By: \_\_\_\_\_  
President, LSF

By: \_\_\_\_\_  
President, Foundation

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Treasurer, LSF

By: \_\_\_\_\_  
Chairperson, Board of Trustees

Date: \_\_\_\_\_

Date: \_\_\_\_\_