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Contract #: C000109
State University of New York at Fredonia
and
Fredonia College Foundation

AGREEMENT made this 2nd day of February, 2015, by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal offices located at State University Plaza, Albany, New York 12246, hereinafter referred to as "State University", acting through the State University of New York at Fredonia, located at 280 Central Ave, New York, hereinafter referred to as "Campus", and the Fredonia College Foundation, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal place of business located at 272 Central Ave., Fredonia, New York 14063, New York, hereinafter referred to as "Foundation".

The Foundation has been established as an independent, non-profit corporation, principally to support the Campus by serving as a means of receiving and managing gifts and making these revenues available to the Campus for approved programs and activities as well as a vehicle to manage real property for the benefit of the Campus; and

The parties desire to enter into an agreement under which the Foundation will provide support for the benefit of the Campus, including, but not limited to, terms for the use of Campus facilities and personnel by the Foundation.

Accordingly, the parties hereto agree as follows:

1. The Foundation will conduct its activities in accordance with the policies of the Campus and State University, including the Board of Trustees' Guidelines for Campus-Related Foundations, attached hereto and made a part hereof as Exhibit B.
2. The Foundation will conduct those activities enumerated in Exhibit C, exclusively for the benefit of the Campus. Any additions to Exhibit C must be approved in writing as an amendment to this agreement.
3. Where Foundation funds are to be expended on Campus property, using Campus employees or equipment and under such circumstances as will require reciprocal or collateral Campus involvement and financial obligation, the prior approval of the campus president shall be secured. Funds accepted by the campus president shall be for University purposes that will not commit the State University to assume financial responsibility at any time, unless such a commitment has been agreed upon by the appropriate officials of the University prior to the acceptance of the funds. Capital construction activities on Campus property supported in whole or in part by Foundation funds shall follow all University and State procedures governing such projects.
4. Campus, in accordance with the terms and conditions of this agreement, shall make available to the Foundation the facilities, personnel, equipment and other support, goods and services designated in Exhibit D, attached hereto and made a part hereof. Any additions to or withdrawals from Exhibit D shall be made by written mutual consent of Campus and the Foundation. If the Campus and the Foundation conclude that a rental charge is required, the rental charge and method of payment will be determined by Campus and the Foundation.
5. The Foundation shall take good care of the property set forth in Exhibit D and shall maintain it in a clean, sanitary and orderly condition. The Campus shall keep such specified premises in good repair and make all necessary capital improvements in order to comply with all applicable federal, state and

municipal health and safety codes. Any alteration or improvement to the premises, fixtures, or replacement equipment that may be paid for by the Foundation shall become the property of State University. Upon removal from the premises, the Foundation shall return the equipment and facilities provided hereunder in good and clean condition.

6. Campus may supply all ordinary and necessary utilities for the premises. If Campus and the Foundation conclude that a utilities charge is required, the charge and method of payment will be determined by the campus and the Foundation.

7. The parties acknowledge that the Foundation is the primary foundation within the meaning of the Guidelines contained in Exhibit B. The Foundation has established the affiliated organizations listed in Exhibit E which organizations shall be bound by the Guidelines in Exhibit B.

8. Campus hereby grants the Foundation a non-exclusive right to use its name and marks.

9. Campus shall make available to the Foundation records and information concerning alumni in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 and regulations promulgated thereunder. Such records and information shall be maintained by the Foundation in good condition and shall not be released to other organizations without the written permission of Campus.

10. Additionally, in performing this contract, the Foundation will receive, maintain, process or otherwise will have access to confidential information on students and/or customers of the Campus. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), the Foundation must implement and maintain a written Information Security Program in order to protect such customer information. Customer information is defined as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic, or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that must be implemented under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

The Foundation shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The Foundation shall be liable for the costs associated with any breach of these provisions if caused by the negligent or willful acts or omissions of the Foundation or its agents, officers, employees, or subcontractors.

If the Foundation sub-contracts with a third party for any of the services that it is required to undertake in furtherance of this contract, the Foundation must ensure that such third parties implement practices which protect nonpublic personal information of students and/or campus customers which they receive, maintain, process or otherwise are permitted access.

11. The Foundation hereby assigns to the Campus its right to collect any unpaid amounts due from any student enrolled at the Campus and billed by the Campus. The right extends to referral to the NYS Attorney General for collection or to an authorized collection agency.

12. The Foundation shall be solely responsible for compliance with all applicable laws, rules, orders, regulations and requirements of federal, state and municipal governments applicable to its operation including the provisions attached hereto and made a part hereof as Exhibit A.

13. The Foundation shall defend, indemnify and hold harmless the State University and the State of New York from and against claim, damage, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation or occasioned by any act, neglect or omission of the Foundation, its officers, employees or agents or its affiliates or sub-contractors.

In the event any damage or injury is caused to the equipment or facilities provided by Campus hereunder, by the negligence or improper conduct of the Foundation, its agents, subcontractors or employees, the Foundation shall cause the said damage or injury to be repaired as speedily as possible at its own cost and expense. Notwithstanding the *above*, if any loss is due to the negligence of Campus, its officers or employees, the Foundation shall be relieved of its responsibility for replacement or repair.

In no event shall anything contained in this agreement be deemed to impose liability of any nature upon the Foundation for loss or damage to persons or property, caused by the State University, its officers or employees or by any third party *over* which the Foundation exercises no control.

14. This agreement does not create the relationship of landlord and tenant between the Foundation and Campus regarding the use of Campus facilities.

15. The term of this agreement shall commence March 1, 2015, and shall continue for a term of *five* (5) Years through February 28, 2020. This agreement may be terminated in whole or in part by Campus upon 45 days prior written notice in accordance with the notice provisions of this agreement.

16. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail addressed as follows:

TO CAMPUS:

President Dr. Virginia Horvath
State University of New York at Fredonia
Office of the President, Fenton Hall
280 Central Ave.
Fredonia, New York 14063

Soteris Tzitzis
Director, University Services
125 A.O.C.
280 Central Ave.
Fredonia, New York 14063
President
State University of New York at

TO THE FOUNDATION:

Betty Gossett, Interim Executive Director
Fredonia College Foundation of State University of New York, Inc.
272 Central Ave.
Fredonia, New York 14063

or to such persons as may be hereafter designated by notice. Any notice served or mailed hereunder shall be effective as of the date of service thereof if served personally, or as of the date of receipt thereof if mail