



AGREEMENT

Delaware Alliance for Nonprofit Advancement And FAMILY FOUNDATIONS ACADEMY

This Agreement (the "Agreement") is made and entered into as of the 2nd day of December, 2014 (the "Effective Date") by and between:

The Delaware Alliance for Nonprofit Advancement, Inc. located at 100 W. 10th St., Suite 1012, Wilmington, DE 19801 ("DANA").

And

Family Foundations Academy – 1 Fallon Drive, Wilmington, DE 19804 (herein referred as "FFA")

WHEREAS, *Achieving Board Excellence*™ is a program specifically designed by DANA to help develop the governance function of nonprofit Boards of Directors and in turn, enhance the community impact of the nonprofit organizations themselves. This program, which was created in conjunction with the *Standards for Excellence*® Institute in Maryland, pairs nonprofit organizations with trained governance consultants who take the organization through a hands-on learning and implementation process based on nationally accepted best practices; and

WHEREAS, FFA wishes to participate in the *Foundation for Board Excellence*™ educational program, a subset of *Achieving Board Excellence*™ and to obtain consulting services provided by DANA in order to improve its governance practices; and

WHEREAS, under the *Foundation for Board Excellence*™ program, DANA actively engages with FFA in a consultative fashion to implement the guiding principles of governance that guide exceptional nonprofit Boards of Directors; and

WHEREAS, DANA shall provide such consulting services as set forth herein.

In consideration of the mutual promises herein contained and intending to be legally bound hereby, DANA and FFA agree as follows:

1. **Scope of Work.** Beginning on the Effective Date and continuing for the term of this Agreement, FFA engages DANA to perform consulting services for FFA in conjunction with the FFA's desire to participate in the *Foundations for Board Excellence*[™] program.

DANA will be responsible for providing such services (the "Services") as described in detail in Exhibit A.

During this term of this Agreement (as set forth below), DANA will perform the Services at the FFA office in Delaware, in locations mutually agreed upon by both parties or at DANA's office.

Modest changes within the overall timetable, but not more than a ten-day variation in the performance of each task, may be made without formal amendment to this Agreement, provided that the full scope of the Services is completed on or before February 28, 2015.

DANA and FFA may mutually agree to modify the Services (and compensation) from time to time during the term of this Agreement, provided such modifications are agreed to and memorialized by both parties in writing and countersigned by both parties.

2. **Payment For Services.** FFA will pay DANA a total of \$1,000.00 for the Services. Attached hereto as Exhibit B, and incorporated herein by reference is the compensation schedule for the Services. DANA will deliver invoices related to the project to *Sean Moore* at the following address:

Family Foundations Academy
1 Fallon Drive,
Wilmington, DE 19804

Absent timely written objection, FFA shall pay each invoice no later than 30 days following the receipt of the invoice. Payments will be in the form of a check payable in U.S. dollars to:

DANA
100 W. 10th Street, Suite 1012
Wilmington, DE 19801
Tax ID#: 22-2792474

3. In the event FFA breaches its payment obligations under this Agreement, in addition to all remedies available under this Agreement, DANA shall be entitled to recover all fees and costs of collecting amounts due under this Agreement, including but not limited to interest, attorneys fees, and Court costs.

The parties agree that the payment set forth in this paragraph may be modified in accordance with modifications to the Services provided hereunder, provided the parties agree in writing thereto.

4. **Term.** This Agreement will commence on the Effective Date and expire on *February 28, 2015* (the "Term"), unless otherwise terminated pursuant to Paragraph 16, below, or extended by written agreement of the parties.
5. **Supervision and Reporting.** DANA's Executive Vice President of Consulting will be responsible for supervising the Services provided by DANA. DANA will report to FFA on all contractual matters related to this Agreement in a timely fashion. FFA agrees to notify DANA's Executive Vice President of Consulting in a timely fashion if it believes Services are not being provided in the agreed-upon fashion under this Agreement.
6. **Independent Contractor.** FFA acknowledges and agrees that DANA will retain third-party contractor(s) to provide Services under this Agreement. DANA acknowledges and agrees that it, and any team member, employee, or third-party contractor of DANA, is acting under this Agreement solely as an independent contractor. DANA, and any team member, employee, or third-party contractor of DANA, will not be deemed an employee, agent, partner or joint venturer of FFA for any purpose whatsoever, and will have no authority to bind or act on behalf of FFA. This Agreement will not entitle DANA, or any team member, employee, or third-party contractor of DANA, to participate in any benefits available to employees of FFA, including, without limitation, workers compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, savings plans, and the like.

DANA will be responsible for, and agrees to comply with, all obligations under federal and state tax laws for payment of income and, if applicable, self-employment tax, and DANA agrees to defend, indemnify and hold FFA harmless from and against any and all liability resulting from any failure to do so.

7. **Conflict of Interest.** The parties represent that no conflict of interest arises as a result of this Agreement. To the extent such conflict arises, the parties agree to use their best efforts to resolve the conflict, or agree that this Agreement shall be terminated.
8. **Retention of Property.** FFA acknowledges that during the course of providing the Services under this Agreement, DANA (or contractors working for DANA) will provide FFA with copyrighted material, or such other intellectual property (including but not limited to trademarks and licensed materials), which FFA agrees shall not become property of FFA under this Agreement. FFA expressly agrees to cooperate with DANA in the protection and use of such material, and further agrees to comply with all applicable law regarding the use of such material. Further, FFA agrees to indemnify, defend, and hold harmless DANA, its officers, directors, employees, agents, successors, and assigns, from and against any and all damages (including without

limitation, reasonably attorney's fees) which may arise, in whole or in part, out of a breach by FFA of its obligations under this paragraph.

- 9. Confidentiality.** In the course of fulfilling its obligations hereunder, either party hereto will likely need to disclose information to the other party that is proprietary and/or confidential. The Receiving Party (whether it is FFA or DANA that receives the confidential information) agrees to keep such information private and confidential and shall not disclose such information to any person or third party, except as necessary to fulfill the obligations under this Agreement. Such information may be oral, written, or documentary. Any such information deemed confidential must be identified as such when such information is shared with either the parties to this Agreement or any person fulfilling the obligations under this Agreement. This Paragraph does not include as "confidential" any information that: (a) is already known to the Receiving Party as evidenced by prior documentation; or (b) is or becomes publicly known through no wrongful act of the Receiving Party; or (c) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement or any other Agreement; or (d) is approved for release by written authorization of the Disclosing Party.

Notwithstanding the foregoing, DANA (or contractors working for DANA) agrees that it will only share confidential information with the FFA *Chief Administrative Officer* and *Board President* alone, unless specifically requested and/or approved in writing by the FFA *Chief Administrative Officer* or Board President.

Additionally, matters related to compensation (Paragraph 2 above and Exhibit B) in this agreement are to be considered confidential, and made available only to DANA, appropriate tax authorities, and the FFA Board President and FFA *Chief Administrative Officer*.

- 10. Cooperation.** FFA acknowledges and agrees that Services provided under this Agreement require the good faith participation of FFA. FFA agrees to participate in the *Foundations for Board Excellence*™ program, to accept the Services under the Agreement, and to commit its best efforts to accepting the Services provided hereunder.
- 11. Force Majeure.** DANA shall not be liable for any delays or failures in performance due to circumstances beyond its reasonable control, including, but not limited to the non-compliance of FFA with relation to their responsibilities for participation in the Project described in Exhibit A or breach of this Agreement.
- 12. No Representation or Warranty.** DANA agrees to provide the Services under this Agreement, however DANA makes no representation or warranty, either express or implied, that FFA or its board will be more stable or sustainable or successful or will demonstrate improved results as a result of successfully completing the *Foundations for Board Excellence*™ program. FFA, on behalf of itself and its board, agrees to accept the Services under this Agreement and accepts sole responsibility for the operation of FFA and the acts of its board arising out of or related to the Services.

- 13. Compliance.** In the performance of the Services, DANA will comply with all applicable federal, state, and local laws, regulations, and guidelines.
- 14. No Restrictions.** DANA represents and warrants that the terms of this Agreement are not inconsistent with any other contractual or legal obligations that DANA may have, or with the policies of any institution or company with which DANA is associated.
- 15. Indemnification.** FFA agrees to indemnify, defend, and hold harmless DANA, its officers, directors, employees, agents, successors, and assigns, from and against any and all claims or damages (including without limitation, reasonably attorney's fees) which may arise, in whole or in part, out of its obligations under this Agreement or those incurred in connection with the Services. Accordingly, DANA shall indemnify, defend and hold harmless FAMILY FOUNDATIONS ACADEMY from any allegations, claims, demands, causes of action or litigation including, but not limited to, all damages, costs and reasonable attorneys' fees, which may arise or be incurred allegedly by reason of the services performed by FAMILY FOUNDATIONS ACADEMY.
- 16. Termination.** This Agreement shall terminate upon completion of the Term, but may be terminated by DANA if FFA fails to pay any invoice on a timely basis and provided DANA has sent the FFA a written thirty day notice to cancel and the FFA fails to cure this default within 30 days. This Agreement may be terminated by DANA if FFA fails to cooperate with DANA (as set forth herein) or otherwise fails to accept the Services. FFA may terminate this Agreement if DANA fails to perform the services it has warranted herein on a timely basis and provided FFA has sent DANA a written thirty day notice to cancel and DANA fails to cure this default within 30 days. Termination of this Agreement shall not terminate the obligations of FFA related to confidentiality or indemnification.
- 17. Waiver.** Waiver of any one provision of this Agreement will not be deemed to be a waiver of any other provision.
- 18. Severability.** Each provision of this Agreement will be considered separable. If for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity will not impair the operation of or affect the remaining provisions of this Agreement.
- 19. Arbitration.** Any and all disputes arising out of or relating to this Agreement shall be subject to mandatory, confidential, binding arbitration under the Federal Arbitration Act, 9 USC §§ 1 et seq., as amended, to the exclusion of all state law ("Arbitration"). The place of arbitration shall be Wilmington, Delaware. Commencement of the Arbitration shall take place only after the parties have engaged in a good faith attempt to resolve their disputes through direct meetings or with the assistance of a mediator. The Arbitration shall be submitted to the American Arbitration Association, or such other alternative dispute resolution organization as agreed upon by the parties. The Arbitration procedure shall be in accordance with the organization's commercial rules. The Arbitration Panel shall consist of a single Arbitrator chosen from a list of qualified

individuals provided by the organization. Regardless of outcome, or the nature of any award or determination made by the Arbitrator, the parties shall pay for their own costs and fees, and shall pay exactly fifty percent (50%) of the final fee charged by the Arbitrator. Once the parties have submitted their written positions to the Arbitrator, the Arbitrator shall issue a written Award within thirty (30) days, or seek an extension of time from the parties. If the Arbitrator is unable provide the Award within thirty days, or the extension granted by the parties, the Arbitrator shall have waived any right to payment. The Arbitration Award shall be confirmed and enforced in any state or federal court. If an Award is not provided by the Arbitrator within the given timeframe, then either party may take legal action in the state or federal courts in Delaware.

- 20. Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of New Castle County in the State of Delaware. Any legal action or proceeding brought to interpret or enforce this Agreement or in any other way arising out of or in relation to this Agreement will be brought exclusively in either the state or federal courts located in Delaware. The parties hereto irrevocably submit to the exclusive jurisdiction and venue of said courts in any such action or proceeding and hereby waive any and all objections to the personal jurisdiction and venue of said courts.
- 21. Entire Agreement.** This Agreement, including the Attachments, which are incorporated herein, constitutes the entire agreement between DANA and FFA with respect to the subject matter hereof and, supersedes all prior oral or written agreements and understandings relating to the subject matter hereof.
- 22. Counterparts.** This Agreement may be executed in counterparts and by facsimile signature, each of which will be deemed an original, and all of which will together constitute one and the same instrument.

The parties hereto have executed this Service Agreement as of the day and year first above written:

**For the Delaware Alliance for Nonprofit
Advancement:**

Paul Stock
Executive Vice President of Consulting

Date

**For FAMILY FOUNDATIONS
ACADEMY:**

Sean Moore
Chief Administrative Officer

Date

Byron W. Brooks, Board President

Date

Attachments:

Exhibit A. Project Description

Exhibit B. Compensation Terms

Exhibit A: Project Description

Foundation for Board Excellence™

Foundation for Board Excellence™ is a comprehensive presentation designed to raise the level of awareness of the true scope and depth of responsibilities of a board. Combined with the subsequent pieces of the *Achieving Board Excellence™* Program, it can dramatically impact boards in their journey toward achieving board excellence.

Achieving Board Excellence™ is a program of the Delaware Alliance for Nonprofit Advancement (DANA) that is specifically designed to help develop the governance function of nonprofit Boards of Directors and thereby the community impact of the nonprofit organizations themselves. This program, which was created in conjunction with the *Standards for Excellence®* Institute in Maryland, begins with this educational piece based on nationally accepted best practices which cover the key areas and responsibilities of boards which operate with excellence.

Education Program Summary:

- Initial orientation meeting between DANA Consultant, Chief Administrative Officer and Board President within 30 days of contract signing to identify specific known needs of the board. *Nonprofit (NP) Time Required: 1-3 hours*
- DANA Consultant reviews known needs of the board to tailor our board education presentation for the nonprofit board. *NP Time Required: N/A*
- Four-hour Board Excellence Workshop scheduled/delivered by DANA Consultant within 90 days of contract signing with a minimum of 70% of NP's Board Members present. *NP Time Required: 4 hours*
- "Notes" copies of the presentation along with the Board Excellence Handbook developed in conjunction with the Standards for Excellence Institute are distributed at this training.

<i>Timeframe</i>	<i>Activity</i>
Engagement Beginning	Contract Signing
Within 1 st month	Initial Orientation Meeting- ED/Board President/ Consultant
Within 90 days	Four-Hour Board Excellence Workshop

Exhibit B: Compensation Schedule

FFA will pay DANA **\$1,000.00** for the delivery of Services outlined in Exhibit A. The payment schedule below represents the total compensation to be paid to DANA and the timeframe upon which invoices will be delivered by DANA to FFA.

Date	Amount Due
Upon Contract Signing	\$ 750.00
Upon Completion of Four-Hour Board Excellence Workshop	\$ 250.00
Total	\$1,000.00