

The City University of New York
Office of the General Counsel and Vice Chancellor for Legal Affairs
535 East 80th Street, New York, N.Y. 10021
Phone: (212) 794-5382
Fax: (212) 794-5426

BARUCH COLLEGE
FEB - 1 2002
COUNSEL TO THE PRESIDENT

Writer's direct phone: (212) 794-5506
Writer's e-mail: fschafffer@fiorello.cuny.edu

Frederick P. Schaffer
General Counsel

Jane Sovern
Deputy General Counsel

Jane E. Davis
Marina B. Ho
Abby L. Jennis
*Daphna H. Mitchell**
Linda Myles
Paul F. Occhiogrosso
Richard M. Plansky
Katherine Raymond
Susan Shanklin
*Michael D. Solomon**

**Associate General Counsel*

ADMINISTRATIVE ADVISORY NO. 02-1

January 23, 2002

M E M O R A N D U M

To: Campus Presidents
From: Frederick P. Schaffer *FPS*
Re: Donation of Used Equipment

Many of you have brought questions to me concerning your wish to donate equipment which is no longer useful to the college, rather than sending it to salvage. Often, the college has made full use of computer equipment, in particular, but knows that it may still be useful to other not-for-profit concerns. Because computer equipment may contain both proprietary software and confidential information and data, particular care is warranted before transferring the equipment outside the college.

To facilitate your donation process while protecting the university, my office has prepared an Agreement for Donation, including instructions for your staff. I have attached a copy of both. Both are simultaneously being distributed in electronic form < h:donate.wpd > to members of your staff, listed below. If you have any questions, feel free to contact Daphna Mitchell (212) 794-5381, my Deputy Jane Sovern (212) 794-5589 or me.

encl.

c:(w/encl. and e-mail)

Senior Vice Chancellor and Chief Operating Officer Allan
Dobrin
Deputy Chief Operating Officer Ronald Spalter
Chief Information Officer Brian Cohen
University Acting Controller Helen F. Woo
Vice Presidents/Deans of Administration
MIS Directors
Business Managers
Purchasing Agents

H:DM OG ADMINISTRATIVE ADVISORY ON DONATION AGREEMENT.WPD/cf

AGREEMENT FOR DONATION

INSTRUCTIONS TO COLLEGE

DO NOT TRANSFER EQUIPMENT WITHOUT FOLLOWING STEPS 1 AND 2

1. College Wipes Equipment

- Computer equipment contains information and/or software that does not belong to the College. The equipment must be wiped before it leaves the college, using one of the below suggestions or a comparable product.

Suggestions for wiping:

- ▣ Manual for government-level wipe for moderately sensitive information:

<http://nsi.org/Library/Govt/Nispom.html>

- ▣ Search here, using term "wipe":

<http://www.zdnet.com/downloads/utilities.html>

- ▣ Recommended commercial software:

http://www.symantec.com/nu/nu_9x/

[look for "wipefile"]

<http://www.jetico.com/>

[look for BCWipe™]

2. Donee signs form

- The Donee must sign the attached "Agreement for Donation" before taking possession of the equipment. This will protect the College and the University.
- Insert the relevant data in the first paragraph and the removal date in Section I (c) (2).

3. College installs open source, freeware or shareware operating system, browser, office suite, etc.

- ▣ Learn more:

<http://linux.com/learn/>

<http://www.opera.com/>

<http://www.openoffice.org/>

AGREEMENT FOR DONATION

This Agreement for Donation ("Agreement") is made as of the date of the last signature hereon between _____
_____ College of The City University Of New York ("Donor"),
an educational corporation pursuant to New York State Education Law
Article 125 and _____
_____, ("Donee"), a natural person OR a not-for-profit
corporation¹ with an address at _____
_____ .

WHEREAS, Donor has title to the equipment listed on Exhibit A
(the "Equipment") and

WHEREAS, Donor wishes to transfer the Equipment to Donee and

WHEREAS, Donee wishes to accept the Equipment under the
following terms and conditions:

NOW, therefore the parties agree to the following terms of
such transfer:

Section I - Equipment

- a. Donor will donate the Equipment to Donee and Donee will accept the Equipment from Donor.
- b. Donee will use the Equipment primarily for academic and/or business purposes.
- c. Donee will remove the Equipment from Donor's premises:
 - 1. at Donee's sole expense and
 - 2. on or before the ____ day of _____, 20 ____.

¹ Strike out what is not applicable.

- d. Donee will use the Equipment solely in accordance with the terms of this Agreement, and Donee will not, either directly or indirectly, decompile, reverse engineer, or analyze the physical construction of any of the Equipment or any component thereof for any purpose.
- e. Upon acceptance, Donee shall be responsible for compliance with all laws and regulations applicable to use of the Equipment, whether required of Donor or otherwise.
- f. The description of the Equipment is for the sole purpose of identifying the Equipment and does not constitute a representation or warranty in any respect whatsoever.

Section II - Confidential Material

- a. The Equipment may contain material pertaining to Donor's business ("Confidential Material").
- b. Nothing herein will be construed as the transfer of Confidential Material to Donee and Donee will not disclose such Confidential Material to any third party.
- c. The entire right, title and interest in such Confidential Materials will remain with Donor.

Section III - Proprietary Material

- a. The Equipment may contain the intellectual property of Donor or others ("Proprietary Material").
- b. Nothing herein will be construed as the transfer of Proprietary Material to Donee.
- c. Donee will not remove any copyright notices or other legends from such Proprietary Material or any accompanying documentation. Except as may arise by operation of law, the donation of the Equipment does not convey to Donee either expressly, by implication or by way of estoppel, any intellectual property rights of Donor, including but not limited to any rights under any patent, trademark, copyright or trade secret.
- d. Neither the donation of the Equipment nor any provision of this Agreement will be construed to grant Donee, either expressly, by implication or by way of estoppel, any license under any patent or other intellectual property rights of Donor covering or relating to any other product or invention or any combination of Equipment with any other product.

Section IV - Hazardous Material

- a. The Equipment may contain flammable items, radioactive materials, explosives, hazardous or toxic substances, material or waste or related materials, including any materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any federal, state or local laws, regulations or ordinances ("Hazardous Material").
- b. Donee will defend, indemnify and hold Donor harmless against any claims resulting from or relating to such Hazardous Material and arising after Donee has taken possession of the Equipment.

Section V- Warranties

- a. DONEE ACKNOWLEDGES AND AGREES THAT:
 - 1. DONEE IS RECEIVING THE EQUIPMENT "AS IS, WHERE IS" AND "WITH ALL FAULTS";
 - 2. DONOR HAS MADE NO REPRESENTATIONS OR WARRANTIES TO DONEE REGARDING THE QUALITY, NATURE, CONDITION OR COMPOSITION OF THE EQUIPMENT;
 - 3. DONOR HAS MADE NO REPRESENTATIONS OR WARRANTIES TO DONEE REGARDING THE COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY SPECIFICATIONS, LAWS OR REGULATIONS; AND
 - 4. DONEE HAS BEEN GIVEN THE OPPORTUNITY TO REJECT THE EQUIPMENT, IN PART AND IN WHOLE, AND HAS DECLINED TO DO SO.
- b. DONOR DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DONOR ALSO DISCLAIMS ANY IMPLIED WARRANTY ARISING OUT OF TRADE USAGE OR OUT OF COURSE OF DEALING OR COURSE OF PERFORMANCE. DONOR ALSO DISCLAIMS ANY WARRANTY OR OTHER OBLIGATION ON ACCOUNT OF ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF PATENTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH THE EQUIPMENT.

Section VI - Limitation of Liability

TO THE MAXIMUM EXTENT ALLOWED BY LAW, UNDER NO CIRCUMSTANCES WILL DONOR BE LIABLE FOR ANY DAMAGES OF ANY KIND, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE, EVEN IF THEY WERE FORESEEABLE AND/OR EVEN IF DONEE HAS INFORMED DONOR OF THEIR POTENTIAL, ARISING IN ANY WAY OUT OF THE EQUIPMENT OR THIS AGREEMENT.

Section VII - Resale

Donee shall be responsible for compliance with all laws and regulations applicable to the resale of the Equipment.

Section VIII - Exportation

- a. Donee will not export the Equipment or any part or item thereof without first obtaining the necessary export licenses and approvals.
- b. Donee warrants that it will not resell, transfer or export the Equipment or any part or item thereof in violation of any laws, regulations, transaction or export controls or economic sanctions imposed by the United States government regarding any other country, government or political entry.

Section IX - Indemnification

Donee will defend, indemnify and hold Donor harmless against any claims relating to the packing, removal, handling, shipping, use, possession, transfer, sale, donation or other disposal of Equipment.

Section X - Miscellaneous

- a. The Agreement represents the entire agreement between the parties with regard to the subject matter hereof. It supersedes all previous oral and written communications between the parties. This Agreement may not be modified except in writing by authorized representatives of both parties. If any provision is held invalid, all other provisions will remain valid, unless such invalidity would frustrate the purpose of the Agreement.
- b. This Agreement will be governed by the laws of the State of New York except where the federal supremacy clause requires otherwise.
- c. All claims and actions brought under or arising from this Agreement will be brought either in the courts of the

United States located in New York City or in the courts
of the State of New York.

DONEE

DONOR

Signature

Signature

Print Name

Print Name

Print Title (if any)

Print Title

Date

Date

h:donate.wpd 01-22-02 cuny/ogc/dhm
H:DONATECHART.WPD/DM/cf

EXHIBIT A

LIST OF EQUIPMENT

Item	Model #	Manufacturer	Serial #
1.			
2.			
3.			
4.			
5.			