

**AFFILIATION AGREEMENT**  
**between**  
**University of South Carolina**  
**and**  
**University of South Carolina Educational Foundation**  
**and**  
**The University of South Carolina Development Foundation**

THIS AGREEMENT (the "Agreement") is entered into as of this 18<sup>th</sup> day of January, 2011 by and between the University of South Carolina (herein called the "University"), and the University of South Carolina Educational Foundation (the "Educational Foundation") and The University of South Carolina Development Foundation (the "Development Foundation") (herein collectively called the "Foundations").

**PREAMBLE**

The Educational Foundation was organized and incorporated December 28, 1956 and the Development Foundation was organized and incorporated May 17, 1965 as the Carolina Research and Development Foundation. The change to its current name occurred November 7, 1991.

The Foundations are independent entities existing separate and apart from the University, and were organized, and exist, to obtain and manage private resources supporting the mission and priorities of the University of South Carolina and to provide opportunities for the

University and a margin of excellence that is not, or may not be, available through state funds. The Foundations are dedicated to assisting the University in the building of its endowment and in addressing, through financial support, the priorities of the University.

As stated in their articles of incorporation, the Educational Foundation and the Development Foundation are not-for-profit organizations separately incorporated under Section 501(c)(3) of the Internal Revenue Code and are responsible for raising, receiving, investing and reinvesting money and property, and using the net profits for the exclusive benefit of the University of South Carolina. The Development Foundation operates exclusively for the benefit of the University primarily to acquire, hold, construct, develop, operate and/or manage real and personal property.

In connection with their asset management activities, the Foundations retain personnel experienced in managing such assets, who work with the University to assist and advise in such activities.

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**

Consistent with their mission to help advance the plans and objectives

of the University, the Foundations are entitled to use the respective names of:

University of South Carolina Educational Foundation

The University of South Carolina Development Foundation

The Foundations will operate under the seal and logotype of the University in the promotion of their business and activities.

### **THE FOUNDATIONS' RELATIONSHIP TO THE UNIVERSITY**

The Educational Foundation and the Development Foundation are separately incorporated 501(c)(3) non-profit organizations created to raise, manage, distribute and steward private resources to support the various missions of the University. Each Foundation has, and shall continue to have, its own duly elected and appointed, independent Board of Directors. Each Foundation Board of Directors shall be responsible for the control and management of all assets of the respective Foundation, including the prudent management of all gifts consistent with donor intent.

The Foundations are independent entities, existing separate and apart from the University, each having its own Board of Directors, Officers, and Bylaws.

The Foundations are responsible for the performance and oversight of all aspects of their operations based on the comprehensive Bylaws of

each that address the Boards' fiduciary responsibilities and duties, including expectations of individual officers, directors, and members based upon ethical guidelines and policies.

The Foundations are responsible for the employment, compensation and evaluation of all their employees, including the Foundations' Executive Director. With the exception of the Executive Director, Foundations' employees may be State of South Carolina employees and may be paid by the University. The Foundations will, however, reimburse fully (salary, benefits, etc.) the University for all payments made on behalf of the employees.

Upon request by the University's Board of Trustees, and approval by the appropriate Foundation's Board of Directors, the Foundations may designate a portion of their unrestricted funds for salary supplements for the University's President and Executive Vice-President for Academic Affairs and Provost. Other funds may be requested for reasonable expenses for the President. The Foundations will either transfer those funds to the University in compliance with state and federal law, Foundation(s) policies and University policies, or reimburse appropriate expenditures. The University's expenditures will comply with the provisions of the Internal Revenue Code and be consistent with the Foundation(s)' missions. Such funds will be audited as part of the Foundation(s)' annual independent audits.

## THE UNIVERSITY'S RELATIONSHIP TO THE FOUNDATION

The University's President is responsible for communicating to the Foundations the University's priorities and long-term plans and goals as approved by the University Board of Trustees.

The University recognizes that the Foundations are private, independent corporations with the authority to keep all records and data confidential consistent with the law.

To facilitate and enhance communication between the University and the Foundations, the Chair of the University Board of Trustees and the President of the University will be *ex officio* (non-voting) members of the Foundations' Board of Directors. Further, the University Board of Trustees will appoint an additional member to serve on the Board of each Foundation as a voting member.

The Executive Director of the Foundations shall be included as a member of the University President's Executive Council (or similarly named body), and shall have regular access to this group.

The University shall include the Foundations as active and prominent participants in the strategic planning for the University, and shall provide regular updates of such plan(s) in order for the Foundations to be kept currently informed of such planning.

In consideration for the University providing space for the Foundations' offices, the Foundations will pay an amount of unrestricted funds for scholarships equal to, or greater than, the cost that would be incurred based upon current market rates for similar space in the area if such space were rented from the University or were rented privately. The amount of the aforesaid compensation will be negotiated on an annual basis as the Foundations structure their budgets of unrestricted funds. The Foundations will pay the going rate for all other services (e.g., telephone, information technology support, etc.) provided by the University.

The University shall establish and enforce policies that support the Foundations' ability to respect the privacy and confidentiality of donor records.

### **FOUNDATION RESPONSIBILITIES**

The Foundations shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.

The Foundations will establish, adhere to, and periodically assess their gift acceptance and management policies. They will work with the Office of University Development to promptly acknowledge and issue receipts for all gifts on behalf of the Foundations and the University and provide appropriate recognition and stewardship of such gifts.

The Foundations shall not accept grants from state or federal agencies, except in special circumstances that are approved by the appropriate Foundation's Board of Directors and the governmental agency.

The Foundations shall maintain and enforce policies to protect donor confidentiality and rights.

### **ASSET MANAGEMENT**

The Foundations will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

Consistent with their policies and procedures, the Foundations will receive, hold, manage, invest, and disburse 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.

Each Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements.

The Development Foundation will explore current opportunities,

including acquisition and management of real estate in support of the University for future allocation, transfer, or use.

The Foundations may pursue entrepreneurial activities and engage in such activities individually or with other entities, including, but not limited to, purchasing, developing, leasing, or managing real estate for potential university expansion, student housing, or related endeavors. They also may hold licensing agreements and other forms of intellectual property, borrow funds, or guarantee debt incurred by either of the Foundations, or engage in other activities to increase the Foundations' revenue.

When distributing gift funds to the University, the Foundations will disclose any terms, conditions, or limitations imposed by donor(s) or legal determination on the gift. The University will abide by such restrictions, including confidentiality requirements, and provide documentation upon request by the appropriate Foundation.

### **TRANSFER OF FUNDS**

The Foundations are the primary depositories of private gifts and will transfer funds to the designated entities within the University in compliance with their Bylaws, applicable rules, and regulations, and laws, University policies, and donor conditions as evidenced by gift agreements.

The Foundations' disbursements on behalf of the University must be reasonable, ordinary and necessary business expenses that support the institution, are consistent with donor intent, and do not conflict with the state or federal law, specifically including IRS regulations.

### **FOUNDATION FUNDING AND ADMINISTRATION**

The Foundations are responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.

The Foundations have the right to use a reasonable percentage of the annual unrestricted funds, and assess fees for services to support their operations. The use of fees, including, but not limited to, service, management, and custodial fees shall be disclosed to donors and the University.

The Foundations shall maintain, at their own expense, copies of the plans, budgets, and other records developed in connection with the performance of their obligations.

The Foundations will provide access to data and records to the University in accordance with applicable laws and Foundation policies. The Foundations will provide, in a timely manner, copies of their annual report, and other information that may be publicly released.

## **CO-ORDINATION OF MUTUAL ACTIVITIES**

This Agreement is intended to set forth policies and procedures that will contribute to the coordination of the mutual activities of the University and the Foundations.

To ensure effective achievement of the terms of this Agreement, the University's and Foundations' officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

## **PERIODIC REVIEW OF AGREEMENT**

In addition to the periodic meetings as noted above, the University's and Foundations' officers and board representatives shall meet not less than once every five (5) years to review the terms of this Agreement.

## **TERMINATION OF AGREEMENT**

Upon ninety (90) days written notice as herein provided, and without cause, (i) the University may terminate this Agreement with either, or both of the Foundations, or (ii) either, or both, of the Foundations may terminate this Agreement with the University. In the event of such termination, and within two hundred ten (210) days from the effective date of the notice of termination, (i) the University will pay to the party

or parties to whom it gave, or from whom it received, notice of termination all indebtedness due such party or parties, and (ii) such other party or other parties giving, or receiving, such notice of termination shall pay the University all indebtedness due. The word "indebtedness" shall include, but is not limited to, any debt incurred on the other's behalf such as lease payments, advanced funds, and funds borrowed for specific initiatives for the benefit of the other party. Additionally, each party will remain obligated for the full performance of any other agreement or agreements existing between the parties.

If any party fails to substantially perform the duties and obligations it owes to another party, hereunder, and such failure or non-performance continues for a period of thirty (30) days after receiving notice of such failure or default from the other specifying the failure or default complained of, the non-defaulting party shall have the option of terminating this Agreement with the defaulting party. In the event of such termination, and just as provided for above with respect to termination without cause, and within two hundred ten (210) days following the effective date of the notice of termination, (i) the University will pay to the party or parties to whom it gave, or received, notice of termination, all indebtedness due such party or parties; and (ii) such other party or other parties giving, or receiving, such notice of termination shall pay the University all indebtedness due. The word "indebtedness" shall include, but is not limited to, any debt incurred on the other's behalf such as lease payments, advanced funds, and funds borrowed for specific initiatives for the benefit of the other party.

Additionally, each party will remain obligated for the full performance of any other agreement existing between the parties. Furthermore, in the event of any such uncured failure or uncured default after notice of the aforesaid, the non-defaulting party, upon termination of this Agreement shall be entitled to all rights and remedies at law or in equity.

### **TRANSFER OF ASSETS**

Consistent with provisions appearing in the Foundations' Bylaws and Articles of Incorporation, should either or both of the Foundations cease to exist or cease to be Internal Revenue Code §501(c)(3) organizations, the Foundation(s) will transfer assets and property to the University, to a reincorporated successor foundation, or to the state or federal government for public purposes, in accordance with the law and donor intent.

### **NOTICE**

Each notice required, or permitted, to be given hereunder shall be in writing, and shall comply with the requirements of this paragraph. The notice shall be deemed to be duly given if: either (i) hand delivered to the person(s) listed below for each party; (ii) sent by registered or certified mail addressed to such person at the address as provided below; or (iii) delivered by recognized overnight delivery to the address

of such person as provided below. Notice shall be deemed effective at the time of hand delivery, or upon two (2) business days following deposit of the notice in the United States Mail for registered or certified delivery, or upon the next business day following delivery to the overnight courier for overnight delivery. Any party shall have the right, from time to time, to change the name and/or address to which notices shall be sent, by giving to the other party or parties, at least five (5) days prior notice of the change.

**To University of South Carolina:**

**University of South Carolina  
Attn: Walter H. Parham  
Title: General Counsel**

**Mailing and Personal Delivery Address:**

**University of South Carolina  
109 Osborne Administration Building  
Columbia, SC 29208**

**To The University of South Carolina Development Foundation:**

**The University of South Carolina  
Development Foundation  
Attn: Jerome D. Odom  
Executive Director  
107 Osborne Administration Building  
Columbia, SC 29208**

**To The University of South Carolina Educational Foundation:**

**University of South Carolina  
Educational Foundation  
Attn: Jerome D. Odom  
Executive Director  
107 Osborne Administration Building  
Columbia, SC 29208**

**ATTORNEY'S FEES**

If either party shall be required to employ an attorney to enforce or defend the rights of such party hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. The "prevailing party" is the party who receives substantially the relief sought, whether by judgment, summary judgment, dismissal, settlement or otherwise.

**WAIVER**

One or more waivers of any breach of any covenant, term or condition of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by any party to, or of any act by, the other party or parties requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

## **HEADINGS**

The paragraph headings as to contents of particular paragraphs herein are inserted only for convenience, and are in no way to be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

## **BENEFIT**

This Agreement and all of the covenants and conditions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

## **AMENDMENT**

This Agreement may be modified and amended by an agreement in writing signed by all the parties hereto, or their successors in interest, and in the sole discretion of each.

## **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties hereto and may not be modified in any manner other than by agreement in writing signed by all the parties hereto, or their successors in interest as heretofore provided.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be signed, and to be effective, as of the day and year first set forth above.

**WITNESSES:**

**UNIVERSITY OF SOUTH CAROLINA**

Walter H. Paul  
Paul S.

By: [Signature]  
Its: Secretary

**UNIVERSITY OF SOUTH CAROLINA  
EDUCATIONAL FOUNDATION**

[Signature]  
Mary S. Bennett

By: Jerome D. Odom  
Its: **Jerome D. Odom  
Executive Director**

**THE UNIVERSITY OF SOUTH CAROLINA  
DEVELOPMENT FOUNDATION**

[Signature]  
Mary S. Bennett

By: Jerome D. Odom  
Its: **Jerome D. Odom  
Executive Director**