

AMENDED & RESTATED AFFILIATION AGREEMENT

by and between

CLEMSON UNIVERSITY

and

CLEMSON UNIVERSITY FOUNDATION

This AMENDED & RESTATED AFFILIATION AGREEMENT (including any exhibits incorporated herein and as it may hereafter be amended, supplemented, and/ or restated, this "*Agreement*") is effective as of July 1, 2013 (the "*Effective Date*") and is by and between CLEMSON UNIVERSITY (together with its successors and permitted assigns, "*Clemson*"), an educational institution of higher learning and agency of the State of South Carolina (the "*State*"), and Clemson University Foundation (together with its successors and permitted assigns, "*CUF*"), a non-profit corporation incorporated under the laws of the State (Clemson and CUF are together referred to herein as the "*Parties*" and each, as a "*Party*").

WITNESSETH

WHEREAS, the mission of CUF is to support Clemson by promoting growth and stewardship of resources entrusted to CUF in fulfillment of covenants with donors, with a vision to be a long term, stable, and significant provider of resources in support of Clemson's goals;

WHEREAS, Clemson recognizes its affiliated relationship with CUF as critical to providing support and aid to the mission, objectives, and programmatic goals of Clemson with regard to fundraising, stewardship, endowment building, donor and alumni relations, the creation of intergenerational equity, and the immediate and long term success of Clemson; and

WHEREAS, Clemson and CUF have previously entered into that certain agreement dated July 1, 2009, as amended on or about July 1, 2009 and January 30, 2013, to memorialize the relationship between Clemson and CUF (the "*Prior Affiliation Agreement*"), and Clemson and CUF desire to amend and restate the Prior Affiliation Agreement to reflect the further maturation of such relationship between the contracting Parties;

NOW, THEREFORE, for and in consideration of the sum of One and No/100 Dollar (\$1.00) paid by CUF to Clemson, the agreements and covenants contained herein, including in particular, the rights provided to CUF pursuant to Article VII, and for other good and valuable consideration, the receipt of which is acknowledged, the Parties hereby agree to amend and restate the Prior Affiliation Agreement as follows:

ARTICLE I

PURPOSE

The purpose of this Agreement is to memorialize an agreement between Clemson and CUF to (i) define clearly the relationship of CUF to Clemson, with CUF being a separate and independent organization formed primarily for the purpose of supporting Clemson, (ii) delineate formally any liability exposure between the Parties arising out of such relationship, and (iii) assure that the activities of CUF, on behalf of and for the benefit of Clemson, shall at all times further the mission of Clemson.

ARTICLE II

RESPONSIBILITIES OF CUF

Section 2.1. Fundraising Support and Fund Management.

2.1.1. CUF's Role. During the term and any renewal period of this Agreement, and subject to the terms and conditions hereof, Clemson hereby acknowledges the role of CUF, and CUF hereby accepts its acknowledged role, to receive, manage, and administer certain private philanthropy for the benefit of Clemson as more fully described herein. Clemson authorizes CUF to receive, directly and indirectly, gifts, grants, pledges, commitments, and other aid and support from donors and grant-makers for the benefit and support of Clemson, its programs and mission. The Parties acknowledge that CUF's role described above is non-exclusive.

2.1.2. CUF's Duties. In connection with and consideration of the foregoing acknowledgement, CUF agrees that:

- a. it shall be responsive to and work diligently and in good faith to meet the fundraising priorities of Clemson;
- b. it shall actively promote the welfare and future development of Clemson in accordance with the mission, programs, goals, and strategic plans of Clemson;
- c. it shall seek, pursuant to the direction of Clemson, and receive gifts or public funds through endowment giving, fundraising and other programs of Clemson; and
- d. it shall prudently and equitably manage such funds described above and the provision of any disbursement thereof on behalf of and for the benefit of Clemson and its current and future generations of students, scholars, professors, alumni, and supporters ("*intergenerational equity*").

2.1.3. Benefit to Clemson. In further connection with and consideration of the foregoing acknowledgement, CUF agrees that it shall provide Clemson, its programs, mission, and, as determined by Clemson in its sole discretion, affiliates and beneficiaries with the sole benefit of all private gifts and net gift income received by CUF.

2.1.4. Stewardship. CUF agrees to use reasonable efforts to provide Clemson benefactors a superior donor experience through fulfillment of donor intentions, appropriate use of funds, and expressions of impact and gratitude. CUF further agrees to ensure that donors shall receive receipts in conformity with all requirements of an organization recognized as a tax exempt organization pursuant to I.R.C. §501(c)(3), and shall act as a good steward to assist in the fulfillment of the charitable commitment to Clemson by such donors.

2.1.5. Endowment Building. CUF shall use its reasonable efforts to grow all CUF managed endowments through intentional fundraising and investment policy in accordance with the fiduciary duties applicable to CUF, its Board of Directors and officers and in the interest of intergenerational equity. As mutually agreed from time to time with Clemson, CUF agrees to provide such other financial and capital asset management services, subject to the responsibilities of the Parties as provided herein, and such other terms and conditions as mutually agreed by the Parties, in writing, at such time.

2.1.6. Nimble Partner. CUF shall have a willingness to support “landscape-changing,” high priority initiatives of Clemson and will maintain processes to monitor the growth of CUF’s unrestricted resources, evaluate the impact of supported initiatives, and be open to these initiatives advanced by Clemson.

2.1.7. Reporting. On a periodic basis, CUF shall report to Clemson on all private philanthropy managed by CUF for the benefit of Clemson, its programs and mission, and such other activities and support as may be provided by CUF to or on behalf of Clemson.

Section 2.2. CUF Reimbursement. CUF shall reimburse Clemson for the portions of those Clemson employees assigned by Clemson to provide services on behalf of CUF and such additional services as are described in Section 3.1. The rates and amount of such reimbursement shall be as mutually agreed in writing by the Parties and shall be adjusted during the course of the fiscal year to reflect actual experience. The Parties agree that such reimbursement is mandatory, and may be made in the form, as mutually agreed in writing by the Parties, of either monetary payment(s) or in-kind contribution(s) by CUF to Clemson.

Section 2.3. Audit. CUF shall allow its books and operations to be audited internally by Clemson on an annual basis. In addition, CUF shall cause an annual audit to be performed by its own external independent auditors and provide Clemson with a copy of CUF’s most recent audited financial statements, along with the then-current roster of the directors of CUF. CUF shall submit annually such audit and roster to Clemson no later than October 31st of each year.

Section 2.4. Legal Compliance. In connection with its performance under this Agreement, CUF shall maintain and observe all State and federal requirements of a nonprofit

corporation recognized as tax exempt by the Internal Revenue Service pursuant to I.R.C. §501(c)(3).

Section 2.5. Conflict of Interest Policy. CUF shall maintain and abide by a policy to ensure that any conflict of interest involving or related to any director, officer, employee, agent, or representative of CUF is addressed in a manner that complies with all applicable state and federal laws, including but not limited to Internal Revenue Code section 501(c)(3) and sections 33-31-831 and 33-31-832 of the South Carolina Code of Laws.

Section 2.6. Direct and Indirect Support.

2.6.1 Requests for Support. During the term of this Agreement and each renewal period, CUF shall consider, from time to time, the provision of support or aid to Clemson, upon Clemson's reasonable request or direction, subject to the fiduciary responsibilities of the CUF Board of Directors, and its delegate(s), including without limitation:

- a. CUF, and its Board of Directors' and officers' compliance with I.R.C. §501(c)(3), the prohibition against private inurement contained therein, the excess benefit transaction rules of I.R.C. §4958, the CUF conflict of interest policy and any other applicable State and federal law, accompanying regulations or successor statutes or provisions;
- b. CUF's compliance with any restrictions in connection with any specific fund, fund agreement, trust agreement, endowment, quasi-endowment, gift, gift instrument, and other donor or grant-maker agreement, enforceable under applicable law; and
- c. the provision of such support or aid is within CUF's cash flow projections and budgetary constraints with regard to commitments and obligations of CUF.

2.6.2. Resolution at Clemson's Request. In the event that the CUF Board of Directors declines any request or direction of Clemson, the President of Clemson (in his or her sole discretion within a reasonable period thereafter) may engage in the procedures provided in Section 7.1.

2.6.3. Resolution at CUF's Request. In the event that the request or direction pursuant to Section 2.6.1 is presented to CUF directly by the Board of Trustees of Clemson, the CUF Board of Directors may engage in the procedures described in Section 7.2.

ARTICLE III

RESPONSIBILITIES OF CLEMSON

Section 3.1. Clemson shall provide to CUF the following support, as requested by CUF, to carry out the normal and regular functions and operations of CUF's business:

- a. the services of Clemson personnel, including clerical, accounting, and other reasonable administrative support, it being understood that (i) such personnel will retain their status as employees of Clemson and will be governed by applicable Clemson rules, regulations, policies and procedures, and (ii) any services relating to the disbursement of funds shall be provided in a manner consistent with applicable federal and State law;
- b. computer services and programming services through the Division of Administrative Programming Services Clemson Computing and Information Technology or its successor as determined by Clemson;
- c. telephone equipment and service required for use in normal CUF business;
- d. accounting services for the disbursement of funds in a manner consistent with applicable rules, regulations and laws of the State and federal government; and
- e. custodial and other related services in connection with the day-to-day maintenance of CUF-owned or leased office space.

Section 3.2. Clemson Reimbursement. Clemson shall reimburse CUF for CUF-owned or leased space occupied by Clemson employees while performing Clemson duties hereunder. The rates and amount of such reimbursement shall be as mutually agreed in writing by the Parties and shall be adjusted during the course of the fiscal year to reflect actual experience. The Parties agree that such reimbursement is mandatory, and may be made in the form, as mutually agreed in writing by the Parties, of either monetary payment(s) or in-kind contribution(s) by Clemson to CUF.

Section 3.3. License. In further consideration of the services, support, and aid provided by CUF to Clemson as provided herein, Clemson hereby grants to CUF a paid-in-full, royalty-free, unlimited, universe-wide license and right to use, during the term and each renewal period, the name and all registered and non-registered marks, trademarks, trade dress, branding and goodwill of Clemson and all other intellectual property rights associated or arising out of any marketing, developing, and gifting materials, publications, and otherwise of Clemson for the fundraising and development activities of CUF. Such use shall be consistent with the Clemson Trade Name and Trademark Policy and related brand policy and visual identity guidelines as published from time to time by Clemson.

Section 3.4. Strategic Planning and Communications. Clemson agrees to provide to CUF, or its designated representative(s), on a regular basis and as necessary for CUF to perform its responsibilities under Article II hereof, pertinent and timely information regarding the current and long range strategic planning, mission, fundraising objectives, and programmatic goals of Clemson, in order that CUF may anticipate funding and support needs, and integrate such needs in the current and long range planning of CUF.

Section 3.5. Stewardship and Endowment Building. Clemson agrees and is committed to the concept that good stewardship of donated, gifted, and granted funds as well as

compliance with donor and grant-maker intent and restrictions, to the extent permissible under applicable law, is critical to the success of immediate and long term fundraising goals, efforts and activities; endowment growth; donor and alumni relations; the creation of intergenerational equity; and the landscape changing, high priority initiatives, the mission, and the programs of Clemson. To the extent permitted by applicable law, Clemson agrees to abide by each restriction contained in any gift, fund, endowment, or other donor or grant-maker agreement with regard to the expenditure of any funds provided by CUF to Clemson under and pursuant to the terms of this Agreement. Clemson further agrees that it will use reasonable efforts to assist CUF in obtaining funds for then-current operations as well as stewardship and endowment building efforts for the benefit of Clemson, and shall work continuously with CUF to improve and expand Clemson donor and alumni relations, including providing direction to Clemson employees and officers to express gratitude to donors and alumni as appropriate in connection with successful fundraising support by CUF.

Section 3.6. Employee Oversight. Clemson agrees that it shall comply with all applicable State and federal laws in connection with, and provide adequate oversight, of all persons it employs or engages as independent contractors on behalf of CUF pursuant to this Agreement, and all other employees or independent contractors for which CUF may provide compensation or similar financial support as described herein. The Parties understand and acknowledge that in connection with these services and as further provided herein, CUF is contracting with Clemson to provide adequate oversight and compliance with all applicable State and federal laws associated with the employment or engagement of any such employees and independent contractors.

Section 3.7. Legal Compliance. In connection with its performance under this Agreement, Clemson shall maintain and observe all State and federal requirements of an agency of the State and educational institution of higher learning.

ARTICLE IV

COORDINATION

Section 4.1. Communication between Boards. The Parties agree in good faith to arrange meetings between members of the Board of Trustees of Clemson and members of the CUF Board of Directors to discuss the strategic planning efforts of Clemson and CUF, to renew the affiliated relationship described herein, and to seek opportunities for the Parties to work together for the benefit of Clemson.

Section 4.2. Fundraising and Planned Giving. CUF and Clemson agree to use reasonable efforts to coordinate their fundraising activities for the benefit of Clemson and cooperate in the application of grants, gifts and gift income received by CUF for the benefit of Clemson, its programs, mission, and, as determined by Clemson in its sole discretion, affiliates and beneficiaries.

Section 4.3. In order to provide increased and enhanced lines of communication between the Parties to assist in the coordination of Clemson's mission and programs and the financial, fundraising, development, and planned giving support of CUF on behalf of Clemson, the Parties agree:

- a. Clemson's President, Vice President for Advancement, and Vice President of Finance and Operations (or equivalent or successor titles as determined by Clemson in its sole discretion) shall serve as ex-officio members of the Board of Directors of CUF.
- b. Clemson's President and Vice President for Advancement (or equivalent or successor titles as determined by Clemson in its sole discretion) shall serve as ex-officio members of the Executive Committee of CUF.
- c. Clemson's Vice President for Advancement (or the equivalent or successor title as determined by Clemson in its sole discretion) shall serve as the Executive Vice President of CUF.
- d. Two Trustees from the Board of Trustees of Clemson shall be appointed by the Chairman of the Board of Trustees of Clemson, in his or her sole discretion, to serve on both the CUF Board of Directors and the CUF Executive Committee in non-voting, ex officio capacities. The Chairman of the Board of Trustees of Clemson may, from time to time, remove and appoint alternate Trustees or replace any Trustee on the CUF Board of Directors and Executive Committee as necessary. Expectations regarding board member attendance and participation on the CUF Board of Directors and its committees will apply to the two Clemson Trustees as they apply to all elected directors on the CUF Board of Directors. The Chairman of the Board of Trustees of Clemson shall require the attendance and participation of the two Trustees that he or she appoints to serve on the CUF Board of Directors.

Section 4.4. CUF President and CEO.

4.4.1. Subject to the final approval of the Board of Directors of CUF, Clemson shall hire a qualified professional to assume the role of President and Chief Executive Officer of CUF (the "**CEO**"). The CEO shall have the ability to hire additional support staff for CUF within any budget approved by the Board of Directors of CUF. In connection therewith, the CEO shall have authority in connection with and approval of all decisions relating to the selection, hiring, retention, compensation and evaluation of employees of Clemson who simultaneously serve as employees of CUF. Unless otherwise provided in subsection 4.4.2, the CEO and the staff that he or she hires shall be the employees of Clemson and shall be subject to applicable Clemson rules, regulations, policies and procedures and applicable State and federal law. Clemson and the CUF Board of Directors shall, respectively, have the ability to terminate the employment of the CEO.

4.4.2. Nothing contained herein shall be interpreted to prevent or limit CUF's ability to engage, hire, or employ independently employees, representatives, or independent contractors and provide reasonable compensation or fees for services rendered.

Section 4.5. Compensation Support.

4.5.1. Any binding commitment of CUF to provide compensation or similar financial support for the President or any other officer, employee, or independent contractor of Clemson, upon its direction, shall be subject to the additional approval of the Board of Directors of CUF, or its delegate, in its, his or her sole discretion, as the case may be, and subject to Section 2.6.

4.5.2. Except as provided in Section 4.4 in the case of the CEO, all other hiring decisions and decisions related to the on-going role and duties of any such employee shall be the responsibility of Clemson, as the primary employer. Clemson agrees that it shall use reasonable efforts to ensure such employees perform at the level appropriate for his or her aggregate compensation, including, if applicable, the performance of any services for the benefit of CUF in connection with the provision of such compensation or similar financial support.

4.5.3. In the event that CUF provides any compensation or other similar financial support to the President of Clemson, the terms of such engagement shall be memorialized in writing.

Section 4.6. Accreditation. The Parties agree to work together to comply with the principles of institutional control and other regulations of the Southern Association of Colleges and Schools (or other equivalent body or association that may provide accreditation or similar rating standards upon Clemson, and to which Clemson is subject) applicable to the accreditation of Clemson ("***SACS Accreditation Standards***"). In the event that any provision of this Agreement violates the SACS Accreditation Standards, such provision of this Agreement shall be automatically reformed and construed so as to be valid, operative, and compliant with SACS Accreditation Standards while preserving its original intent to the maximum extent possible.

Section 4.7. Clemson Alumni Association. CUF agrees that the operations and finances of the going-concern known as the "***Clemson Alumni Association***," which are under the direction of CUF, shall comply with all terms and provisions applicable to CUF under this Agreement. CUF agrees that prior to CUF's transfer of any operations and finances of the going concern known as the Clemson Alumni Association to any separately incorporated or organized entity or legal person, CUF shall require such entity or legal person to enter into an agreement with Clemson consistent with the SACS Accreditation Standards.

ARTICLE V

LIMITATION OF LIABILITY

Section 5.1. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE CONTRACTUAL RELATIONSHIPS ESTABLISHED, ACTIVITIES, RESPONSIBILITIES, AND SERVICES

CONTEMPLATED HEREUNDER, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE, LOSS OF THE BENEFITS OF USE, OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. UNDER NO CIRCUMSTANCE SHALL CUF BE LIABLE TO CLEMSON WITH REGARD TO THE PERFORMANCE OF ANY INVESTMENT OF AMOUNTS HELD IN ANY ACCOUNT, ENDOWMENT, QUASI-ENDOWMENT, ANY RESERVE FUND, TRUST, OR PURSUANT TO ANY FUND OR PLEDGE AGREEMENT.

ARTICLE VI

CONFIDENTIALITY

Section 6.1. General. As used in this Agreement, the term “*Confidential Information*” shall include (i) any communications as described in Article VII and all related materials, including any Written Request and CUF Response (as defined in Article VII), which shall be deemed privileged and confidential under renewed contract negotiations, but not including any Trustee Solution, and (ii) all other information, plans, agreements, ideas, and financial information in connection with any donor information, for which the donor has requested or been promised anonymity by CUF or Clemson, (iii) all planned giving and major gift strategies and development of either Party, which is hereby agreed to be the trade secrets of each Party, respectively, and (iv) the economic development activities and contract negotiations of CUF on behalf of Clemson, and which is disclosed by one Party (the “*Disclosing Party*”) to the other Party (the “*Receiving Party*”) or its respective affiliates, directors, officers, trustees, employees, agents, controlling persons, attorneys, accountants other than any information that (i) is or becomes generally available to the public, other than as a result of a disclosure by a Receiving Party; (ii) becomes available to the Receiving Party on a non-confidential basis from a source not prohibited from disclosing such information; (iii) a Receiving Party develops independently of any disclosure by the Disclosing Party; (iv) was in the Receiving Party’s possession or known to the Receiving Party prior to disclosure by the Disclosing Party, as demonstrated by reliable evidence; or (v) is disclosed pursuant to any judicial or government request, requirement, or order, provided that the Receiving Party makes a reasonable attempt to provide the Disclosing Party with any available opportunity to contest such request, requirement, or order; provided that the Receiving Party has complied with Section 6.2 below.

The Receiving Party agrees to hold all Confidential Information, however and whenever communicated, strictly confidential and secret except as (i) explicitly permitted pursuant to this Section 6.1, (ii) explicitly permitted by the Disclosing Party in the form of written consent by an officer of that entity, or (iii) may be required by judicial process or applicable law. The Parties shall take all reasonable, necessary, and appropriate steps to restrict disclosure of all such Confidential Information to only those of its affiliates, directors, officers, trustees, employees, agents, controlling persons, attorneys, accountants, or other representatives who are directly involved in such discussions or who have a need to review and assess the Confidential Information. The obligation to maintain the confidentiality and secrecy of the Confidential Information shall continue following the termination of this Agreement.

Section 6.2. Legal Process. If either Party shall receive a request to disclose all or any part of the Confidential Information under the terms of the subpoena, legal process, civil investigative demand, or other order issued by a court of competent jurisdiction or by a government agency ("***Legal Process***"), the Party receiving the Legal Process shall: (i) promptly notify the other Party of the existence, terms, and circumstances surrounding the request; (ii) cooperate with the other Party in its efforts to obtain an order prohibiting or limiting the disclosure or reasonable assurance that confidential treatment will be accorded to that portion of the Confidential Information disclosed; and (iii) if disclosure of the Confidential Information is ultimately required, furnish only such portion of the Confidential Information as the Party shall be ordered to disclose. The Party seeking to oppose or limit the Legal Process shall bear all costs of such efforts, including reasonable attorneys' fees.

Section 6.3. South Carolina Freedom of Information Act. Notwithstanding anything to the contrary contained herein, it is expressly understood that no provision in this Agreement with regard to Confidential Information shall restrict or limit the obligation of either Party to comply with Title 30, Chapter 4 of the Code of Laws of South Carolina, also known as the South Carolina Freedom of Information Act, as amended from time to time, and any accompanying regulations, as may be applicable.

ARTICLE VII

WORKING RELATIONSHIP AND COOPERATION

Section 7.1. Promotion of a High Level of Communication and Cooperation between the Parties.

7.1.1 **Informal Discussions.** The Parties recognize that, from time to time, differences of perspective may arise with regard to the collaboration and working relationship described in this Agreement. Under such circumstances, the Parties agree that they will engage in informal discussions in good faith to reach an amicable solution. The President of Clemson and the Chair of the Board of Directors of CUF or their respective delegates shall use best efforts to reach such a solution.

7.1.2 **Written Request and Response.** In the event that such discussions do not produce a solution, the President of Clemson may provide to CUF and the Board of Trustees of Clemson a written request for assistance of the Board of Trustees of Clemson in reaching a mutually agreeable solution, and such request will describe in adequate detail the assistance sought ("***Written Request***"). Within a reasonable period of time following receipt of the Written Request, the CUF Board of Directors shall respond in writing to the President of Clemson and the Board of Trustees of Clemson ("***CUF Response***").

7.1.3 **Trustee Solution.** Thereafter, the Chairman of the Board of Trustees of Clemson shall schedule a meeting for the President and the CUF Board of Directors to meet with the Clemson Board of Trustees, whereby representatives of the CUF Board of Directors shall present the position of CUF directly to the Board of Trustees of Clemson. The Parties agree that they

shall follow and abide by any solution approved by the Board of Trustees of Clemson (“*Trustee Solution*”). To the extent possible and practicable, the Board of Trustees of Clemson shall present the reasoning behind such Trustee Solution in writing.

Section 7.2. Direct Trustee Guidance. In the event that the request of direction pursuant to Section 2.6.1 is presented to CUF directly by the Board of Trustees of Clemson and the CUF Board of Directors desires, the CUF Board of Directors may elect to present its position directly to the Board of Trustees of Clemson. The Chairman of the Board of Trustees of Clemson shall schedule a meeting of the Board of Trustees of Clemson, whereby representatives of the CUF Board of Directors shall present the position of CUF directly to the Board of Trustees of Clemson. The Board of Trustees shall respond following such presentation in the form of a Trustee Solution.

Section 7.3. CUF Presentation to Clemson Trustees. The meetings with the Board of Trustees of Clemson described in Section 7.1.3 and 7.2 shall occur at the next regular or special meeting of the Board of Trustees of Clemson with a quorum of the Board of Trustees of Clemson present in person and not by proxy. The right of CUF to present its position directly to the Board of Trustees of Clemson is intended to provide the Clemson Board of Trustees access to the experience and expertise of CUF and its Board of Directors with regard to the services they provide to Clemson.

Section 7.4. Intended Perpetuity of Relationship. In recognition of the intent of the Parties to maintain this affiliated relationship in perpetuity and to the extent permitted by applicable law, the proceedings and presentations before the Board of Trustees of Clemson as described herein, the Written Request and the CUF Response shall be deemed Confidential Information as described in Section 6.1 and shall be considered as on-going contractual negotiations between the Parties. The Trustee Solution shall not be treated as Confidential Information.

ARTICLE VIII

TERM, TERMINATION, AND MATERIAL BREACH

Section 8.1. Term. This Agreement shall commence upon the Effective Date and continue for a term of ten (10) years commencing on the next July 1. This Agreement shall thereafter automatically renew for additional periods of ten (10) years unless otherwise terminated prior to the conclusion of the term or the then-current renewal period as provided below.

Section 8.2. Termination. This Agreement may be terminated effective on June 30 at the conclusion of the then-current term or renewal period, as the case may be, by one Party providing notice of intent to terminate this Agreement to the other Party at least sixty (60) calendar days, but no sooner than one hundred twenty (120) calendar days, prior to June 30 of the final year of the term or renewal period.

Section 8.3. Survival. Notwithstanding Section 8.2, the rights and obligations of the Parties described in Articles V, VI, VII, and IX and this Section 8.3 shall survive the termination of this Agreement to the fullest extent permitted by State and federal law. Additionally, in the event of termination of this Agreement, those provisions that relate to management and disbursement of all private gifts and net gift income received by CUF prior to the termination of this Agreement (whether received before or after the Effective Date) shall survive such termination, including without limitation Section 2.6 and Article VII; and, for the purposes of clarity, such funds arising from all private gifts and net gift income received by CUF prior to the termination of this Agreement shall continue to be subject to any restrictions imposed by any donor or grant-maker (if any), and shall be expended exclusively for the benefit of Clemson, its programs, mission, and, as determined by Clemson in its sole discretion, affiliates and beneficiaries.

Section 8.4. Material Breach. In the event a Party materially breaches any material term of this Agreement, it agrees to work, in good faith, to correct such material breach within a reasonable period of time following written notice from the other Party. In the event that the Parties pursue a Trustee Solution as a result of or related to a material breach or allegation thereof, a decision of the Board of Trustees of Clemson with regard to any material breach by a Party or allegation thereof shall be final and binding and may include specific performance or a plan of reasonable corrective measures by the breaching Party.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, postage prepaid, return receipt requested, or given when dispatched by facsimile transmission, electronic mail (with confirmation of receipt requested and received) or by personal delivery addressed as follows:

If to Clemson:

Clemson University
207 Sikes Hall
Clemson, South Carolina 29634
Attention: General Counsel
Telephone: (864) 656-3414
Facsimile: (864) 656-7739
Email: chip@clemson.edu

If to CUF:

Clemson University Foundation
155 Old Greenville Highway, Suite 105
Clemson, SC 29631
Attention: President & Chief Executive Officer
Telephone: 864.656.0844
Facsimile: 864.656.1692

With a courtesy copy to:

Clemson University Foundation
155 Old Greenville Highway, Suite 105
Clemson, SC 29631
Attention: Chair of the Board of Directors
Telephone: 864.656.0844
Facsimile: 864.656.1692

Receipt of notices, certificates, or other communications hereunder shall occur upon actual delivery and receipt by any means available (whether by mail (certified and uncertified), facsimile transmission, electronic mail, messenger, or courier service) to, in the case of Clemson, to the General Counsel of Clemson at the address of Clemson University as set forth above, and in the case of CUF, to the CEO or the Chief Financial Officer of CUF (with a courtesy copy delivered to the attention of the Chair of the Board of Directors of CUF) at the address of CUF as set forth above, subject to change as provided herein. Either Party may, by notice given to the other Party, designate any additional or different addresses to which subsequent notices or other communications shall be sent.

Section 9.2. Construction and Binding Effect. This Agreement constitutes the entire agreement of the Parties and supersedes any prior agreements. This Agreement shall inure to the benefit of and shall be binding upon the Parties, and their respective successors and permitted assigns.

Section 9.3. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be automatically reformed and construed so as to be valid, legal, operative, and enforceable to the maximum extent permitted by applicable law while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

Section 9.4. Amendment, Changes, and Modifications. This Agreement may be amended, changed, modified, or altered only by an instrument in writing executed by both Parties.

Section 9.5. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.6. Law Governing Construction of this Agreement. This Agreement is prepared and entered into with the intention that the law of the State, exclusive of such State's rules governing choice of law, shall govern its construction.

Section 9.7. Language Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Section 9.8. Assignment. Neither Party shall assign or transfer its interest in this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, and any such attempted assignment or transfer shall be void and of no force or effect.

Section 9.9. Waiver. Failure by either Party to insist upon strict performance of any provision herein by the other Party shall not be deemed a waiver by such Party of its rights or remedies or a waiver by it of any subsequent default by such other Party, and no waiver shall be effective unless it is in writing and duly executed by the Party entitled to enforce the provision being waived.

Section 9.10. Headings for Convenience. The headings used herein are inserted for convenience only and do not describe, interpret, define or limit the scope, extent or intent of this Agreement.

Section 9.11. Incorporation of Recitals. The recitals or "Whereas" clauses set forth above are incorporated into and made a part of this Agreement.

Section 9.12. Relationship of the Parties. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the Parties, and each of the Parties is an independent contractor to the other Party in all matters connected herewith.

Section 9.13. Compliance with Laws. During the term and each renewal period of this Agreement, each Party shall promptly comply, at its own cost and expense, in every material respect with all laws, ordinances, rules, regulations and requirements of all federal, State, and local governmental authorities that are applicable to the activities or services pursuant to this Agreement.

Section 9.14. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the activities, responsibilities, and services described herein and supersedes any and all prior or contemporaneous oral or written communications with respect to the subject matter hereof, including but not limited to the Prior Affiliation Agreement. Additionally, for clarity, this Agreement shall not replace that certain Memorandum of Understanding by and between the Parties dated July 11, 2003, as may be amended from time to time. No employee, agent, or other representative of either Party has any authority to bind the other Party with regard to any statement, representation, warranty, or other

expression unless the same is specifically set forth or incorporated by reference herein. It is expressly understood and agreed that, there being no expectation to the contrary between the Parties, no usage of trade or other regular practice or method of dealing between the Parties shall be used to modify, interpret, supplement or alter in any manner the express terms of this Agreement or any part hereof. The Parties agree that this Agreement is the product of negotiations among the Parties and that this Agreement was mutually drafted by the Parties.

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The Parties hereto have caused this **AMENDED & RESTATED AFFILIATION AGREEMENT** to be effective in their respective names and on their respective behalves by their respective duly authorized officers as of the Effective Date.


CLEMSON UNIVERSITY

CLEMSON UNIVERSITY FOUNDATION

By: 
James F. Barker

Its: President

Date: 7/19/13

By: 
Harrison F. Trammell

Its: President

Date: 7/19/2013

By: 
David H. Wilkins

Its: Chairman of the Board of Trustees

Date: 7/19/13

By: 
Goz G. Segars

Its: Chair of the Board of Directors

Date: 7/19/13