AFFILIATION AGREEMENT
between
The University of South Carolina Upstate
and
The University of South Carolina Upstate Foundation, Inc.

THIS AGREEMENT (the “Agreement”) is entered into as of this 20th day of December 2010 by and between the University of South Carolina Upstate (herein called the “University”), and the University of South Carolina Upstate Foundation, Inc. (the “Foundation”).

PREAMBLE

The Foundation was organized and incorporated February 27, 1973 as the Carolina Piedmont Foundation. The change to its current name occurred on June 25, 2009.

The Foundation is an independent entity existing separate and apart from the University, and was organized, and exists, to obtain and manage private resources supporting the mission and priorities of the University of South Carolina Upstate and to provide opportunities for the University and a margin of excellence that is not, or may not, be available through state funds. The Foundation is 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 its articles of incorporation, the Foundation is a not-for-profit organization separately incorporated under Section 501(c)(3) of the Internal Revenue Code and is 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 Upstate. In connection with its asset management activities, the Foundation retains personnel experienced in managing such assets, and 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 Foundation is entitled to use the respective name of University of South Carolina Upstate Foundation, Inc.
The Foundation will operate under the seal and logotype of the Foundation in the promotion of its business and activities.

THE FOUNDATION’S RELATIONSHIP TO THE UNIVERSITY
The Foundation is a 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. The Foundation has, and shall continue to have, its own duly elected and appointed, independent Board of Directors. The Foundation Board of Directors shall be responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

The Foundation is an independent entity, existing separate and apart from the University, having its own Board of Directors, Officers, and Bylaws.

The Foundation is responsible for the performance and oversight of all aspects of its operations based on its comprehensive Bylaws that address fiduciary responsibilities and duties, including expectations of individual officers, directors, and members based upon ethical guidelines and policies.

Upon request by the University’s Board of Trustees, and approval by the Foundation’s Board of Directors, the Foundation may designate a portion of its unrestricted funds for salary supplements for the Chancellor. Other funds may be requested for reasonable expenses for the Chancellor. The Foundation will either transfer those funds to the University in compliance with state law, Foundation policies and University policies, or reimburse appropriate expenditures. These expenditures will comply with the provisions of the Internal Revenue Service Code and be consistent with the Foundations’ 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 Chancellor is responsible for communicating to the Foundation the University's priorities and long-term plans and goals as approved by the administration of the University.

The University recognizes that the Foundation is a private, independent corporation with the authority to keep all records and data confidential consistent with applicable law.

To facilitate and enhance communication between the University and the Foundation, the Chair of the Spartanburg County Commission for Higher Education and the Chancellor of the University will be ex officio (non-voting) members of the Foundation's Board of Directors.

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

The University shall include the Foundation 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 Foundation to be kept currently informed of such planning.

The University shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records to the extent allowed by applicable law.

FOUNDATION RESPONSIBILITIES

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

The Foundation will establish, adhere to, and periodically assess their gift-management and acceptance policies. It will work with the Office of University Development to promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts.
The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation’s Board of Directors and the governmental agency.

The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

**ASSET MANAGEMENT**

The Foundation 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 its policies and procedures, the Foundation 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.

The 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 Foundation 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. The Foundation also may hold licensing agreements and other forms of intellectual property, borrow funds, or guarantee debt incurred by the University, or engage in other activities to increase the Foundation’s revenue.

When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal requirements regarding the gift. The University will abide by such restrictions and provide appropriate documentation.
TRANSFER OF FUNDS

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

The Foundation's 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 law or IRS regulations.

FOUNDATION FUNDING AND ADMINISTRATION

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

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

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

The Foundation will provide access to data and records to the University in accordance with applicable laws and Foundation policies. The Foundation will provide, in a timely manner, copies of its 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 Foundation.

To ensure effective achievement of the terms of this Agreement, the respective officers and board representatives of the University and Foundation 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 respective officers and board representatives of the University and Foundation shall meet once every five (5) years to review the terms of this Agreement.

TERMINATION OF AGREEMENT

Either party may, without cause, terminate this Agreement upon ninety (90) days written notice to the other in the manner herein provided. In the event of such termination, each party will pay to the other all indebtedness due the other within two hundred ten (210) days following the effective date of the notice of termination which 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. Additionally, each party will remain obligated for the full performance of any other agreements or agreement existing between the parties.

- If either party fails to substantially perform its duties and obligations hereunder for a period of thirty (30) days after receiving written notice of such failure or default from the other specifying the failure or default complained of, this Agreement shall terminate at the option of the non-defaulting party. In the event of such termination, and just as provided for above with respect to termination without cause, each party will pay to the other all indebtedness due the other within two hundred ten (210) days following the effective date of the notice of termination, which 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. 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 Foundation's Bylaws and Articles of Incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation 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 applicable 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 Upstate:

 University of South Carolina Upstate
 Attn: 
 Title: 

Mailing and Personal Delivery Address:

University of South Carolina Upstate
800 University Way
Spartanburg, SC 29303

To The University of South Carolina Upstate Foundation:

The University of South Carolina Upstate Foundation, Inc.
Attn: Executive Director
800 University Way
Spartanburg, SC 29303
WAIVER

One or more waivers of any breach of any covenant, term or condition of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party or of any act by the other party 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 the 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 hereofore provided. The Agreement is governed by South Carolina law and enforceable only in the state courts of South Carolina.

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:

[Signatures]

UNIVERSITY OF SOUTH CAROLINA
UPSTATE

By:

Dr. John S. Stockwell

Its: Chancellor
Witnesses:

Lynn C. Young

Thomas L. Stepp
Secretary
USC Board of Trustees

UNIVERSITY OF SOUTH CAROLINA
UPSTATE FOUNDATION, INC.

By: Michael E. Irvin
Its: Executive Director