

MEMORANDUM OF UNDERSTANDING

Lowcountry Graduate Center

1.0 ESTABLISHMENT OF CONSORTIUM

This Memorandum of Understanding ("Memorandum") is entered into as of this 30th day of January 2017 ("Effective Date") and establishes a Consortium between the College of Charleston ("College"), The Citadel ("The Citadel"), and the Medical University of South Carolina ("MUSC"), all of which are state-assisted institutions of higher education established and existing under the laws of South Carolina ("the Universities"). Under the terms of this Memorandum, the Universities have entered into a Consortium to provide continued direction in the operation and activities of their joint undertaking known as the Lowcountry Graduate Center ("LGC").

2.0 RELATION TO PREVIOUS AGREEMENTS

All previous written agreements regarding the LGC as a Consortium expired on or prior to September 30, 2016. The current Memorandum exists separately and apart from those previous expired agreements, which have no bearing on the LGC and the Consortium as described herein. Employment, cost sharing, and other contractual or economic arrangements entered into under prior and expired agreements shall be concluded or modified, as appropriate, to ensure the objectives of the current Memorandum are met, following a period of transition, with all transitory arrangements to be concluded no later than December 31, 2017.

3.0 PURPOSE AND OBJECTIVES

The purpose of the LGC is to expand opportunities for affordable, public graduate education in the Lowcountry of South Carolina, as provided by the Universities. Such new opportunities for graduate education will address and help to meet the economic, business development, and social needs of the Lowcountry. To this end, the LGC shall have three objectives:

- (a) To produce an annual report on the state of graduate education in the Lowcountry, to include a current audit of existing public and private graduate programs offered in part or in whole in Charleston, Berkeley, and Dorchester counties, exclusive of graduate programs offered entirely at a distance, and with some review of alleged or actual shortcomings of graduate offerings in the Lowcountry;
- (b) To secure access to high-quality and technologically advanced graduate instructional space for the support of approved graduate programs offered by the Universities, along with facilities for the support of graduate students and university faculty and staff, as appropriate, with a strong preference for the provision of these spaces in the Charleston, Berkeley, or Dorchester County, South Carolina; and

- (c) To provide short-term start-up funding support for new or substantially revised and expanded graduate programs, where a need for these programs in the Lowcountry is identified, and without regard to the optimal mode of delivery or the location of the delivery proposed for the new or revised graduate program.

The LGC shall be operated to minimize operational overhead expenses and to devote the maximum possible financial support to the LGC Purpose and Objectives, as stated herein.

4.0 RELATIONSHIP OF PARTIES

At all times under this Memorandum, the Universities shall be considered independent parties. Nothing contained herein, nor any course of action or failure to act, shall be construed to create a partnership, joint venture, common business association, or any other similar entity; nor shall any such action or failure to act be deemed to create an employer-employee, agent-servant, or representative relationship between the Universities.

5.0 ORGANIZATION

The LGC shall operate as an academic center of the College of Charleston, unless otherwise directed by the South Carolina General Assembly.

5.1 Establishment. Subject to the terms and conditions contained herein, the Universities hereby agree to act by and through a non-profit Consortium solely for the Purpose and Objectives described in Section 3.0. The Consortium shall provide specific direction for the supervision and management of the LGC. The Consortium shall not be regarded as, nor held out by any University to be, a separate or affiliated legal entity, a state agency or instrumentality, or anything other than a voluntary association of Universities that share a common interest to further the Purpose and Objectives stated in Section 3.0.

5.2 Supervisory Council. The powers of the Consortium shall be exercised by and through a Supervisory Council (the "Council" or "Supervisory Council"), consisting of the Provosts (or their designees) from the Universities. The parliamentary authority of the Supervisory Council shall be the most recent edition of *Robert's Rules of Order Newly Revised*, except that, in the event of a conflict between this Memorandum of Understanding and the parliamentary authority, the provisions of the Memorandum of Understanding shall prevail.

5.3 Powers of the Council. The Council is empowered to:

- (a) Recommend the proposed budget or budget adjustments of the LGC, request and receive current statements of the LGC Account, and authorize and recommend the expenditure of LGC funds to accomplish the stated goals of this Memorandum;
- (b) Advise the management of the College regarding the desired annual activities of the LGC Director, the optimal position description of the LGC Director, the annual

evaluations of the LGC Director, and such other attributes of the work of the LGC Director as are essential to the success of the LGC;

- (c) Approve annually or at some other regular interval the agreement by which any instructional or support space is procured, including the total cost associated with the acquisition and everyday operation of those spaces, consistent with Section 3.0;
- (d) Approve the allocation of any start-up funds to be used for the establishment of new or substantially revised graduate programs of one or more of the Universities, consistent with Section 3.0;
- (e) Approve applications for appropriately accredited graduate programs to be offered by one or more of the Universities in the instructional space procured by the LGC;
- (f) Approve LGC reports intended for distribution external to the LGC;
- (g) Receive such reports from the LGC Director as the Council, or any member thereof, may believe appropriate to monitor the financial condition of the LGC and its adherence to the approved budget;
- (h) Review assessment reports and such other documents as the College may require the LGC to prepare in the conduct of state or university business;
- (i) Authorize the operation of advisory committees and ad hoc committees to provide advice and assistance to the Supervisory Council and/or the LGC Director;
- (j) Request audits and authorize use of LGC funds for payment of same; and
- (k) Take such other actions as may be incident to any of the powers listed in this Section 5.3 or that may be necessary or appropriate to carry out the terms and conditions of this Agreement and the intent of the Universities.

5.4 Freedom of Information Act. Notwithstanding any other provisions of this Memorandum to the contrary, the Council shall exercise its powers in a manner that is fully consistent with the South Carolina Freedom of Information Act (S.C. Code Ann. § 30-4-10 *et seq.*), and Consortium records shall be made publicly available to the same nature and extent as if the Consortium and the Council were each considered a “public body” within the meaning of S.C. Code Ann. §30-4-20(a).

5.5 Limitations

- (a) Consortium. Without the expressed prior consent of one or more of the Universities, neither the LGC Director, nor anyone working on behalf of or for the Consortium, shall have the legal authority to act as an agent or representative of such University in

any capacity whatsoever including, but not limited to, representing to third parties that the Consortium has the authority to (1) legally bind that University; (2) incur any obligation on that University's behalf; (3) commit to the use of that University's resources; or (4) accept funds or other things of value to which that University is entitled.

- (b) Universities. No University or employee of a University shall take any action on its behalf or on behalf of the Consortium or the LGC that is inconsistent with this Memorandum, providing that, nothing included herein is intended to limit the ability of a University to manage its own internal operations and academic programs and activities in a manner deemed most appropriate by that University.

5.6 Actions of the Supervisory Council. All actions of the Supervisory Council shall be by majority vote, a quorum being present. A quorum shall consist of a majority of Council members. The Council may meet by telephone or by such other means of electronic communication that now exist or might exist in the future, providing that each member thereof can hear and communicate with all other members. All actions of the Council shall be taken by motion or by resolution.

5.7 Meetings of the Council. There will be at least two regular meetings of the Council during each year, with each regular meeting to be scheduled at least 60 days in advance of each such meeting. Any member of the Council may call a special meeting of the Council upon the provision of 10 days advance notice or such other advance notice as may be practical under the circumstances, provided that such notice states the purpose for the special meeting. Advance scheduling and meeting notification may be waived by unanimous consent of all members of the Council. All meetings of the Council shall be held at such times of day and at such places within the State of South Carolina as may be determined by the Chair of the Council.

5.8 Chair of the Council. The Council shall elect one of its members to serve as Chair of the Council. The term of service for the Chair shall be one year. No member shall serve as Chair of the Council for more than three consecutive terms. The Chair may exercise such authority as may be appropriate to the Office of Chair. Such other officers of the Council may be appointed as the Chair may subsequently determine. The Chair shall assure that Council minutes are timely prepared and submitted to the Council for approval and that an annual Consortium report is prepared for submission to the President (or the President's designee) for each of the Universities.

5.9 Director. The LGC Director is appointed by the College's Provost, subject to the review and determination of the President of the College of Charleston and following receipt of the advice and recommendations, if any, of the Supervisory Council and the Presidents of MUSC and The Citadel. The LGC Director is supervised by the College's Provost. The LGC Director is evaluated annually by the College's Provost, following receipt of the advice, if any, of the Supervisory Council. The Director shall be compensated by the College, consistent with the approved budget of the LGC. The Director shall be responsible for ensuring that the Purpose and Objectives described in Section 3.0 shall be achieved to the fullest extent possible, consistent with available

resources and conditions. LGC mission statements, vision statements, strategic plans, assessment plans and reports, and other administrative requirements shall be prepared by the LGC Director, in consultation with the Council as appropriate. The LGC Director shall operate the LGC in a way that creates the lowest possible overhead expenses, so that the financial resources of the LGC shall be directed and expended consistent with Section 3.0, to the fullest extent possible. The LGC Director shall devise appropriate work plans and LGC procedures consistent with Section 3.0, subject to the review and determination of the College's Provost, consistent with the other provisions of this Memorandum. The LGC Director shall seek to assure that the Consortium-approved graduate programs of the Universities (to include access for individual course offerings) have appropriate access to the instructional or support space procured for the use of the LGC.

6.0 NON-DUPLICATION OF EFFORT

In order to ensure that the LGC is being operated in the most efficient and effective way practicable, no graduate program shall be offered through the LGC or receive start-up financial support that is duplicative in a material way with a program already offered by one of the public Universities in the Charleston metropolitan area that is participating in the Consortium, unless such University consents in writing, with the final determination as to program duplication to be made by vote of the Supervisory Council.

7.0 FISCAL DUTIES OF THE COLLEGE

Until such time as otherwise directed by the South Carolina General Assembly, the College shall operate the LGC as an academic Center of the College, with LGC funds to be received and disbursed in a financially responsible and reasonable way. The College shall be responsible for the following:

- (a) Receiving and disbursing appropriated funds on behalf of the LGC in accordance with law and the approved budget of the LGC;
- (b) Receiving budget recommendations from the Supervisory Council prior to the submission for approval of any recommended College of Charleston budget to the College of Charleston Board of Trustees;
- (c) Employing the Director and other staff assigned to the LGC, if any, pursuant to the College's own policies, practices, and procedures dealing with the employment of its personnel, and consistent with the approved LGC budget;
- (d) Maintaining funds appropriated for the use of the LGC in a separate internal account (the "LGC Account") and providing for an accounting of all such funds in accordance with such statements and principles of the Government Accounting Standards Board as may be applicable to the College's financial operations; and

- (e) Providing for the separate audit of the LGC Account at any time, following the receipt of an audit request by the Supervisory Council, the South Carolina Commission on Higher Education, or the President of any of the Universities, with the funds to support the completion of the audit to be deducted from those funds budgeted for the operational support of the LGC.

Separate from and in addition to the provisions of Section 7.0(e), the LGC Account shall be subject to audit and review by The Citadel or MUSC, at that University's sole expense, at such reasonable times as may be agreed to between the College and the University requesting such an audit and review.

8.0 DEDUCTIONS FROM THE LGC ACCOUNT

Notwithstanding any other provision of this Memorandum to the contrary, the College is hereby authorized, to the extent permitted by appropriations acts and other provisions of law, to deduct and retain from the LGC Account the amount of expenses it has incurred, in accordance with the approved LGC budget, or consistent with the start-up funds allocated from the LGC Account by the Supervisory Council to a graduate program being developed or substantially revised by the College. Further, the College is hereby authorized, to the extent permitted by appropriations acts and other provisions of law, to deduct from the LGC Account and pay to The Citadel or MUSC the amount of reasonable expenses that each respective University has incurred, in accordance with the approved LGC budget, or consistent with the start-up funds allocated from the LGC Account by the Supervisory Council to a graduate program being developed or substantially revised by one of those Universities. The College is further authorized to deduct such expenses as are reasonably incurred in the operation of the LGC Consortium, pursuant to those goals and duties as are referenced elsewhere in this Memorandum.

9.0 PUBLIC RELATIONS AND ADVERTISING

All public relations, advertising, or publicity activities and announcements about the existence or the subject matter of this Memorandum or the LGC, including representations made on websites maintained by any of the Universities, shall be subject to the prior written approval of the three Universities. Each University agrees not to engage in any such activity or make any such announcement without the prior written consent of the other Universities.

10.0 INSURANCE

Each University warrants that it has obtained general liability and other appropriate insurance through the South Carolina Insurance Reserve Fund or other authorized provider, with minimum limits of \$1,000,000.00/\$2,000,000.00, or such other amounts as are required by law.

11.0 TERMINATION OF MEMORANDUM

11.1 Terminations. This Memorandum shall be deemed terminated in its entirety upon the occurrence of any one or more of the following events: (a) upon lawful direction from the South Carolina General Assembly; (b) upon the expiration of the term of performance specified in this Memorandum; (3) upon the mutual agreement of the Universities as evidenced by a fully executed rescission agreement. Further, a University may withdraw from this memorandum and from participation in the Consortium and the LGC at any time and for any reason or no reason, provided that such University provides the other Universities at least 90 days prior written notice of such withdrawal.

11.2 Remedies Upon Termination. In the event of a termination of this Memorandum for any reason, the terminating University, if providing programs or courses of instruction through instructional space procured by the LGC, shall complete to the extent of their legal ability to do so the semester during which the notice of termination is provided.

12.0 EXTENT OF MEMORANDUM AND MODIFICATIONS

This Memorandum represents the entire and integrated Memorandum of Understanding between the Universities and supersedes all prior negotiations, representations or agreements, either written or oral. No representations were made or relied upon by any Party other than those expressly set forth herein. No agent, employee, or representative of a University is empowered to alter or modify any of the terms in this Memorandum unless such alteration or modification is done in writing and signed by the signatories below, or their successors.

13.0 NOTICES

13.1 Representatives. All notices, designations and other communications contemplated under this Memorandum shall be in writing and shall be either personally delivered or transmitted by certified mail, facsimile transmission, or other device reasonably calculated to effect delivery of documents within three (3) calendar days. Unless otherwise agreed to in writing by the Universities, such notices, designations, and communications shall be sent to the Universities at the addresses noted below:

If to the College of Charleston:

Name: Brian R. McGee
Provost and Executive Vice President for Academic Affairs

Address: College of Charleston
66 George Street
Charleston, South Carolina 29424

If to the Medical University of South Carolina:

Name: Lisa Saladin
Interim Vice President for Academic Affairs and Provost

Address: Room 213, Colcock Hall
179 Ashley Ave.
Charleston, South Carolina 29425

If to The Citadel:

Name: Constance LeDoux Book
Provost and Dean of the College

Address: 171 Moultrie Street
Charleston, South Carolina 29409

13.2 Authority. Each Provost of a University shall administer and interpret this Memorandum on behalf of her or his respective institution. The Presidents of the Universities shall be the only individuals authorized to modify this Memorandum by amendment or otherwise.

14.0 CAPTIONS

The captions or headings in this Memorandum are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Sections hereof.

15.0 WAIVERS

Any waiver by a University to any term or condition of this Memorandum by another University shall not affect or impair the waiving University's right with respect to any subsequent act or omission of the same type, nor shall it be deemed to waive any other right under this Memorandum; nor shall any delay or omission of a University to exercise any right arising under this Memorandum affect or impair such University's rights as to the same or any future delay or omission; nor shall the failure of a University under this Memorandum to require or exact full and complete compliance with any one or more of the provisions of this Memorandum be construed as in any manner changing such provision or provisions.

16.0 SEVERABILITY

If any provision of this Memorandum, or any covenant, obligation or agreement contained herein, is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant obligations or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed

to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

17.0 NO THIRD PARTY BENEFICIARIES

Nothing contained herein is intended by the Universities to convey or vest any legal right or entitlement in a third party to enforce a term or condition of this Memorandum or to seek any remedy for a violation of any such term or condition.

18.0 TERM

Performance under this Memorandum shall begin on the Effective Date and unless earlier terminated in accordance with Section 11.0, or extended by mutual agreement with Section 13.0, end at the close of business on June 30, 2020, or on the first day of the Fiscal Year in which the approved Budget of the State of South Carolina shall include no funding for the LGC or shall have removed that funding from the budget of the College of Charleston and assigned it to some other agency or instrumentality of the State, whichever is earlier.

19.0 GOVERNING LAW

This Memorandum shall be interpreted, controlled, and enforced in accordance with the substantive laws of South Carolina.

IN WITNESS WHEREOF, the Universities have executed this Memorandum of Understanding on the date indicated below their respective signatures.

COLLEGE OF CHARLESTON

By: 

Printed Name: GLENN F. MCCONNELL

Title: President

Date: 1/30/2017

THE CITADEL

By: 

Printed Name: JOHN W. ROSA

Title: President

Date: 1/30/2017

MEDICAL UNIVERSITY OF SOUTH CAROLINA

By: _____

Printed Name: DAVID J. COLE

Title: President

Date: _____

IN WITNESS WHEREOF, the Universities have executed this Memorandum of Understanding on the date indicated below their respective signatures.

COLLEGE OF CHARLESTON

By: Glenn F. McConnell

Printed Name: GLENN F. MCCONNELL

Title: President

Date: 1/30/2017

THE CITADEL

By: _____

Printed Name: JOHN W. ROSA

Title: President

Date: _____

MEDICAL UNIVERSITY OF SOUTH CAROLINA

By: David J. Cole

Printed Name: DAVID J. COLE

Title: President

Date: 1/26/17

OFFICE OF THE
GENERAL COUNSEL
MUSC/MUHA
-APPROVED AS TO FORM-

BY: [Signature]

DATE: 1/19/17