

**AFFILIATION AGREEMENT
BETWEEN
UNIVERSITY OF MISSISSIPPI
AND THE
UNIVERSITY OF MISSISSIPPI FOUNDATION**

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between The University of Mississippi, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and The University of Mississippi Foundation, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated July 31, 1973, a copy of which is attached to this Agreement as Exhibit A;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c)(3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Foundation owns certain real property situated at 406 University Avenue, Oxford, Mississippi, referred to as “Brandt Memory House” including the attached “Carriage House.” The offices of the Foundation being located in this facility, which adjoins, but is not part of, the campus of the University;

WHEREAS, the University has an active fund-raising and development program and wishes to utilize office space, enhanced computer capabilities and assistance in the identification of donors, solicitation of donations, acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Foundation can provide;

WHEREAS, the University and the Foundation anticipate that the Foundation will provide the University with specified services and facilities in carrying out its mission; and

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. LEASE OF FACILITIES

1.1 The Foundation shall provide the University with approximately 11,500 square feet of office space in Brandt Memory House and Carriage House at the prevailing rate for comparable office space in Oxford, Mississippi, as well as parking privileges for University employees performing work on behalf of the Foundation or the University’s fund-raising activities. The rental fee charged the University for this office space shall include the cost of all utilities other than telephone service charges, which charges shall be paid separately by the University. The parties agree at this time that this charge will be \$16.10 per square foot for a total sum of \$185,000 per year. Future increases are anticipated to be based on approximate increases in market rates. The University agrees to maintain the leased premises, to include equipment provided by the Foundation, in reasonable repair. All additions and improvements made to the leased premises

which are not firmly affixed to a structure shall remain the property of the University and may be removed by the University at any time.

1.2 The Foundation shall permit the University to use Brandt Memory House for appropriate University functions consistent with the terms set forth in its Brandt Memory House Rental Agreement. A separate contract is to be executed for each official use of Brandt Memory House. The Foundation serves as host for many functions sponsored by the University and will continue to do so.

ARTICLE 2. UNIVERSITY PERSONNEL AND SERVICES

2.1 The Foundation may utilize, with the approval of the University Vice Chancellor for Finance, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the purposes of the Foundation.

2.2 The Foundation and the University agree that the portion of the cost incurred by utilizing University employees for Foundation operational activities shall be reimbursed annually by the Foundation to the University. The reimbursement shall be based on the percentage of time University employees devote to Foundation operations multiplied by the employee(s) annual compensation including benefit costs.

2.3 The Foundation shall reimburse the University for expenses the University incurs as a result of Foundation operations, if those expenses would not otherwise have been incurred by the University, specifically including telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

2.4 The University shall provide support services to the Foundation of the type provided to University departments on a cost reimbursement basis including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

2.5 The University shall provide Foundation employees staff identification cards, parking privileges, admittance to athletics and entertainment events, health services benefits and access to the University's library and to its recreation and fitness programs, at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.

2.6 The University designates the Foundation as the primary entity for receipting, acknowledging, accounting for and managing its funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors. The University and the Foundation agree that the annual sum of \$425,000 is a fair and appropriate amount for the University to pay to the Foundation for the performance of these services. Adjustments to this sum in future fiscal years are expected to be based on local cost of living adjustments, unless otherwise agreed to by the University Vice Chancellor for Finance and the Foundation CEO. The University shall also reimburse the Foundation for the cost of any donations received for items such as wire fees and credit card fees on gifts received.

2.7 The Chancellor of the University shall serve *ex officio* as a non-voting member of the Foundation's Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation's Board of Directors.

2.8 Annually, the Chancellor of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.

2.9 The Chancellor of the University shall submit a request to the Foundation for utilization of University unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, incorporate the University's request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University Chancellor and/or the University Director of Development (or equivalent position), shall routinely update key Foundation personnel on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fund raising needs and objectives.

2.10 The University's name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University's name or registered marks or logos to any person or entity without the written approval of the Chancellor of the University and the Director of the University's Licensing Program. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

2.10 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.

2.10 (b) An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Foundation.

2.10 (c) The designation of the Foundation as a University affiliated entity.

2.10 (d) Such other rights, privileges or benefits as the University Chancellor, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 3. FOUNDATION OBLIGATIONS

3.1 The Foundation's primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its charitable, scientific and educational purposes.

3.2 The Foundation, acting through its Board of Directors and staff, shall assist the University's Office of Development in its fund-raising activities and development programs with individuals, corporations, foundations, governmental and other external organizations.

3.3 The Foundation, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University's physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting funds

on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University's missions, goals and obligations.

3.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired. The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Foundation.

3.5 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 5 years.

3.6 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of the condition of the Entity, which shall include such detail as IHL may from time to time require. The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Foundation's annual financial statements, and the Foundation shall submit the audited financial statements,

along with a list of its officers, directors or trustees, to the Chancellor of the University and to IHL within five months following the completion of the Foundation's fiscal year or by October 15 of each year, whichever is earlier. The CPA firm to be utilized by the Foundation must be approved by the IHL, and the Foundation must request such approval not later than three months prior to the end of the Foundation's fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis.

3.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation.

3.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269, as amended.

3.9 The Foundation shall immediately deposit into the appropriate University account any funds which are sent to the Foundation but which are clearly intended to be funds designated for a University account. In such an instance, the Foundation shall issue, on behalf of the University, a University development receipt.

3.10 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation.

3.11 The Foundation CEO shall promptly notify the Chancellor of the University and the IHL, in writing, if any of the following events ("Reportable Events") occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or
6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of \$50,000 in any calendar year; The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

3.12 If requested by the University, the Foundation shall provide any and all information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the Chancellor of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the Chancellor and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the

circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 4. COMPLIANCE

4.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 5. INSURANCE

5.1 The Foundation shall maintain General Liability insurance providing insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

5.2 The Foundation shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property to insure against the loss of the real property and any improvements associated with the insured premises.

5.3 The Foundation shall provide for the bonding of its officers and employees and shall maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

5.4 The Foundation shall maintain Commercial Excess or Umbrella Coverage of \$4,000,000 in additional coverage in excess or over and above the basic coverage set forth above.

5.5 The Foundation shall maintain Worker's Compensation insurance, if required to so by applicable law, or such other insurance coverage as may be required by applicable law.

5.6 Although in some circumstances the Foundation or a Foundation employee may be considered a university employee under the statutory definition of "Employee" under the Mississippi Tort Claim Act ("MTCA"), the parties agree that any insurance coverage purchased by the Foundation shall not constitute a waiver of any protections provided by the MTCA to the University and shall not constitute "excess" insurance within the meaning of Miss. Code Ann. § 11-46-17(4) or be any waiver under the MTCA.

ARTICLE 6. REPORTING

6.1 The Foundation shall, each year during this Agreement, submit to the University Vice Chancellor for Administration and Finance and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 3.6 of this Agreement. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University's payroll system and with the Chancellor's approval. Understanding that no form of additional compensation may be underwritten for the University Chancellor or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the Chancellor or provided to the University for purposes of supplementing the Chancellor's salary.

6.2 In order to facilitate transparency, the Foundation shall also maintain on its website, for public and University inspection, a copy of this Agreement along with copies of the most recent

annual audited financial statements, Form 990, By-laws, Charter, listing of the members of its Board of Directors, its conflict of interest policy and its investment policy.

6.3 The Foundation CEO shall submit to the Chancellor of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the Chancellor of the University and the IHL, as required above. The Foundation CEO shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Foundation CEO will immediately notify, in writing, the Chancellor of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall expire on December 31, 2023, if not renewed by mutual consent of the parties before that date.

7.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

7.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes.

7.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University's name or registered marks or logos to any person or entity without the written approval of the Chancellor, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any

restricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University Chancellor; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

7.5 The Foundation agrees to cease using University's name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

7.6 The University and Foundation expect there to exist a cooperative relationship between them. In the event that the University Chancellor determines that such cooperation is not in place and is thus, in the Chancellor's view, detrimental to the well-being of the University, the Chancellor shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the Chancellor that it is in the best interest of the University to substitute new members of the Board of directors of the Foundation, the Chancellor may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the Chancellor, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the Ole Miss Athletics Foundation, (4) one member appointed by a majority vote of the Board of Directors of the University of Mississippi Alumni Association, and (5) one member appointed by a majority vote

of the then living members of the Barnard Society, or the then existing equivalent donor group with a lifetime giving of \$5 million or greater; however, such donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall during the ninety day period appoint, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Foundation.

7.7 In the unlikely event that the Commission, as described in 7.6 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation board members may be reelected by this Commission to serve.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Foundation is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

8.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.

8.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions. The parties further agree that although the Foundation may provide perquisites and

supplemental compensation to some University employees, the Foundation is doing so at the direction of the University under the Foundation affiliation agreement. The Foundation and the University agree that the Foundation is not the employer of any University employees and does not control, direct or supervise the work of any University employees.

8.5 The University and Foundation agree that the Foundation's donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Except as otherwise provided in Section 3.12 above, and unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

8.6 In the performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran's status. The Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

8.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body

of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

8.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

8.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.11 The Foundation's obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls (including, but not limited to, the University of Mississippi Foundation Realty, LLC), with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq., as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.

8.12 The University and the Foundation agree that it is intended for title to all personal property and contents purchased by the Foundation for the use of the University to be conveyed to the University at the time of delivery to the University. Therefore, the Foundation shall be under no duty to purchase property insurance coverage for personal property and contents which are purchased by the Foundation for the use of the University.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing and signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:

Jeffrey S. Vitter,
Chancellor
The University of Mississippi
Lyceum
University, MS 38677

To the Foundation:

Wendell W. Weakley,
President and CEO
The University of Mississippi Foundation
406 University Avenue
Oxford, MS 38655

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the Chancellor of the University and the President and Chief Executive Officer of the Foundation, respectively, execute this Agreement on this the 11 day of December, 2017.

THE UNIVERSITY OF MISSISSIPPI

By: 
Jeffery S. Vitter, Chancellor

THE UNIVERSITY OF MISSISSIPPI
FOUNDATION

By: 
Wendell W. Weakley, President and
Chief Executive Officer