

# AFFILIATION AGREEMENT

between

Lander University

and

The Lander Foundation

THIS AGREEMENT (the "Agreement") is entered into as of 9/10/19, 2019 by and between the Lander University, a South Carolina institution of higher learning (herein called the "University"), and The Lander Foundation, as South Carolina eleemosynary corporation (the "Foundation").

## PREAMBLE

The Foundation was organized and incorporated March 17, 1948.

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 and to provide opportunities for the University 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. The Foundation operates exclusively for the benefit of the University primarily to raise funds and to build and manage the endowment that generates revenue to advance the University's mission. The Foundation may acquire, hold, and manage real property, but primarily as investment assets comprising part of the endowment. 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 name of:

The Lander Foundation

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

## THE RELATIONSHIP OF THE FOUNDATION 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 the comprehensive Bylaws that addresses the Boards' fiduciary responsibilities and duties including expectations of individual officers, directors, and members based upon ethical guidelines and policies. The University is responsible for the employment, compensation and evaluation of all Foundation employees, including the Foundation's Executive Director. The Foundation's employees, including the Executive Director, may be State of South Carolina employees and may be paid by the University.

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 University's President and other executive leadership positions. Other funds may be requested for reasonable expenses for the President. The Foundation will either transfer those funds to the University in compliance with state and federal law, Foundation policies and University policies, or reimburse appropriate expenditures. The University's expenditures will comply with the provisions of the Internal Revenue Code and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's annual independent audits.

#### THE UNIVERSITY'S RELATIONSHIP TO THE FOUNDATION

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

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

To facilitate and enhance communication between the University and the Foundation, the Foundation Board shall consist of University designated members described in Art. II,

Sec. 1. of the By-Laws of the Lander Foundation (last amended August 23, 2018).

The Executive Director of the Foundation shall be included as a member of the University President'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.

#### 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 its gift acceptance and management policies. It will work with the Office of University Advancement 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 the state or federal agencies, except in special circumstances that are approved by the University Board of Trustees, the Foundation Board of Directors and the governmental agency.

The Foundation shall maintain 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, and as more specifically set forth in the article of incorporation of the Foundation, as amended.

The Foundation will build and manage the endowment prudently, with the objectives of 1) generating returns sufficient to meet the annual drawdown requested by the University without impairment of the corpus; 2) producing over the long term average annual returns that at least match those of a weighted market benchmark consisting of 70 percent equities and 30 percent fixed income; and 3) avoiding volatility in returns that is exceptionally greater than that of the market benchmark.

The Foundation will develop an Investment Policy Statement that lays out the investment strategy for the endowment, asset allocation guidelines, acceptable risk parameters, and the chosen endowment management model, as well as Investment Committee and staff responsibilities. The Directors of the Foundation shall periodically review the Investment Policy Statement and revise as needed to ensure that it is up to date respecting market developments and the University's needs.

The Foundation will use one or more external managers to invest the endowment. These will be selected based on criteria including their performance track records and experience, their fit with the foundation's investment strategy, their stability as a firm, and their fee structure. Each manager will be assigned an appropriate market benchmark, and its performance will be judged vis a vis that benchmark over a market cycle. The service of investment managers may be terminated for reasons including persistent underperformance relative to their benchmark, investment decisions inconsistent with their agreement with the Foundation, changes at the firm that pose business risk, and changes in the Foundation's investment strategy. The Investment Committee of the Foundation will have the primary responsibility for hiring and firing investment managers.

The staff of the Foundation is responsible for reporting to the Board of the Foundation and the University at least twice annually the recent and long-term total return of the endowment, consisting of the combined weighted return of each manager, and an analysis of each manager's performance. The report will show the total endowment performance relative to that of the overall weighted market benchmark and of a peer endowment universe. The Foundation may engage a consultant if needed to provide this independent report on the total endowment's comparative performance.

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

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. It 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(s) or legal determination of the gift. The University will abide by such restrictions, including confidentiality requirements, and provide documentation upon request by the Foundation.

#### 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 state or federal law, specifically including 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.

#### COORDINATION 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 University's and Foundation's officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

## PERIODIC REVIEW OF AGREEMENT

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

## TERMINATION OF AGREEMENT

Upon ninety (90) days written notice as herein provided, and without cause, (i) the University may terminate this Agreement with the Foundation, or (ii) the Foundation may terminate this Agreement with the University. In the event of such termination, and within two hundred ten (210) days from the effective date of the notice of termination, (i) the University will pay to the party or parties to whom it gave, or from whom it received, notice of termination all indebtedness due such party or parties, and (ii) such other party or other parties giving, or receiving, such notice of termination shall pay the University all indebtedness due.

The word "indebtedness" shall include, but is not limited to, any debt incurred on the other's behalf such as lease payments, advanced funds, and funds borrowed for specific initiatives for the benefit of the other party. Additionally, each party will remain obligated for the full performance of any other agreement or agreements existing between the parties.

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

## TRANSFER OF ASSETS

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

## NOTICE

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

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

To Lander University:

Lander University  
c/o Vice President of Business and Administration  
320 Stanley Ave.  
Greenwood, South Carolina 29649

To The Lander Foundation:

The Lander Foundation  
c/o Executive Director  
302 Hampton Ave.  
Greenwood, South Carolina 29646

with copy to:

Lander University  
c/o Vice President for University Advancement  
320 Stanley Ave.  
Greenwood, South Carolina 29646

#### ATTORNEY'S FEES

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

#### WAIVER

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

#### HEADINGS

The paragraph headings as to contents of particular paragraphs herein are inserted only for the 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

The 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

The 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

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

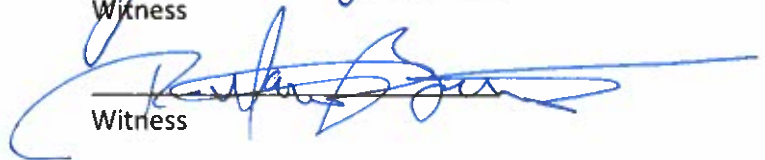
***[Remainder of page left intentionally blank. Signatures appear on the following page.]***

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.

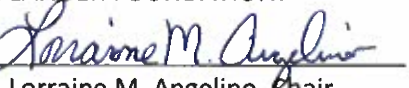
LANDER UNIVERSITY:

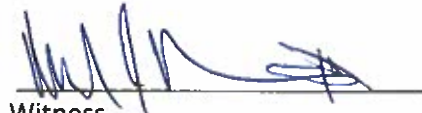
By:   
Linda Dolny Lister, Chair  
Board of Trustees

  
Witness

  
Witness

THE LANDER FOUNDATION:

By:   
Lorraine M. Angelino, Chair  
Board of Directors

  
Witness

  
Witness