

**Affiliation Agreement
between
University of Mississippi
and the
University of Mississippi Research Foundation**

This agreement is made and entered into this the 1st day of January, 2018 (the effective date) by and between UNIVERSITY OF MISSISSIPPI, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (hereinafter referred to as "UM"), and the UNIVERSITY OF MISSISSIPPI RESEARCH FOUNDATION, a corporation duly organized under the laws of the State of Mississippi (hereinafter referred to as "RF").

PREAMBLE

WHEREAS, RF has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986 for the purposes outlined in its Articles of Incorporation, a copy of which is attached to this agreement as Exhibit A;

WHEREAS, UM has the authority and right to enter into agreements with affiliated 501(c)(3), not-for-profit organizations with the approval of its governing board, the Board of Trustees for Institutions of Higher Learning for the State of Mississippi ("IHL");

WHEREAS, RF has the responsibility as a non-profit corporation to use its resources in a responsible and effective manner to further the research, academic, and service programs of UM and to support UM as outlined in its Articles of Incorporation;

WHEREAS, UM and RF anticipate that UM will provide RF with specified services and facilities with which to carry out its responsibilities in exchange for the development, commercialization, management, financial, and other service, support, and assistance RF shall provide UM; and

WHEREAS, UM and RF desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, UM and RF do hereby agree, as follows:

ARTICLE I. USE OF UM FACILITIES

1.1 UM grants to RF a license to use for RF's activities, physical space provided by UM as needed by RF and available from UM. Upon such time as RF may require space for its exclusive use, UM and RF shall enter a separate lease for such space or the parties shall amend the agreement accordingly.

1.2 This license shall include use of office and related space, maintenance, furniture, equipment and utilities for the leased space. UM agrees to maintain the premises, including equipment provided by UM, in reasonable repair. Maintenance of equipment purchased by RF will be the responsibility of RF. All additions and improvements made by RF to the premises which are not firmly affixed to a structure shall remain the property of RF and may be removed by RF at any time. UM may request RF to relocate at such time that licensed space is needed to fulfill the missions and programs of UM.

ARTICLE 2. PERSONNEL AND SERVICES

RF may utilize, with the approval of the Chancellor of UM, which approval shall not be unreasonably withheld, such UM administrative, professional, and other employees from time to time as are needed to carry out the purposes of RF as agreed by UM. RF may also recommend to the Chancellor changes in personnel, as necessary, for those University employees who perform work for or under the direction of RF Board or RF employees.

ARTICLE 3. RF OBLIGATIONS

3.1 RF acknowledges, covenants, and agrees that it may only use its resources for the express purpose of advancing UM's academic, educational, research, and service missions as outlined in its Articles of Incorporation.

3.2 During the term of this Agreement UM may assign to RF contractual rights resulting from UM's licensing of intellectual property owned or developed in whole or in part by UM or resulting from UM's related commercialization activities and efforts. These contractual rights may include income streams from or an equity position or ownership interest in other business entities or the right to receive income streams from or an equity position or ownership interest in other business entities (collectively "Equities"). RF further covenants and agrees upon UM's request to distribute according to UM's instructions any dividends or other income received as a result of owning Equities and any proceeds from the sale or transfer of any interest in any portion of the Equities.

3.3 At least thirty days before the end of each Fiscal Year during this Agreement, RF shall submit an annual budget for the forthcoming Fiscal Year to the Chancellor or the Chancellor's designee.

3.4 RF agrees to maintain its financial and accounting records separate from the records of UM and in accordance with generally accepted accounting principles. RF agrees to retain all books, accounts, reports, files and other records relating to this Agreement, the operation and management of RF or any funds contributed to, received by, expended by, or managed by RF, and to make such records available at all reasonable times for inspection and audit by the Chancellor or his/her designees, during the term of and for a period of five years after the completion of this Agreement. Such records shall be provided at RF's offices on UM's Oxford Campus, or such other location as designated by UM upon reasonable notice to RF. To the extent that information is inspected, reviewed or received by the Chancellor or his/her designees, with respect to the identity of donors or members who have expressly stated they wish

to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors or members, with respect to personal information relating to a donor or member or his/her family business, or with respect to any personal, commercial or proprietary information provided to RF by third parties, such information shall be treated as confidential by the Chancellor and by any designee who may review or acquire such information. UM 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. If upon such inspection or audit UM determines that UM funds or resources have been expended for purposes inconsistent with this Agreement, RF, upon demand by UM, shall reimburse UM for such misused funds, and UM shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL, and further, any such decision to disclose or release any confidential, personal or proprietary information or information that would identify any particular donor or members shall be made by the IHL acting upon its minutes.

3.5 RF must cause to be prepared annual financial statements of its condition, which shall include such detail as the IHL may from time to time require. RF must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. RF shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the RF's fiscal year, to the Chancellor of UM and to IHL. However, if the IHL's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit determine that RF's annual audited financial statement will be required for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR), then RF must submit annual audited financial statements, along with a list of Entity officers, directors or trustees, by October 15 of each year. The IHL's Associate Commissioner of Finance and Administration shall notify RF of the applicability of the October 15 deadline to RF as far in advance of the deadline as possible each year. The CPA firm to be utilized by RF must be approved by the IHL, and all such requests must be submitted to the IHL for approval not later than three months prior to the end of RF'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 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. However, at the request of RF, the Chancellor, with the approval of the IHL, may grant a request to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that RF's assets are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of RF financial records in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how RF anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and

(d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above. RF shall contemporaneously submit an annual report to UM and to the IHL providing a detailed list of supplemental compensation which was submitted to UM for the purpose of providing additional compensation to UM employees or paid directly to UM employees. This reporting requirement does not apply to transfers to UM by RF that are paid directly to UM for use by UM to compensate UM employees if that compensation is included in UM's annual budget.

3.6 RF may not provide or pay compensation to any UM employee without prior approval of the Chancellor, and any such approval shall be reported to the IHL by RF at the IHL's next meeting. This provision does not apply to transfers to UM by RF that are paid directly to UM for use by UM to compensate UM employees if that compensation is included in UM's annual budget. Nothing in this provision prevents, however, RF from reimbursing a UM employee for expenses consistent with policies or procedures established between UM and RF.

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

3.8 RF shall adopt and maintain a conflict of interest policy that complies with all requirements of Miss Code Ann § 79-11-269 (1972), as amended from time to time.

3.9 RF shall enter into an agreement with the University of Mississippi Foundation, Inc. to provide for the University of Mississippi Foundation, Inc.'s receipting and accounting for charitable gifts, grants, and endowments given to or received by RF, to assure that any such charitable gifts, grants, and endowments are received and accounted for consistent with the policies and practices adopted by the University of Mississippi Foundation, Inc. and consistent with the Affiliation Agreement between UM and the University of Mississippi Foundation, Inc., and to provide for the University of Mississippi Foundation, Inc.'s, management on behalf of RF of all RF endowments and other non-cash assets. The RF 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 RF. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the RF.

3.10 RF shall provide the Chancellor notice of any regular, annual, or special meetings of the RF Board of Directors, and the Chancellor or the Chancellor's designee has the right to attend any such meetings.

3.11 RF agrees to timely satisfy any and all financial, audit, and accounting obligations to third parties, including but not limited to any requirements of any funding or grant awarding agencies.

3.12 RF further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless UM consents to the proposed amendment.

3.13 UM may from time to time make other requests from RF or seek other assistance from RF in accomplishing UM's mission, and RF agrees that it will not unreasonably deny any such requests.

3.14 RF shall reimburse the University for expenses the University incurs as a result of RF 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 charged RF shall be the rate that is charged to University departments for such services.

3.15 The parties acknowledge that UM employees currently serve on RF's Board of Directors. RF agrees that when future Board Members are solicited, no employee of the University or of its governing board will be elected to serve as a voting member of the RF Board of Directors without the prior approval of the IHL.

3.16 RF agrees to regularly seek input from UM's Chancellor in defining RF's objectives.

3.17 RF may not underwrite, pay, or provide additional compensation to the UM Chancellor or any IHL system office employee without the prior approval of the IHL. Any such request for approval shall be made through the IHL Commissioner to the IHL.

3.18 Although RF may seek contributions, grants, and other support from third parties on its own behalf, RF shall not seek contributions, grants, or other public or private support on behalf of UM without the consent of UM through its Chancellor. To the extent RF seeks any contributions, gifts, grants, and other support from third parties on its own behalf but for the benefit of UM, RF agrees to accept or solicit only those contributions, gifts, grants, and support that are consistent with UM and RF's missions, goals, or objectives.

3.19 RF agrees to manage all funds and/or assets in its control in a reasonably sound and prudent manner.

3.20 RF may enter its contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed two years.

ARTICLE 4. UM OBLIGATIONS AND IN-KIND SUPPORT

To assist RF in discharging its obligations under this Agreement and in development, commercialization, management, financial, and other service, support, and assistance RF shall provide UM in support of its academic, educational, research, and service missions, UM grants RF the following rights:

4.1 The designation as an UM official affiliated entity.

4.2 A non-exclusive, non-transferable license to use UM trademarks, service marks, and logos consistent with UM policy and its contract with Collegiate Licensing Company, including but not limited to a license to use marks developed by UM for use by RF.

4.3 An exclusive, transferable license to use UM trademarks, service marks, and trade names historically associated with RF.

4.4 UM shall provide support services to RF of the type provided to UM 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 UM campus mail system and protection of the University Police Department.

4.5 UM shall provide RF employees staff identification cards, parking privileges, admission to athletics and entertainment events, and access to the UM'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.

4.6 UM shall provide RF technical support, expertise, cooperation, and assistance in applying for grants and external funding and in complying with the regulatory and other requirements of governmental agencies and other funding sources.

4.7 UM shall provide RF such other rights, privileges or benefits as the Chancellor, in the Chancellor's sole discretion, may determine will assist RF in discharging its obligations under this Agreement.

4.8 UM, through its Chancellor, will regularly communicate to RF UM's needs and priorities to RF, particularly with respect to UM's research objectives, mission, and goals.

ARTICLE 5. COMPLIANCE

RF shall comply with any and all federal and state laws and regulations and shall comply with any compliance, financial, accounting, audit, and regulatory guidelines as may be required by UM's governing Board or by granting or funding agencies.

ARTICLE 6. INDEMNIFICATION

RF agrees to indemnify and hold harmless UM, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. RF agrees to reimburse UM and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

ARTICLE 7. INSURANCE

7.1 RF shall maintain General Liability insurance providing insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 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.

7.2 In the event RF owns, or leases automobiles or other motorized vehicles, RF shall maintain Automobile Liability insurance providing at least \$1,000,000 per accident or occurrence for bodily injury and property damage.

7.3 RF shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property, and in the event that RF owns any interest in real property during the life of this Agreement, sufficient property and casualty insurance to insure against the loss of the real property and any improvements or personal property associated with the insured premises.

7.4 RF shall maintain Directors and Officers liability insurance on members of the Board of Directors and RF Officers, while performing as such.

7.5 RF shall maintain Commercial Excess or Umbrella Coverage: RF shall maintain \$4,000,000 in additional coverage in excess or over and above the basic coverages set forth in Articles 7.1, 7.2, and 7.4.

7.6 RF shall maintain Workers Compensation insurance if required to do so by applicable law or such other insurance coverages as may be required by applicable law.

7.7 Although in some circumstances an RF 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 RF 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 8. REPORTING

8.1 RF shall, by October 15 of each year during the life of this Agreement submit a detailed annual report of the work and financial condition of RF for the preceding fiscal year to the Chancellor, and shall also submit by the dates set forth in this Agreement any other reports as required by this Agreement, by the Bylaws of RF, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 3.4 and 3.5 of this Agreement.

8.2 RF shall promptly notify the Chancellor and the IHL, in writing, if any of the following events ("Reportable Events") occur:

- a. RF has materially breached any of its contractual obligations under the Agreement;
- b. RF 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;

- c. RF 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;
- d. There has been a failure by RF 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 RF;
- e. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on RF or upon its status as a tax exempt organization; or
- f. RF has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of RF, or any entity 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 RF to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

8.3 RF's chief executive officer shall submit to the Chancellor and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that RF 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 and the IHL, as required in Article 8.2 above. In this certification RF's chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, RF's chief executive officer will immediately notify, in writing, the Chancellor of UM.

ARTICLE 9. TERMINATION AND RENEWAL

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

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

9.3 The University may terminate this Agreement for cause without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes. RF may not terminate this Agreement without the prior consent of the University Chancellor and the IHL.

9.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 9.1, Articles 6, 9, and 10 shall survive the termination.

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

extent practicable and allowed by law, to move any restricted funds held for the benefit of UM to such entity as designated in writing by the Chancellor on behalf of UM, (4) RF 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 Chancellor; and (5) RF shall work in concert with the UM to provide UM or its designee with records and materials of RF necessary to continue the business and/or wind up the affairs of RF.

ARTICLE 10. MISCELLANEOUS PROVISIONS

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

10.2 The parties agree that RF is not the agent or employee of UM, and nothing in this Agreement creates an employment or other agency relationship between the parties.

10.3 The parties agree that RF is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of RF, no IHL employee shall hold a voting position on the RF Board. Senior UM administrators should only participate on the RF Board, if at all, in an ex-officio, non-voting capacity. The IHL may allow, upon written request by UM, exceptions to this restriction regarding IHL/University employees. As of the date of this Agreement, IHL has allowed such exceptions, with certain UM officials serving in their official capacities as voting members of the RF Board.

10.4 UM and RF agree that RF's donor and giving records and any other financial or commercial information possessed by RF or provided by RF to UM concerning individuals or corporations that provide RF financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Article 3.4 of this Agreement with respect to actions by IHL acting upon its minutes, UM and RF 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 RF.

10.5 In the performance of this Agreement, RF 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.

10.6 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.

10.7 The provision of this Agreement are severable, and in the event that any provisions of this 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.

10.8 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this 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.

10.9 RF's obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, 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. (1972), 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.

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

10.11 UM and RF agree that neither UM nor RF shall have any liability for the obligations, acts or omissions of the other party. 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 RF may provide perquisites and supplemental compensation to some UM employees, RF is doing so at the direction of UM under the RF affiliation agreement. RF and UM agree that RF is not the employer of any University employees and does not control, direct or supervise the work of any UM employees.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

UNIVERSITY OF MISSISSIPPI

By: 
Jeffrey S. Vitter, Chancellor

Date: 12-11-2017

UNIVERSITY OF MISSISSIPPI RESEARCH
FOUNDATION

By: 
Joseph Rhea Gladden, President

Date: 12/13/17