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Agenda Item 11

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MEMORANDUM

To: Dr. Bettie Rose Horne, Chair, and Members, Committee on Academic Affairs and Licensing

From: Dr. T. Michael Raley, Director of Academic Affairs and Licensing

Consideration of Revised Consortium Agreement, Lowcountry Graduate Center

Summary

The Lowcountry Graduate Center (LGC) was created by the General Assembly through an appropriation of $465,000 in the FY 2003-04 Appropriations bill. The LGC was established as a non-profit consortium of higher education institutions whose purpose is to increase "access to graduate educational opportunities for the citizens of the tri-county Charleston metropolitan area of South Carolina." The tri-county area includes Charleston, Berkeley, and Dorchester counties. The three founding institutions are The Citadel, the College of Charleston, and the Medical University of South Carolina (MUSC). The 2012 revised consortium agreement (**Attachment 1**) adds the phrase "professional development and continuing education" to its statement of purpose and includes editorial changes throughout to reflect this expansion of its purpose.

By-laws outlining an administrative and governance structure for the operation of LGC were approved by the Commission on July 8, 2004. In February 2010, the Commission approved a New Consortium Agreement that revised and expanded the by-laws and replaced them as the defining document of the LGC. Since that time, the Commission has approved funding requests by LGC which have flowed through CHE's budget to the LGC. In 2011-2012 the state budgeted $785,099 to the LGC, a reduction of 39% since 2009. Since its inception, the LGC has been hosted by the College of Charleston in a building on the North Campus of the College.

The 2010 consortium agreement defined a Board consisting of the presidents of the member institutions or their designees, their provosts, and two trustees of each member institution. The executive director is an *ex-officio* non-voting member of the Governing Board and "may be invited to attend all public meetings of the LGC Board." The 2012 revision creates an expanded Governing Board consisting of the provosts of the member institutions, their

provosts, two trustees of each member institution, the Director of the LGC (*ex-officio* non-voting), the Dean of the College of Charleston North Campus (*ex-officio* non-voting, newly added), and a member of the Commission on Higher Education (*ex-officio* non-voting, newly added).

The 2010 agreement also defined the selection and duties of an Executive Committee. The 2012 revision does not contain a provision for this committee, but many of the duties of the former Executive Committee are held by the revised Academic Affairs Committee, which consists of the Provosts of the member institutions. The duties of the redefined Academic Affairs Committee are enumerated in the revised agreement and include hiring and evaluating the executive director; establishing his/her compensation; recommending the annual budget to the Board; commissioning and receiving reports and transmitting reports to stakeholders such as the Legislature or CHE; and approving or rejecting new programs proposed to be offered at LGC.

The 2010 agreement defined an Advisory Council consisting of up to 35 members from the tri-county area, including Chamber of Commerce presidents, Legislative appointees, a representative from the SC Research Authority, and representatives from local Chambers of Commerce. The purpose of the Council was to identify areas of need for graduate education, identify economic and social needs of the area, and recommend academic initiatives. The 2012 revision of the agreement does not contain a provision for the Advisory Council.

The revised agreement does not allow for the addition of new member institutions, a reversal from the 2010 agreement. It does, however, allow for a non-member institution to propose a course or program to be offered at the LGC. Such a course or program would be required to be approved by the Academic Affairs Committee and the offering institution would have to pay a "fair and reasonable price" for facilities usage and any LGC supplies used.

The LGC's new consortium agreement was signed by the presidents of the three member institutions by March 2, 2012, and submitted to CHE staff shortly thereafter.

Discussion

The revised consortium agreement streamlines the LGC's governance and reduces the number of standing committees. A prime example of the latter is the elimination of both the Executive Committee and the Advisory Council. At the same time that it streamlines governance, it opens the door for a wider audience and for a broader mix of programs through the inclusion of professional development and continuing education in its statement of purpose. These changes will almost certainly contribute to the long-term stability and viability of the LGC.

Recommendation

The staff recommends that the Committee on Academic Affairs and Licensing commend favorably to the Commission approval of the "Consortium Agreement Lowcountry Graduate Center" for immediate implementation.

REVISED CONSORTIUM AGREEMENT
LOWCOUNTRY GRADUATE CENTER

This **REVISED CONSORTIUM AGREEMENT** ("Agreement") is entered into as of this 2nd day of March 2012 ("Effective Date") and is made by and between the College of Charleston (the "College"), the Medical University of South Carolina ("MUSC"), and The Citadel ("The Citadel"), all of which are state-assisted institutions of higher education established and existing under the laws of South Carolina. The College, MUSC and The Citadel may be individually referred to herein as a "Member Institution" or a "Party" and may be collectively referred to as the "Member Institutions" or the "Parties".

PREMISES

WHEREAS, through their mutual collaboration and effort, the College, The Citadel and MUSC have established the Lowcountry Graduate Center ("LGC") to expand the opportunities for qualified students to receive a graduate education, as well as, professional development and continuing education in the Lowcountry of South Carolina;

WHEREAS, it is the intent of the Parties that the LGC be operated in a way that will have the greatest impact on the economic development and the quality of life in the Lowcountry and beyond; and

WHEREAS, it is the purpose of this Agreement to recite the terms and conditions under which the Member Institutions will provide individual graduate courses ("Courses"), degree-awarding graduate programs of instruction ("Programs"), and professional development/continuing education non-credit training or instruction, with the assistance of the LGC, whether such Courses or Programs or training/instruction are offered by one Institution only, as part of a joint program between two or more Institutions, or otherwise made available through cross enrollment or other arrangements, as subsequently approved by Member Institutions.

NOW THEREFORE, in consideration of the Premises and the mutual promises herein contained, and intending to be legally bound thereby, the Parties agree as follows:

COVENANTS

1.0 RELATIONSHIP OF PARTIES

At all times under this Agreement, the College, The Citadel and MUSC 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 or agent-servant relationship between the Member Institutions.

2.0 PURPOSE

The purpose of the LGC is to expand opportunities for a graduate education and related experiential learning opportunities in a variety of disciplines, as approved by Member Institutions, that have a high probability of: (a) providing educational and professional development opportunities to residents of the Lowcountry that would otherwise be unavailable or available only at significant cost or inconvenience; (b) addressing the economic, business development and social needs of the Lowcountry; (c) generating

academic and business affiliations for the joint development and/or delivery of products or services in areas of the economy that have a high growth potential; and (d) being conducted in an economic and efficient manner and with due regard to the legitimate interests of each Member Institution.

3.0 GOVERNANCE

3.1 Establishment. Subject to the terms and conditions contained herein, the Parties hereby agree to act by and through a non-profit consortium solely for the purposes described in Section 2.0. The consortium shall be known as the "Lowcountry Graduate Center" (the "Consortium" or the "LGC"). but shall not be regarded as, nor held out by any Party to be, a separate or affiliated legal entity, a state agency or instrumentality, or anything other than a voluntary association of Member Institutions that share a common interest to further the purposes stated in Section 2.0.

3.2 Governing Board. The governance of the Consortium shall be vested in a LGC Governing Board (the "Board" or "Governing Board") consisting of the Provosts from the Member Institutions, and two trustees of each Member Institution. In addition to the foregoing, the Director of the LGC and the Dean of the College of Charleston North Campus (the "Dean") shall be *ex-officio,* non-voting members of the Governing Board and may be invited to attend all public meetings of the LGC Board. A member of the South Carolina Commission on Higher Education shall also serve as an *ex-officio*, non-voting member and shall be appointed by, and shall serve at the pleasure of, the Chair of the Commission.

3.3 Powers of the Board. The Board is empowered to:

(a) approve the budget of the LGC;

(b) select and remove the Fiscal Agent of the LGC in accordance with Section 8.1 and 8.5, respectively, of this Agreement;

(c) approve LGC reports intended for distribution external to the LGC and make such recommendations for legislative change as may further the purposes of the LGC; and

(d) take such other actions as may be incident to any of the powers listed in this Section 3.3 or that may be necessary or appropriate to carry out the terms and conditions of this Agreement and the intent of the Parties.

3.4 Freedom of Information Act. Notwithstanding any other provision of this Agreement to the contrary, the Board 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 LGC records shall be made publicly available to the same nature and extent as if the Consortium and the Board were each considered a "public body" within the meaning of S.C. Code Ann. §30-4-20(a).

3.5 Limitations.

(a) LGC: Without the expressed prior consent of a Member Institution, neither the LGC, or anyone working on behalf of or for the LGC, shall have the legal authority to act as an agent or representative of such Member in any capacity whatsoever including, but not limited to, representing to third parties that the
LGC has the authority to: (1) legally bind that Member; (2) incur any obligation on that Member's behalf; (3) commit to the use of that Member's resources; or (4) accept funds or other things of value to which that Member is entitled.

(b) Member Institutions: No Member Institution, or employee of a Member Institution, shall take any action on its behalf or on behalf of the LGC that is inconsistent with this Agreement, provided that, nothing included herein is intended to limit the ability of a Member Institution to manage its own internal operations and academic programs and activities in a manner deemed most appropriate by such Institution.

3.6 Actions of the Board and its Committees. Except as otherwise specifically provided for in this Agreement, all actions of the Board, and any committee thereof, shall be by majority vote, a quorum being present. A quorum shall consist of a majority of the Board or committee, as the case may be, but no *ex officio* member shall be counted for the purposes of a quorum. The Board or a committee may meet by telephone, provided that each member thereof can hear and communicate with all other members. All actions of the Board and of its committees shall be taken by resolution.

3.7 Meetings of the Board. During the first 12 months after the Effective Date, there will be at least three regular meetings of the Board. Thereafter, the number of regular meetings each year shall be determined by the Board in the exercise of its discretion, provided that there is at least one meeting during each calendar year that is designated as, and that shall constitute the "Annual Meeting" of the Board. The date of the Annual Meeting and all regular meetings shall be determined by the Board at least 60 days in advance of each such meeting. Any member of the Governing Board may call a special meeting of the Board 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. All meetings of the Board 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 Board.

3.8 Chair of the Board. The Provost of the Fiscal Agent shall serve as Chair of the Board, shall appoint a Secretary to the Board, and may exercise such other authorities as may be appropriate to the office of Chair. Such other officers of the Board may be appointed as the Board may subsequently determine.

3.9 Academic Affairs Committee. There is hereby established an Academic Affairs Committee of the LGC Board consisting of the Provosts of the Member Institutions. The Director of the LGC will serve as an *ex officio, non-voting member.* The Provost of the Fiscal Agent shall serve as chair of the Committee for the first two years of operation under this MOU. In year three, the Chairmanship will rotate for the next two years to the Provost of The Citadel, followed in sequence by the Provost of MUSC and will continue to rotate in this manner. The Academic Affairs Committee shall:

(a) conduct searches for and hire the LGC Director;

(b) set performance evaluation measures and compensation for the Director, review annual performance evaluations of the Director and take such further actions pertaining to such related matters as may be appropriate including, but not limited to, retention and length of service decisions;

(c) recommend to the Board the annual budget for the LGC;

(d) order and receive such reports from the Director as the Academic Affairs Committee or any member thereof, may believe appropriate to monitor the financial condition of the LGC and its adherence to the approved budget;

(e) upon the approval of the Board, transmit LGC reports to, and act as LGC liaison, with the South Carolina Commission on Higher Education, either House of the South Carolina General Assembly, the Office of the Governor of South

Carolina, and agencies of the State of South Carolina and/or the Federal Government (each a "Government Entity") and propose initiatives to any of the foregoing for legislative action directly affecting the LGC;

(f) review and/or prepare such reports or submissions to a Government Entity that: (1) are requested by a Government Entity or are required to be submitted under law or regulation to a Government Entity; and (2) contain either financial information about the LGC or a request for funding of the LGC. To the extent permitted by law, all such requested or required reports or submissions shall be presented to the Academic Affairs Committee for final approval or other appropriate action prior to submission to the Government Entity on behalf of the LGC; and

(g) approve or reject new Programs requests, as further provided for in Section 5.0.

3.10 Other Committees of the Board. The Board may establish such other committees as it may deem appropriate. Each such committee shall have a specific area of concern and such delegations of power as the Board may determine, provided that, such areas and delegations shall not conflict with or impede the jurisdiction and the responsibilities of the Academic Affairs Committee. The members of all other committees, and the chair of each such committee, shall be appointed by the Chair of the Board.

3.11 Secretary of the Board. The Secretary of the Governing Board shall be appointed by the Chair of the Board and shall be responsible for preparing the minutes of Board meetings, for maintaining the records of the Board, and for the Board's compliance with Section 3.4. The Secretary need not be a member of the Board.

3.12 Director. The Director is the chief administrative officer of the LGC and shall be an employee of the Fiscal Agent. The Director, and all other employees of the Fiscal Agent while performing services for the LGC, will report, directly or indirectly, to the Provost of the Fiscal Agent. While the LGC is located at the College of Charleston North Campus, the Dean of the College of Charleston North Campus (the "Dean") will be primarily responsible for the day to day operation of the LGC. The Director shall report and be responsible to the Dean for such day-to-day operations, but shall be evaluated yearly on performance by the Provosts serving on the Academic Affairs Committee based on such pre-determined objectives and/or measures as may have been established by the Academic Affairs Committee. Among other duties, the Director shall be responsible for formulating and recommending proposed annual budgets to the Academic Affairs Committee and for planning, organizing, and operating the LGC in the most economic and effective way practicable consistent with the purpose of the LGC stated in Section 2.0. Specifically, the Director shall, in consultation with the Chair of the Academic Affairs Committee:

(a) approve new Courses and professional development/continuing education activities to be offered through the LGC;

(b) shape and implement a unifying vision, goals and strategic plans for the LGC in accord with the directions of the Board;

(c) provide leadership, support and administrative oversight necessary to meet the LGC's vision, goals and strategic plans;

(d) facilitate communication among academically affiliate institutions;

(e) facilitate the securing of additional financial resources necessary to build facility infrastructure, enhance program offerings and increase university and community involvement;

(f) explore funding opportunities through private sponsorship, foundations and public/private partnerships with business and industry, working with the Provosts to avoid duplication with Member Institutions' funding initiatives;

(g) identify regional programming needs and works with Member and affiliate institutions to bring appropriate programs to the LGC;

(h) prepare the following for review by the Academic Affairs Committee:

(i) Long-range plan for the LGC, to be updated annually;
(ii) Annual business plan of operation for the LGC; and
(iii) Report on facilities utilization and anticipated needs;

(i) promote inter-institutional cooperation among academically affiliated institutions to meet the education needs of the region;

(j) develop, maintain, and enhance external linkages with governmental agencies and civic organizations to explore new opportunities for growth consistent with the purposes and mission of the LGC;

(k) promote the recognition and credibility of the LGC on a local, regional and statewide basis;

(l) create and maintain, with LGC Board approval, an external advisory board to engage the community and build support for the LGC; and

(m) develop external contacts as necessary to generate resources/funds from local, state, federal and private sources. Grants and contracts will be submitted and administered by the Fiscal Agent of the LGC or one of the other member institutions depending upon where the project leadership resides.

3.13 Effect. The governance and the management of the LGC shall be conducted without regard to the "Lowcountry Graduate Center Bylaws", The Consortium Agreement between the parties effective November 20, 2009 (as subsequently amended), or any other document, policy, practice, or procedure, except for: (a) this Agreement; (b) actions taken in reliance on or pursuant to this Agreement; and (c) such laws, rules and regulations as may be applicable to the Consortium or its Member Institutions.

4.0 NON-DUPLICATION OF EFFORT

In order to ensure that the LGC is being operated in the most efficient and effective way practicable, no Course or Program may be offered through the LGC that is duplicative in a material way with a Course or Program offered by a Member Institution on its campus in the Charleston metropolitan area unless —

(a) such Member Institution consents; and

(b) the Course or Program is otherwise approved in accordance with Section 5.0 of this Agreement.

5.0 APPROVAL PROCESS FOR ~~COURSES AND~~ PROGRAMS

5.1 General Rule for All Programs. All Programs offered through the LGC must-

(a) be consistent with the purposes of the Consortium, as stated in Section 2.0;

(b) meet the requirements of Section 4.0, if applicable;

(c) be offered on property owned or leased by a Member Institution; and

(d) be approved by the Academic Affairs Committee.

5.2 Program Plan. With the nomination of each Program, the offering Institution or entity shall submit a plan for the administration of that Program that includes, among other information, the need for resources from the LGC or Member Institutions, and suggested measures of success for furthering the purposes described in Section 2.0 that could be subsequently used by the Academic Affairs Committee to determine the appropriateness of the Program for the LGC.

5.3 General Rule for All Individual Courses. Subject to the requirements of Section 7.0 (dealing with non-member Institutions), all individual Courses offered through the LGC by an Institution or entity must meet requirements (a) through (c) prescribed in 5.1 and be approved by the ~~Executive~~ Director, after consultation with the Dean.

6.0 REFERRALS AMONG MEMBER INSTITUTIONS

At all times, the Director and other staff assigned to the LGC shall act in the best academic interest of students who are taking, or applying to take, Courses or Programs at or through the LGC. To further the individual education goals of each such student, qualified LGC academic counselors may recommend that students take Courses at one or more Member Institutions through cross enrollment or other arrangements deemed acceptable to the participating Member Institutions.

7.0 PARTICIPATION OF NON-MEMBER INSTITUTIONS AND ENTITIES

7.1 Proposals. The LGC may solicit or receive proposals from a non-member Institution of Higher Education or from any other accredited institution to offer one or more Courses (including certificate awarding courses) or Programs at or through the LGC. A Course or Program proposed by such a non-member Institution or other accredited institution shall not be approved for an offering through the LGC unless-

(a) the proposed Course or Program meets the requirements of Section 5.0 of this Agreement; and

(b) the offering non-member Institution or entity agrees to pay a fair and reasonable cost for the use of such facilities and services.

7.2 Payments. All payments to a host Member Institution pursuant to Section 7.1(b) shall be paid directly to that Member Institution, but the amount of all such payments shall be reported to the Board on an annual basis to be used solely for its evaluation of the Courses and Programs being presented by the non-member institution through the LGC.

8.0 EXPENSES; SALARIES; ADMINISTRATIVE SERVICES; FACILITIES

8.1 Appointment of Fiscal Agent. Subject to the requirements of Section 8.9, the Governing Board shall select a Member Institution to be the Fiscal Agent for the LGC, provided that, such Member has consented to serve in that capacity. Only the President of a Member Institution may give such consent on behalf of his/her Institution. A Fiscal Agent shall be appointed to serve for a term of two years, subject to such renewal periods, of no longer than two years each, as may be subsequently agreed to by the Board and the Member. The designation of a Fiscal Agent shall be made at least 60 days prior to the fiscal year for which that designation is made. The Board and the Member Institution appointed as Fiscal Agent may negotiate and mutually execute a letter agreement specifying the period of the appointment and such other specific terms and conditions of the appointment that the Parties may deem appropriate, provided that, such terms and conditions are not inconsistent with this Agreement.

8.2 Duties of Fiscal Agent. The Fiscal Agent shall be responsible for the following:

(a) receiving and disbursing appropriated funds on behalf of the LGC in accordance with law and the budget of the LGC approved by the Board or, in the absence of such approval, in a financially responsible and reasonable way;

(b) employing the Director and other staff assigned to the LGC pursuant to Fiscal Agent's own policies, practices, and procedures dealing with the employment of its personnel (including but not limited to: (i) the provision of employee benefits, as they may from time to time be established by the Fiscal Agent; and (ii) utilizing its own "employee lines" for such positions), except that, the amount of compensation paid to the Director shall be determined by the Academic Affairs Committee; and

(c) 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 Fiscal Agent's financial operations.

8.3 Deductions from the LGC Account.

(a) Notwithstanding any other provision of this Agreement to the contrary, the Fiscal Agent 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, to pay for:

(1) the employment of the Director and other staff assigned to the LGC for the amount of their work effort devoted to the LGC including, but not limited to, salary, benefits, travel, per diem, training, and all other associated personnel-related expenses that are reimbursable or otherwise payable under the laws of South Carolina;

(2) the reasonable cost of the Fiscal Agent's supplies, furniture, fixtures, equipment and personal services used by the LGC and all acquisition and rental costs incurred by the Fiscal Agent to purchase, lease, remodel or renovate space for the use of the LGC, provided that such costs are within the approved budget of the LGC; and

(3) a proportionate share of overhead for the Fiscal Agent's facilities' space that is being utilized by the Director and other LGC staff and for such space being used by other Member and non-member Institutions to provide Courses and

Programs of instruction at the facilities of the Fiscal Agent, provided that, such proportionate share is not any greater than the allocation that the Fiscal Agent would charge its own operating units.

(b) The Fiscal Agent is hereby authorized, to the extent permitted by appropriations acts and other provisions of law, to deduct from the LGC Account and to pay to another Member Institution the amount of reasonable expenses that Member Institution has incurred, in accordance with the approved LGC budget, to –

(1) provide supplies, furniture, fixtures, equipment and personnel services to the LGC;

(2) purchase goods or services for the use of the LGC; and

(3) reimburse for a proportionate share of overhead of that Member's facilities' space that is being utilized by other Member and non-member Institutions to provide Programs of instruction at the facilities of the host Member Institution, provided that, such proportionate share is not any greater than the allocation that the host Member Institution would charge its own operating units,

8.3.1 Notwithstanding any other provision of this Agreement to the contrary --

(a) the Director shall devote 100 percent of his/her work effort to the performance of LGC work; and

(b) for the period commencing on July 1, 2012, other staff assigned to perform the work of the LGC shall devote no more than 50 percent of their individual work efforts to the performance of LGC work, provided that the percent of the work effort performed by such staff may be adjusted as appropriate by the Academic Committee in the exercise of its sole discretion.

8.4 Reviews; Audits. The LGC Account shall be subject to audit and review by a Member Institution, at that Member's sole expense, at such reasonable times as may be agreed to between the Fiscal Agent and such Member Institution. The results of such an audit or review (including all work papers) shall be shared with and made available to all Member Institutions, including the Fiscal Agent. In addition to the provisions of the preceding two sentences the Fiscal Agent, as appropriate, may cause the LGC Account to be audited as part of its routine annual audit and reported on its financial statements in such matter and to such extent as may be permitted under relevant policies and statements of the Government Accounting Standards Board.

8.5 Removal or Resignation of Fiscal Agent. Unless otherwise prohibited by law, the Fiscal Agent may be removed by the Governing Board for any reason or no reason prior to the expiration of the Fiscal Agent's appointed term. The Fiscal Agent may resign its position as fiscal agent at any time upon the provision of 90 days prior notice to the Governing Board.

8.6 Transfer of LGC Assets. In the event of any termination, resignation, or lapse of appointment, the Fiscal Agent shall undertake to deliver to the Board, the successor Fiscal Agent, or the Commission on Higher Education (as may be appropriate under the circumstances): (a) the balance of funds in the LGC Account and such records, papers, and books of account as may directly pertain to such Account; (b) a copy of such employment records of those persons providing services for the benefit of the LGC that may be necessary for such persons to be employed and managed by the new Fiscal Agent; and (c) an inventory

of all furniture, fixtures, and equipment ("FF&E") that may have been purchased with funds disbursed from the LGC Account. Title to FF&E purchased exclusively with LGC funds shall be transferred to the newly appointed Fiscal Agent.

8.7 Assets Acquired with Mixed Funds. If FF&E have been purchased with funds derived from both the LGC Account and from other funds of the Fiscal Agent then, at the time its appointment as Fiscal Agent expires for any reason whatsoever --

(a) The terminated Fiscal Agent shall have the opportunity to acquire (except to the extent that it may be prohibited by law) sole use of such FF&E upon the payment to the LGC Account of the LGC's financial investment in that FF&E. The value of that LGC investment shall be determined by: (1) multiplying the percent of the acquisition price originally paid with LGC funds by the (2) dollar value of the remaining useful life for that FF&E.

(b) In the event that the terminating Fiscal Agent elects not to acquire sole use of such FF&E, the LGC shall reimburse the terminating Fiscal Agent for the value of its investment and title to the FF&E shall pass to the newly appointed Fiscal Agent for the use of the LGC. The value of the terminating Fiscal Agent's investment shall be calculated by (1) multiplying the percent of the acquisition price originally paid with Fiscal Agent funds by (2) the dollar value of the remaining useful life for the FF&E.

8.8 Priority on the Assignment of Physical Facilities. Physical facilities available for the use of the LGC shall be assigned by the Dean of the North Campus according to the following priorities that are listed in order of descending importance:

(a) graduate and certificate Programs offering all courses at the LGC facilities;

(b) graduate credit courses;

(c) non-credit and professional development courses; and

(d) rentals for other than LGC purposes.

8.9 Commission on Higher Education. In the event that the South Carolina Commission on Higher Education ("CHE") elects and is legally authorized to perform the duties of the Fiscal Agent and thereby be responsible for the disbursement of funds, the purchase of goods and services and the employment of personnel, as described under this Section 8.0, the Member Institutions shall operate without regard to the provisions of Section 8.1 and shall cooperate in good faith to effect a transfer of the following to the CHE: (a) the balance of funds in the LGC Account and such records, papers, and books of account as may directly pertain to such Account; (b) a copy of such employment records of those persons providing services for the benefit of the LGC as may be necessary for such persons to be employed and managed by the CHE; and (c) an inventory of all FF&E that may have been purchased with funds disbursed from the LGC Account.

9.0 CONTROLLING RULES AND REGULATIONS FOR FACULTY, STUDENTS, STAFF

9.1 General Rule. No Party to this Agreement shall be responsible for any obligation or liability incurred or assumed by another Party or its employees, students, affiliates, or other representatives, and each Party shall be responsible for its own acts or omissions and those of its employees, students,

affiliates, or other representatives and nothing contained herein is intended to shift such responsibility from one Party to another.

9.2 Faculty Disputes.

Faculty employed by a Member Institution (a "Home Institution") providing educational services at the facilities of another Member Institution (the "Host Institution") as a result of an offering made by or through the LGC shall be subject to the employment rules, regulations and policies of the Home Institution, except that, such Faculty shall also observe the rules of the Host Institution with respect to:

(a) the use of its facilities and grounds;

(b) non-discrimination and ethical conduct; and

(c) such other rules, policies and regulations of the Host Institution as may be deemed necessary, in the exercise of Host Institution's sole discretion, to provide for the orderly provision and management of education services at its facilities.

9.3 Staff Disputes. Disputes involving administrative staff assisting teaching faculty to provide educational services through the LGC shall be resolved, to the extent practicable, in the same, or substantially the same, manner that is described in section 9.2 for disputes involving faculty.

9.4 Students.

(a) Students enrolled at a Member Institution (a "Home Institution") taking a Course of instruction at the facilities of another Member Institution (the "Host Institution") as a result of an offering made through the LGC shall be subject to the student handbook, catalogue, and all other student rules, policies and regulations of the Home Institution, except that, all student regardless of where enrolled, or if enrolled at another institution, shall also observe the rules of the Host Institution with respect to:

(1) the use of its facilities and grounds;

(2) non-discrimination and ethical conduct; and

(3) such other rules, policies and regulations of the Host Institution as it may deem necessary, in the exercise of its sole discretion, to provide for orderly provision and management of education services at its facilities.

(b) Students taking one or more courses of instruction at or through the LGC and who are not enrolled as a student with a Member Institution or another institution offering such course or courses through the LGC, shall be subject to the academic policies and procedures and the code of conduct stated in the *Graduate Student Handbook* of the College of Charleston, provided that, in the event that the College of Charleston is not the Fiscal Agent of the LGC, such students shall be governed by the Graduate Student Handbook of such other Member Institution as may be specified by the Academic Affairs Committee.

(c) A Student of the Home Institution may file a complaint with either the Home

Institution or the Host Institution regarding conduct occurring on the premises of the Host Institution or during an LGC approved activity that the student reasonably believes to constitute a violation of any law or governmental rule or regulation. Once such a complaint is received, both the Home and the Host Institutions shall confer immediately about the respective roles of each Institution to investigate the matter. The Member Institution that has the legal ability or is otherwise best suited to take remedial action with respect to the complainant and the person/entity accused of alleged improper conduct, shall conduct such proceedings as it believes appropriate to resolve the complaint.

9.5 Reservation of Rights. Notwithstanding any other provision of this Agreement to the contrary, each Member Institution reserves the right to determine, in the exercise of its sole discretion, who may be permitted to enter and/or remain on its property.

10.0 STUDENT RECORDS

To the extent that a Member Institution may have access to, or possession of, the education records of a student enrolled at another institution, it agrees that those records may only be released or disclosed to the enrolling institution, to the relevant student (and to persons authorized by the student), or to others as specifically provided for in the Family Educational Rights Protection Act (20 U.S.C. §1232g) and the regulations promulgated pursuant thereto. Nothing herein shall be deemed to require that any particular educational record of a Member Institution be shared with the LGC.

11.0 INTELLECTUAL PROPERTY RIGHTS

11.1 Intellectual Property of Member Institution. A Party shall have no rights or authority to use the name, trademark, trade secrets, patent, course materials, or other rights to intellectual property of another Party in any manner whatsoever, except as expressly authorized herein or as subsequently authorized by that latter Party in writing.

11.2 Use of Advertisements and the Internet. The LGC, the Director and other Staff assigned to the LGC, shall not use the name, trademark, indicia or other intellectual property of a Member or non-member Institution without the express written consent of the Institution that owns such property. Any promotion, advertisement, internet page, or other readable material containing the intellectual property of such an Institution must be pre-approved in writing by that Institution.

11.3 Intellectual Property of LGC. Except as specifically provided for in this Section 11.0, Member Institutions shall have equal right, title, and interest in drawings, specifications, reports, documents, statistical compilations, forecasts, analyses, logos, indicia and all other work products (regardless of the medium in which stored) prepared by, or at the direction of the LGC pursuant to this Agreement ("LGC Intellectual Property").

11.4 Restrictions. Notwithstanding the provisions of Section 11.3, a Member Institution shall not sell, assign, license or otherwise transfer its right to LGC Intellectual Property without the prior written consent of all other Member Institutions.

12.0 PUBLIC RELATIONS

All public relations or publicity activities and announcements about the existence or the subject matter of this Agreement shall be subject to the prior approval of all Member Institutions. Each Party agrees not to engage in any such activity or make any such announcement without the prior written consent of all other Parties.

13.0 INSURANCE; IMMUNITY

13.1 Insurance. Each Member Institution hereby warrants and represents that-

(a) it is required by the Laws of South Carolina (S.C. Code Ann. 1-11-140 (C)) to obtain tort liability insurance through the South Carolina State Budget and Control Board, Office of Insurance Services (hereinafter the "State Insurance Reserve Fund");

(b) it is a participant in good standing in the State Insurance Reserve Fund;

(c) the State Insurance Reserve Fund provides for the coverage of tort and tort related liabilities arising from the actions or inactions of the employees and students of its Institution that include, but are not limited to, bodily injuries, discrimination, and property damage resulting from certain accidents and other occurrences, as further defined in the Tort Liability Insurance Policy of the State Insurance Reserve Fund found at http://www.irf.sc.gov/; and

(d) Member Institutions are eligible entities to file a claim pursuant to such Insurance Policy against another Member Institution and, if such claim is covered under such Policy, to receive payment for such claims, the sole payee, in amounts provided for that coverage.

13.2 Immunity. Nothing in this Agreement shall be deemed to limit, or affect in any other way, the immunity of public employees, volunteers, or public officials under the Constitution and Laws of the State of South Carolina and the Eleventh Amendment of the Constitution of the United States, and each Member Institution shall remain responsible for advancing such defenses on behalf of itself and its own trustees, officers, employees, volunteers and other representatives and nothing contained herein is intended to shift that responsibility from one Party to another.

14.0 TERMINATION OF AGREEMENT

14.1 Terminations.

(a) Termination of the Agreement. Subject to the provisions of Section 14.2, this Agreement shall be deemed terminated in its entirety upon the occurrence of any one or more of the following events:

(1) upon lawful direction from the South Carolina Commission on Higher Education;

(2) the expiration of the term of performance specified in Section 23.0; or

(3) mutual agreement of the Parties as evidenced by a fully executed recession agreement.

(b) Termination of Membership. A Member Institution may withdraw from this Agreement and from participation in the LGC at any time and for any reason or no reason, provided that, such Member provides all other Members at least 90 days prior written notice of such withdrawal.

14.2 Remedies Upon Termination. In the event of a termination of this Agreement for any reason, the terminating Party, if providing Programs or Course of instruction through the LGC, shall complete (to the extent of their legal ability to do so) the semester during which the notice of termination is provided.

14.3 Surviving Provisions. The provisions of Sections 9.0 (CONTROLLING RULES AND REGULATIONS FOR FACULTY, STUDENTS, STAFF), 11.0 (INTELLECTUAL PROPERTY RIGHTS), and 13.0 (INSURANCE; IMMUNITY) shall survive the termination of this Agreement.

15.0 SUBMISSION TO COMMISSION ON HIGHER EDUCATION FOR APPROVAL

Upon full execution of this Agreement, the Agreement shall be jointly presented by the Member Institutions to the Commission on Higher Education pursuant to S.C. Code Ann. § 59-103-35.

16.0 EXTENT OF AGREEMENT; MODIFICATIONS

This Agreement represents the entire and integrated agreement between the Parties 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 Party is empowered to alter or modify any of the terms in this Agreement unless such alteration or modification is done in writing and signed by the signatories below, or their successors.

17.0 NOTICES

17.1 Representatives. All notices, designations and other communications contemplated under this Agreement 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 Parties, such notices, designations, and communications shall be sent to the Parties at the addresses noted below:

If to the College of Charleston:

Name: **George Hynd**
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: **Mark S. Sothmann**
Vice President for Academic Affairs and Provost

Address: **Room 213 Colcock Hall**
179 Ashley Avenue
Charleston, South Carolina 29425

If to The Citadel:

Name: **Samuel M. Hines, Jr.**
Provost and Dean of the College

Address: **171 Moultrie Street**
Charleston, South Carolina 29409

17.2 Authority. Each Provost of a Member Institution shall administer and interpret this Agreement on behalf of her/his respective Institution. Each President of a Member Institution shall be the only individuals authorized to modify this Agreement by amendment or otherwise.

18.0 CAPTIONS

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

19.0 WAIVERS

Any waiver by a Party to any term or condition of this Agreement by another Party shall not affect or impair the waiving Party'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 Agreement; nor shall any delay or omission of a Party to exercise any right arising under this Agreement affect or impair such Party's rights as to the same or any future delay or omission; nor shall the failure of a Party to this Agreement to require or exact full and complete compliance with any one or more of the provisions of this Agreement be construed as in any manner changing such provision or provisions.

20.0 SEVERABILITY

If any provision of this Agreement, 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 obligation 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.

21.0 NO THIRD PARTY BENEFICIARIES

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

22.0 TERM

Performance under this Agreement shall begin on the Effective Date and unless earlier terminated in accordance with Section 14.0, or extended by mutual agreement in accordance with Section 16.0, end at the close of business on November 30, 2014.

23.0 GOVERNING LAW

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

IN WITNESS WHEREOF, the Parties, intending to be legally bound thereby, have executed this **CONSORTIUM AGREEMENT** on the date indicated below under their respective signatures.

COLLEGE OF CHARLESTON

By: P. George Benson

Printed Name: P. GEORGE BENSON

Title: President

Date: March 2, 2012

THE CITADEL

By: JWRosa

Printed Name: JOHN W. ROSA

Title: President

Date: 2/24/12

MEDICAL UNIVERSITY OF SOUTH CAROLINA

By: Raymond S. Greenberg

Printed Name: RAYMOND S. GREENBERG

Title: President

Date: 3/2/12