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CHE
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Agenda Item 8.02.B

March 4, 2010

MEMORANDUM

To: Mr. Ken Wingate, Chairman, and Members, Commission on Higher Education
From: Dr. Bettie Rose Horne, Chair, and Members, Committee on Academic Affairs and Licensing

Consideration of New Consortium Agreement, Low Country Graduate Center

Summary

The Low Country Graduate Center (LGC) was created by the General Assembly through an appropriation of \$465,000 in the FY 2003-04 Appropriations bill for use in FY 2004-05, contingent upon receipt, review, and approval by the Commission of a comprehensive operating plan, by-laws, and a detailed budget. 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). Since 2009, LGC's legislative appropriation has been reduced by 30.5% and now totals just over \$980,000.

By-laws outlining an administrative and governance structure for the operation of LGC were approved by the Commission on July 8, 2004. Since that time, the Commission has approved funding requests by LGC which have flowed through CHE's budget to the LGC. Unlike a predecessor consortium named the Charleston Higher Education Consortium (CHEC), which had existed for a period of years until its discontinuation sometime during the College of Charleston presidency of Dr. Harry Lightsey (1985-1991), the LGC has been focused on graduate education. Funded largely through grants, the CHEC focused primarily on the facilitation of Charleston area undergraduate students being able to take courses at any member institution.

Since its inception, the LGC has been hosted by the College of Charleston in a building in North Charleston that also serves as the North campus of the College. Under the 2004 by-laws, the host institution is designated by the Board of Directors and bears responsibility for providing instructional, administrative, and student services facilities for the consortium.

The original Board of Directors was composed of an Executive Director as well as the president, provost, and two members of the Board of Trustees of each of the three member institutions. Other institutions could join as affiliate members and serve on the Board as *ex-officio* non-voting members. In addition, the original by-laws provided for an Advisory Council of community leaders. The original by-laws were modeled on the by-laws of the Greenville University Center, an older consortium that had been operating for some years in the Upstate.

The new consortium agreement (see **Attachment 1**) is much more extensive and more legalistic, addressing areas omitted from the original by-laws such as enumeration of the specific powers of the board; duties of and processes to be followed by the LCG's fiscal agent; rules and regulations for faculty, students, and staff; student records; and intellectual property rights, among others. All of these are useful in clarifying policy and procedures to avoid misunderstandings or ambiguity regarding the operations of the LGC.

The new consortium agreement retains 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 to be an *ex-officio* non-voting member of the Governing Board and "may be invited to attend all public meetings of the LGC Board." The executive director will be the chief administrative officer of the LGC, subject to the authority of the Executive Committee, but reporting to the Academic Affairs Committee for day-to-day operations. Officers of the Board consist of an elected chair who serves a two-year term and an appointed secretary who need not be a member of the Board and is not term-limited.

New to the governance structure is the redefined membership of the Executive Committee, which will now consist of the presidents of the three member institutions rather than of the provosts, the executive director, and the chair of the Board of Directors. The duties of the redefined Executive Committee are enumerated in the new agreement and include hiring and evaluating the executive director; establishing his/her compensation; nominating members to the Advisory Council for appointment by the Board; recommending the annual budget to the Board; commissioning and receiving reports and transmitting reports to stakeholders such as the Legislature or CHE; and making recommendations to the Board with respect to new programs and new member institutions.

In addition, a new Academic Affairs Committee consisting of the provosts of the member institutions is created and its duties are also enumerated. Included are approving new courses; developing and recommending the annual budget to the Executive Committee; submitting annual evaluations of the Executive Director to the Executive Committee; and preparing or reviewing reports as may be requested. The Advisory Council is retained with membership eligibility and the numbers of members are much more specifically defined in the new agreement; one seat is allocated to CHE. The new agreement also permits the establishment of other such committees as may be needed.

Given its stated purpose of expanding "the opportunities for qualified students to receive a graduate education in the Lowcountry of South Carolina," the new agreement does allow for the addition of new member institutions. Eligibility of new member institutions depends on a recommendation of the Executive Committee, agreement to abide by the provisions outlined in the new consortium agreement, willingness to "contribute such resources to the LGC as the Board may determine appropriate," accreditation, and the offering of courses or programs through the LGC.

Discussion

The new consortium agreement builds on the experiences of the LGC's first five or six years and usefully clarifies various elements of governance and operations. However, it is interesting to note that while both the Greenville University Center (GUC) and LGC were structured similarly, these two consortia are moving in somewhat different directions in terms of their governance structure. LGC is concentrating governance authority in an executive committee consisting of the three presidents of the founding members, supported by an Academic Affairs committee of institutional provosts and less directly by the Board and an Advisory Committee of external interested parties. By contrast, GUC is shifting governance authority to a Board of Directors whose majority will be constituted by local stakeholders from the Greenville area, supported by an Academic Affairs committee of institutional provosts, rather than by institutional provosts or presidents. Staff expects that revised by-laws from the GUC will be finalized in the near future and will likely be submitted to CHE for approval later this spring.

The LGC's new consortium agreement was signed by all the presidents of the three member institutions by December 9 and submitted to CHE staff shortly thereafter. Although both Clemson and USC are already delivering a couple of doctoral programs in Charleston, neither institution is named as a member of the LGC.

Both CHE itself and the new Graduate Professional Alliance established by CHE under the auspices of the State Higher Education Action Plan are particularly interested in expanding delivery of graduate programs in Charleston, broadening access to doctoral programs offered by the state's research institutions, and identifying what additional program needs might exist. CHE proposes to establish a task force to complete a comprehensive assessment for needed graduate programs—beyond those currently offered by the universities based in Charleston—with an expected emphasis on graduate programs in science and technology. Given the strong undergraduate and master's level science and technology programs offered at both College of Charleston and The Citadel, synergies involving increased opportunities for undergraduate and master's level research, internships, and participation in advanced programs are likely to result from development of a strategic plan for expanded graduate programs, especially as these might serve the interests of new companies to the area such as Boeing and related satellite companies. A proposal to establish the task force is under development. The task force should include representatives of The Citadel, Clemson, College of Charleston, MUSC, SC State, and USC-Columbia as well as representatives of the SC Research Authority, the LGC, and CHE.

Recommendation

The Committee on Academic Affairs and Licensing commends favorably to the Commission approval of the "Consortium Agreement Lowcountry Graduate Center," providing that the Agreement be amended by March 4, 2010, to add a representative of the CHE appointed by the CHE chair to the Lowcountry Graduate Center Governing Board to serve non-voting *ex officio*.

CONSORTIUM AGREEMENT LOWCOUNTRY GRADUATE CENTER

This **CONSORTIUM AGREEMENT** ("Agreement") is entered into as of this 20th day of November 2009 ("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 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") or degree-awarding graduate programs of instruction ("Programs") at or with the assistance of the LGC, whether such Courses or Programs are offered by one Institution only, as part of a joint degree 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 provide opportunities for a graduate education in a number of disciplines, as selected and approved by Member Institutions, that have a high probability of: (a) providing educational opportunities to residents of the Lowcountry that would otherwise be unavailable or available only at significant cost or inconvenience; (b) addressing the economic and/or social needs of the Lowcountry; and (c) 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 Presidents from each Member Institution, or their designees, the Provosts from the Member Institutions, and two trustees of each Member Institution. In addition to the foregoing the Executive Director of the LGC shall be an *ex-officio*, non-voting member of the Governing Board and may be invited to attend all public meetings of the LGC Board.

3.3 Powers of the Board. After consultation with the Executive Committee, and in accord with its recommendations, 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;
- (c) hire and set the compensation of the LGC Executive Director;
- (d) approve performance evaluation measures for the Executive Director, conduct evaluations of performance and make all retention decisions regarding length of service for the Executive Director;
- (e) approve all new member institutions of the LGC and all new Programs of the LGC;
- (f) approve the selection of Advisory Council members and appoint an Advisory Council chair pursuant to Section 3.15(c);
- (g) 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
- (h) 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. There shall be at least one regular meeting of the Board, to be held during May or June of each year (the "Annual Meeting"). 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 advanced notice or such other advanced 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 Annual Meetings. During each Annual Meeting the Board shall elect a Chair, pursuant to Section 3.12, and appoint a Secretary, as provided for in Section 3.13 and take actions on such other matters as may have been submitted to it for consideration by the Executive Committee. Such matters may include:

- (a) approval or disapproval of the budget of the LGC for the upcoming academic year; and
- (b) the conduct of such other business as may be appropriate including, but not limited to, scheduling regular meetings throughout the following twelve month period.

3.9 Executive Committee. There is hereby established an Executive Committee of the LGC Board consisting of the Presidents of the Member Institutions. The Executive Committee shall:

- (a) conduct searches for and recommend the hire of an LGC Executive Director to the Board;

- (b) recommend to the Board performance evaluation measures and compensation for the Executive Director and make such further recommendations to the Board regarding performance evaluations and related matters as may be appropriate including, but not limited to, retention and length of service decisions;
- (c) nominate members of the Advisory Council for consideration and appointment by the Board;
- (d) recommend to the Board the annual budget for the LGC;
- (e) order and receive such reports from the Executive Director and the Academic Affairs Committee as the Executive Committee, or any member thereof, may believe appropriate to monitor the financial condition of the LGC and its adherence to the approved budget;
- (f) 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, or 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; and
- (g) recommend action to the Board with respect to new Programs requests (pursuant to section 5.1) and the admittance of new Member Institutions (pursuant to section 14.0).

3.10 Academic Affairs Committee. There is hereby established an Academic Affairs Committee of the LGC Board consisting of the Provosts of the Member Institutions. The Academic Affairs Committee is empowered to:

- (a) take appropriate action on Courses pursuant to Section 5.3;
- (b) develop and recommend to the Executive Committee the annual budget for the LGC;
- (c) submit annual evaluations of the Executive Director to the Executive Committee; and
- (d) 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 Executive Committee for final approval or other appropriate action prior to submission to the Government Entity on behalf of the LGC.

3.11 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 Executive Committee and 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.

3.12 Chair of the Board. The Chair shall be elected by the Board for a two year term and shall not be eligible for reelection for the immediately succeeding year.

3.13 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.

3.14 Executive Director. The Executive Director is the chief administrative officer of the LGC and, subject to the authority of the Executive Committee, has general supervision over the activities and the operations of the LGC. The Executive Director shall be an employee of the Fiscal Agent and shall report and be responsible to the Academic Affairs Committee for day-to-day operations but shall be evaluated yearly on performance by the Executive Committee based on such pre-determined objectives and/or measures as may have been established by the Executive Committee. Among other duties, the Executive Director shall, in consultation with the Academic Affairs Committee, be responsible for formulating and recommending proposed annual budgets 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.

3.15 Advisory Council.

(a) There is hereby established an Advisory Council consisting of the following members:

- (1) Three members appointed by the Charleston County Legislative Delegation;
- (2) Three members appointed by the Berkeley County Legislative Delegation;
- (3) Three members appointed by the Dorchester County Legislative Delegation;
- (4) The presidents of the local Chambers of Commerce;
- (5) The Executive Director of the Charleston Regional Development Alliance;
- (6) No more than twenty individuals from the private and public sectors;
- (7) A representative from the South Carolina Research Authority; and
- (8) A representative of the South Carolina Commission on Higher Education, as determined by the Executive Director of the Commission.

(b) The Advisory Council shall offer advice to the Governing Board, the Committees of the Board and the Executive Director with respect to:

- (1) identifying graduate education opportunities that are unavailable or available only at significant cost or inconvenience to residents of the Lowcountry;

- (2) identifying the economic and social needs of the Lowcountry; and
 - (3) recommending academic initiatives, especially those involving community engagement, as part of an approved Course or Program offered through the LGC.
- (c) The Advisory Council shall be chaired by one of its members who is appointed as Chair by action of the Governing Board. The Chair of the Advisory Council shall serve for a two year term and may be reappointed by the Board for one additional consecutive two year term. Members of the Advisory Council shall serve terms of two years, subject to such reappointments for not to exceed three additional two year terms, as may be approved by the Governing Board. The Chair shall call such meetings of the Advisory Board as such Chair may deem appropriate, but in no event less than two times a year.
- (d) Members of the Advisory Council shall be deemed to be “volunteers” of the Member Institutions within the meaning of S.C. Code Ann. §8-25-10 and, therefore, subject to the provisions of S.C. Code Ann. §8-25-40 (dealing with reimbursement for certain expenses, liability insurance, and the protection of sovereign immunity) to the same extent provided to the public employees of Member Institutions.

3.16 Effect. The governance and the management of the LGC shall be conducted without regard to the “Lowcountry Graduate Center Bylaws” 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 economic 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. Subject to the requirements of Section 7.0 (dealing with non-member Institutions), 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 Board upon recommendation of the Executive 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 Executive Committee to determine the appropriateness of the Program for the LGC. The Program Plan shall initially be submitted to the Academic Affairs Committee for review, comment and recommendation by that Committee to the Executive Committee.

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 Academic Affairs Committee.

6.0 REFERRALS AMONG MEMBER INSTITUTIONS

At all times the Executive 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 either: (i) agrees to pay a fair and reasonable cost for the use of such facilities and other resources that are provided by a Member Institution to host the offered Program of instruction, or (ii) such cost is otherwise paid with public funds appropriated for such purpose.

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 8.8, 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 shall

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 Executive 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 Executive Director shall be determined by the Executive 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 Executive 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;
 - (3) a proportionate share of overhead for the Fiscal Agent's facilities' space that is being utilized by the Executive 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.

8.4 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 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.

- (a) Faculty employed by a Member Institution (a "Home Institution") providing a Course or Program 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:
 - (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 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.
- (b) Faculty from the Home Institution shall not be entitled to use the grievance process of the Host Institution or any other mechanism or arrangement the Host Institution may make available to its own employees to resolve employment disputes.
- (c) A Host Institution shall cooperate and provide reasonable assistance to a Home Institution conducting a review or investigation of allegations made by a Home

Institution Faculty member about conduct that allegedly took place at the Host Institution while such Faculty member was teaching a Course through the LGC.

- (d) Nothing contained herein shall prevent the Host Institution from filing and pursuing a complaint with the Home Institution regarding the conduct of Home Faculty while on the property of the Host Institution.

9.3 Staff Disputes. Disputes involving administrative staff assisting teaching faculty providing a Course or Program 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 students 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 including, but not limited to, Title VI of the *Civil Rights Act of 1964*, as amended (42 U.S.C. §2000d *et seq.*), Title IX of the *Education Act Amendments* of 1972 (20 U.S.C. §§1581-1588), Section 504 of the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act* (42 USC 12101 *et seq.*), the *Family Educational Rights and Privacy Act* (20 U.S.C. §1232g), the *South Carolina Family Privacy Protection Act of 2002*, as amended (S.C. Code Ann. §30-2-10 *et seq.*), or any other statutory or constitutional right dealing with or affecting students' rights. 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 Executive 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 claim, as 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 ADDING NEW MEMBER INSTITUTIONS

From time to time the Board, upon the recommendation of the Executive Committee, may admit another institution of higher education to the Consortium. In order to qualify as a Member Institution an institution must –

- (a) be an accredited institution of higher education;
- (b) agree to be added as a party to this Agreement;
- (c) offer one or more Courses or Programs through the LGC; and
- (d) contribute such resources to the LGC as the Board may determine appropriate.

15.0 TERMINATION OF AGREEMENT

15.1 Terminations.

- (a) **Termination of the Agreement.** Subject to the provisions of Section 15.2, 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 anytime and for any reason or no reason, provided that, that such Member provides all other Members at least 90 days prior written notice of such withdrawal.

15.2 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.

15.3 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.

16.0 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.

17.0 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.

18.0 NOTICES

18.1 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: Dr. Beverly Diamond
Interim 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: John Raymond, M.D.
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., Ph.D.
Provost and Dean of the College

Address: 171 Moultrie Street
Charleston, South Carolina 29409

18.2 **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.

19.0 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.

20.0 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.

21.0 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.

22.0 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.

23.0 TERM

Performance under this Agreement shall begin on the Effective Date and unless earlier terminated in accordance with Section 15.0, or extended by mutual agreement in accordance with Section 17.0, end at the close of business on the first annual anniversary of such Effective Date.

24.0 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
(Signature)

Printed Name: P. George Benson

Title: President

Date: November 20, 2009

THE CITADEL

By

John W. Rosa
(Signature)

Printed Name: John W. Rosa

Title: President

Date: 3 Dec 09

**MEDICAL UNIVERSITY
OF SOUTH CAROLINA**

By

Raymond S. Greenberg
(Signature)

Printed Name: Raymond S. Greenberg

Title: President

Date: 11/24/09