

AFFILIATION AGREEMENT BETWEEN JAMES MADISON UNIVERSITY AND THE JAMES MADISON UNIVERSITY FOUNDATION, INC.

REPRESENTATIONS

James Madison University (University) is a public institution of higher education and agency of the Commonwealth of Virginia. The James Madison University Foundation, Inc. (Foundation) is not part of the University, but rather exists and operates independently as a 501(c)(3) organization, and for the benefit of the University.

The Foundation represents that the Executive Committee of the Board of Trustees of the Foundation was provided a copy of this affiliation agreement and authorized the persons executing this agreement to do so on behalf of the Foundation.

The James Madison University Board of Visitors represents that the officers and board members of the University were provided a copy of this affiliation agreement and that they authorized the persons executing this agreement to do so on behalf of the University.

PURPOSE

WHEREAS, the Foundation is organized under the laws of the Commonwealth of Virginia as a 501(c)(3) not-for-profit corporation; and

WHEREAS, the Foundation is constituted so as to attract support from contributions, either directly or indirectly; and

WHEREAS, the Foundation operates for the purpose of promoting the welfare, efficiency, service to the public, and objectives of the University and to encourage private gifts of money, securities, land, or other property of whatever character for such purposes, and to that end to take, hold, and receive and enjoy any gift, grant, devise, or bequest, for the benefit of the University, in the manner designated, for the general purposes and improvement of the University, and to accept, execute, and administer any trust in which it may have an interest under the terms creating the trust;

NOW, THEREFORE, in consideration of these premises, and in accordance with University policy and the Foundation's Articles of Incorporation, the James Madison University Board of Visitors and the Foundation agree as follows:

TERM, TERMINATION AND AMENDMENT

1. The term of this Agreement shall expire June 30, 2028.
2. Either party may, upon 90 days prior written notice to the other, terminate this Agreement without cause.

3. Either party may terminate this Agreement for cause in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice of such default.
4. This Agreement may be amended only upon the written agreement of the University and the Foundation.
5. This Agreement shall automatically renew for successive one year periods under the same terms and conditions as set forth herein until either Party terminates it, or until the Parties mutually agree to amend or replace the Agreement.

BACKGROUND AND RELATIONSHIP BETWEEN THE FOUNDATION AND THE UNIVERSITY

1. Pursuant to Section 23.1-1301 of the Code of Virginia, the Board of Visitors of the University is vested with the authority to manage the funds of the University, make regulations and policies concerning the University, appoint the President of the University, appoint all professors, teachers, staff members, and agents of the University and fix their salaries, and generally direct the affairs of the University.
2. The Foundation is a separately incorporated Virginia nonstock corporation and is an organization described in Internal Revenue Code section 501(c)(3) and was created to manage, invest and distribute private resources to advance and further the mission and purposes of the University.
3. The Foundation Board of Trustees is responsible for: (i) the control and management of all assets of the Foundation, including the prudent management of all gifts and endowment funds, and other investment assets in a manner consistent with written donor intent and with any applicable law, and (ii) the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws and other policies adopted by the Foundation's Board of Trustees that address the Board of Trustees' fiduciary responsibilities.
4. The University recognizes that the Foundation is a private corporation with the authority and obligations to keep its records and data confidential and private, consistent with donor intent and the requirements of applicable law.
5. No provision of this Agreement shall be deemed to create a partnership or joint venture between the University and the Foundation.

RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

1. The James Madison University Board of Visitors designates the Foundation to receive, acknowledge, and manage all gifts to the University.

2. The James Madison University Board of Visitors grants the Foundation the use of the name, *James Madison University Foundation, Inc.*, and, except as previously agreed or provided herein, the Foundation shall operate under its own seal and logotype, and shall not use the seal of the University in the promotion of its business and activities.
3. The James Madison University Board of Visitors assigned all rights, title and interest in any trademark, logo and insignia now owned or later acquired to the Foundation as of January 26, 1989.
4. The University President is responsible for communicating the University's priorities and long-term plans, as approved by the James Madison University Board of Visitors, with the Foundation. The Foundation President should have routine access to the Senior Leadership of the University to ensure priorities are aligned.
5. Consistent with the provisions of the Foundation's Articles of Incorporation, in the event of liquidation or dissolution of the Foundation, the balance of all money and property, after payment of all debts and obligations, shall be used or distributed within the intent of Internal Revenue Code Section 501 (c)(3) and regulations applicable thereto at such time of dissolution.
6. Any gift, grant, devise, or bequest received by the Foundation, the income of which has not been designated by the donor for a specific purpose, may be commingled by the Foundation, for investment purposes, with funds designated for specific purposes.
7. In view of Foundation needs that may be readily met by the University through the use of its trained personnel and available facilities, the University agrees during the term of this Agreement to do the following:
 - a. Provide at nominal rates technology support services, as well as online access to such University systems and files as are relevant to the business and purpose of the Foundation;
 - b. Provide PCI DSS – Payment Card Industry Data Security Standard compliance support to the Foundation, as outlined in Appendix A.
 - c. Provide at nominal rates access to the University's auxiliary services including graphics, mail service, event scheduling, facility management, and related activities.
 - d. Provide payroll and benefits, the cost of which will be reimbursed in full by the Foundation.
8. During the term of this Agreement, the Foundation, as an independent entity/organization, and *not as an agent of the University*, shall:
 - a. Be responsible for the selection, compensation, and evaluation of all personnel providing services for the Foundation;

- b. Make distributions from designated endowment funds to appropriate departments of the University for dispensation;
 - c. Distribute current expenditure funds on behalf of University departments;
 - d. Act as repository for all current and future endowment gifts to the University, unless the donor specifies otherwise. The management of these funds, including investment, payout rates and administrative fees, is the prerogative of the Foundation Board of Trustees;
 - e. The Foundation shall adhere to applicable federal and state laws, including, without limitation, the Uniform Prudent Management of Institutional Funds Act (UPMIFA);
 - f. The Foundation shall establish and enforce policies to protect donor confidentiality and privacy generally and in accordance with donor intent and the requirements of applicable law; and
 - g. Conduct fund-raising activities only after receipt of the prior written consent of the University's Vice President of University Advancement, acting on behalf of the President of the University, which approval will not be unreasonably withheld.
9. The University and the Foundation acknowledge that once funds are transferred to the University, it is the University's responsibility to ensure funds are applied per the donor's intent and in accordance with any donation documents.
10. The University's VP for Administration and Finance, who is an ex-officio member of the Foundation's Board of Trustees, will provide Foundation staff with the University's budget expenditure plans that impact the unrestricted expenditure budget. This should be done with adequate time for inclusion in the Foundation's budget which is presented to the board for approval at the JMUF spring board meeting.
11. The University and the Foundation acknowledge that each is an independent entity and agree neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, staff, or other agents. The Foundation further acknowledges that the Commonwealth of Virginia will not be liable for any of the Foundation's contracts, torts, or other acts or omissions.
12. The Foundation will report to the University any changes in Board membership, mission, or purpose.
13. The Foundation will make available to the University a copy of its annual auditor's report and IRS Form 990.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals the date and year written herein.

Mary D. Herod

Jonathan R. Alger

Rector, James Madison University

President, James Madison University

Maribeth D. Herod

Jonathan R. Alger

February 10, 2023

February 10, 2023

Date

Date

J. Barry Purcell III

Chair, James Madison University
Foundation, Inc.

John Barry Purcell, III

Warren K. Coleman

CEO/President, James Madison University
Foundation, Inc.

Warren K. Coleman

2/16/23

Date

2-16-23

Date

Appendix A

PCI DSS Compliance Addendum

Both the University and the Foundation represent, warrant, and agree that (a) where required, each complies with the current version of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) and will maintain compliance with the PCI DSS or any successor standard established by the PCI Security Standards Council (PCI SSC); (b) each is responsible for the security of cardholder data in its possession and that such data will be utilized only for purposes permitted by law and the PCI DSS; (c) the University and the Foundation will jointly manage the PCI compliance of Foundation associated merchant IDs (MIDs); and (d) the University and the Foundation jointly have security, compliance, and audit programs in place that assure a Payment Card Industry representative or a Payment Card Industry approved External Partner, can be provided with full cooperation and access for the purpose of validating compliance with the PCI DSS.

Both the University and the Foundation will promptly notify the other if either becomes aware of an occurrence of a Cardholder Event involving cardholder data relating to the Foundation. For purposes of this Agreement, a “Cardholder Event” means any of the following: a loss of, an incident of unauthorized access to, or an unauthorized disclosure of, cardholder data that is stored, processed, or transmitted by the University, the Foundation, or an affiliated third-party.