

NONDISCLOSURE AND NONUSE AGREEMENT

THIS NONDISCLOSURE AND NONUSE AGREEMENT (this “Agreement”) is made and entered into this ___ day of August, 2016, by and between **The Big 12 Conference, Inc.**, a Delaware nonprofit corporation (the “Conference”), and the **University of Memphis** (the “University”).

WHEREAS, the University has initiated communications with the Conference through which the University has expressed interest in being (a) considered for possible admission as a member in the Conference and (b) part of a greater process wherein the Conference is evaluating a number of candidates for possible admission as members in the Conference (the “Project”); and

WHEREAS, in response to that expression of interest by the University, the Conference desires to disclose certain Conference Confidential Information (as defined below) to the University and the University desires to disclose certain University Confidential Information (as defined below), all subject to and conditioned upon the execution of this Agreement and compliance by the University of the covenants, terms, and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Conference and the University hereby agree as follows:

1. **Conference Confidential Information**. As used herein, “Conference Confidential Information” shall mean all information or data, whether disclosed by the Conference to the University (and any and all summaries or reports thereof or notes relating thereto) at any time orally, in writing, or in electronic format, in any way related to (a) the business, finances, prospects, or affairs of the Conference or member institutions (its “Members”), that is not generally available to the public as of the time of disclosure, including, without limitation, any and all nonpublic information, data, financial statements or budgets or projections, contracts, reports, papers, analyses, compilations, records, notes, summaries, discussions, studies, or other materials (in whatever form or media maintained); or (b) the Project or the participation in the Project of the University or any other person or entity, including, without limitation, this Agreement or any other agreement or other documents executed in connection with the Project (including the existence or terms of this Agreement or any other agreements or documents), procedures, timetables, criteria, decisions, or results of the Project as they may relate to the University or any other person or entity or the University’s or any other person or entities participation therein (the “Project Information”).

2. **University Confidential Information**. As used herein, “University Confidential Information” shall mean any information or data disclosed by the University to the Conference in writing (and any and all summaries or reports thereof or notes relating thereto), or in electronic format in connection with the Project, relating to the University’s business plans, assets, liabilities, properties, accounts, financial information, or budgets that are not generally available to the public, that is explicitly identified, or marked in writing, as being “confidential” at the time of such disclosure.

3. Nondisclosure and Nonuse of Conference Confidential Information. The University acknowledges and agrees that the Conference Confidential Information is of great value to the Conference and that the restrictions and agreements contained in this Agreement are reasonably necessary to protect the Conference Confidential Information and the goodwill of the Conference. Accordingly, the University shall, and shall cause all of its directors, officers, employees, agents, independent contractors or other representatives (the “University Covered Persons”) to:

(a) protect and safeguard the confidentiality of the Conference Confidential Information with at least the same degree of care as the University would protect its own confidential information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Conference Confidential Information, or permit it to be accessed or used, for any purpose other than in connection with the University’s participation in the Project;

(c) not disclose the Conference Confidential Information to any person or entity, except to the University’s representatives (the “University Need to Know Individuals”) who:

(i) are listed on **Schedule A** attached hereto and who need to know the Conference Confidential Information to assist the University, or act on its behalf, in relation to the Project or who are hereafter proposed by the University and who are approved by the Conference in its sole discretion for addition to **Schedule A**;

(ii) are informed by the University of the confidential nature of the Conference Confidential Information and the obligations of the Conference hereunder and agree to be bound by those covenants as if they were parties hereto; and

(iii) are subject to confidentiality duties or obligations to the University that are no less restrictive than the terms and conditions of this Agreement.

(d) not make any public announcement or comment regarding the Conference Confidential Information or the Project; and

(e) not make any statements or disclosures, public or private, with regard to, or to disclose any information with respect to, the Project Information or the University’s participation therein, or the status or the results of the Project during or after the conclusion of the Project, other than to the University Need to Know Individuals.

The University acknowledges and agrees that it shall be responsible and liable for violation of any provision of this Agreement by any of the University Covered Persons or the University Need to Know Individuals as if such breach was caused by the University or such persons were parties to this Agreement.

The Conference acknowledges and agrees that certain University Covered Persons that are not University Need to Know Individuals may be involved in the process of gathering and compiling University Confidential Information in connection with the Project without violating this Agreement; provided, however, and for the avoidance of doubt, the University acknowledges and agrees it will not share or distribute Conference Confidential Information (including, without limitation, the Project Information) to any such University Covered Persons.

4. Nondisclosure of University Confidential Information. The Conference acknowledges and agrees that the University Confidential Information is of great value to the University and that the restrictions and agreements contained in this Agreement are reasonably necessary to protect the University Confidential Information and the goodwill of the University. Accordingly, the Conference shall, and shall cause all of its Members and its and their respective directors, regents, presidents, chancellors, athletic directors, officers, employees, agents, independent contractors or other representatives (the “Conference Covered Persons”) to:

(a) protect and safeguard the confidentiality of the University Confidential Information with at least the same degree of care as the Conference would protect its own confidential information, but in no event with less than a commercially reasonable degree of care;

(b) not use the University Confidential Information, or permit it to be accessed or used, for any purpose other the Project; and

(c) not disclose the University Confidential Information to any person or entity, except to the Conference Covered Persons and except in connection with any Conference statement or disclosure, public or private, with regard to the Project Information or the status of the Project during the Project.

The Conference acknowledges and agrees that it shall be responsible and liable for violation of any provision of this Agreement by any of the Conference Covered Persons as if such breach was caused by the Conference or such persons were parties to this Agreement.

5. Required Disclosure. Any disclosure by the University or the University Need to Know Individuals of any of the Conference Confidential Information, or any disclosure by the Conference of any of the University Confidential Information (as applicable, the “Disclosing Party”), pursuant to an applicable federal, state or local law or regulation, including, without limitation, any federal or state “Freedom of Information Act” requests made under applicable law, or a valid order issued by a court or governmental agency of competent jurisdiction (a “Legal Obligation”), shall be subject to the terms of this Section. Prior to making any such disclosure, the Disclosing Party will provide the other party with: (a) prompt written notice of such requirement so that the other party may seek a protective order or other remedy; and (b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Disclosing Party remains subject to a Legal Obligation to disclose any Conference Confidential Information or University Confidential Information,

as applicable, the Disclosing Party shall disclose no more than that portion of the such information which, on the advice of the Disclosing Party's legal counsel, such Legal Obligation specifically requires the Disclosing Party to disclose and, upon the other party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such information will be afforded confidential treatment.

6. **Return or Destruction of Confidential Information.** At the Conference's request, the University shall promptly return to the Conference all copies, whether in written, electronic or other form or media, of the Conference Confidential Information, or, as requested, destroy all such copies and certify in writing to the Conference that such Conference Confidential Information has been destroyed. At the University's request, the Conference shall promptly return to the University all copies, whether in written, electronic or other form or media, of the University Confidential Information, or, as requested, destroy all such copies and certify in writing to the University that such University Confidential Information has been destroyed.

7. **Equitable Remedies.** The University acknowledges and agrees that, with respect to the Conference Confidential Information, and the Conference acknowledges and agrees that, with respect to the University Confidential Information, due to the unique nature of the Conference Confidential Information and University Confidential Information, as applicable, there may not be an adequate remedy at law for any breach of the obligations of the University or the Conference, as applicable, under this Agreement and, therefore, that upon any such breach or any threat thereof monetary damages, without the posting of any bond or other security, the University or the Conference, as applicable, may be entitled to appropriate equitable relief in addition to whatever remedies it might have at law, including, without limitation, attorneys' fees, if it is the prevailing party, in connection with any breach or enforcement of the obligations of the University or the Conference, as applicable, hereunder or the unauthorized use or release of any such confidential information, and such relief may be granted without the necessity of proving actual monetary damages unless required by law. The University further acknowledges and agrees that any breach of this Agreement or other public disclosure by any of the University Covered Persons or University Need to Know Individuals may lead the Conference to immediately terminate and end all consideration and evaluation of the University as a possible new member of the Conference.

8. **Miscellaneous.** The rights and obligations of the parties under this Agreement are perpetual and shall survive after the end of the Project or the end of the University's participation therein, and shall inure to the benefit of and be binding upon their permitted successors and assigns. This Agreement and the agreements referred to herein or therein contain the entire understanding of the parties hereto with regard to the subject matter contained herein, and supersedes all prior agreements, understandings or intents between the parties hereto. This Agreement may be amended, modified or supplemented only by a writing signed by the parties hereto. No waiver or any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement.

CONFIDENTIAL AND PROPRIETARY

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.


THE CONFERENCE:

The Big 12 Conference, Inc.

By: _____
Bob Bowlsby, Commissioner

THE UNIVERSITY:

University of Memphis

By:  _____
M. David Rudd, President

Schedule A

University Need to Know Individuals

M. David Rudd, President
Tom Bowen, Athletic Director
Melanie Murry, University Counsel