GRENADA

STATUTORY RULES AND ORDERS NO. 7 OF 2022

RESOLUTION FOR THE PURPOSES OF SECTION (5) OF THE ST. GEORGE'S UNIVERSITY LIMITED ACT CAP. 294A.

(Gazetted 10th February, 2022).

WHEREAS section 5 (1) of the Saint George's University Limited Act, Chapter 294A (hereinafter referred to as "the Act") provides that where any amendment of the Charter or the Agreement is accepted by the Government and the University, the Minister may, by order amend the First Schedule or the Second Schedule, as the case may be, in order to give effect to such amendment.

WHEREAS section 5 (3) of the Act provides that an Order made under section 5 (1) of the Act shall be subject to negative resolution of each House of Parliament;

WHEREAS the Government and the University have deemed it necessary to amend the Second Schedule of the Act;

WHEREAS on the 27th day of January, 2022, the Saint George's University (Amendment) Order, 2022 was made by the Minister responsible for Education;

AND WHEREAS the Saint George's University (Amendment) Order, 2022 was laid in and approved by the House of Representatives on the 1st day of February, 2022;

NOW THEREFORE BE IT RESOLVED by the Senate that the Saint George's University (Amendment) Order, 2022 which is attached as the Schedule to this Resolution be now laid and approved.

SCHEDULE

GRENADA

STATUTORY RULES AND ORDERS NO. 5 OF 2022

THE MINISTER IN EXERCISE OF THE POWERS CONFERRED ON HER PURSUANT TO SECTION 5 (1) OF THE SAINT GEORGE'S UNIVERSITY LIMITED ACT CAP. 294A MAKES THE FOLLOWING ORDER–

1. Citation and duration.—(1) This Order may be cited as the

SAINT GEORGE'S UNIVERSITY LIMITED (AMENDMENT) ORDER, 2022.

(2) This Order shall expire ten years after it enters into force.

2. Amendment of Second Schedule to the Saint George's University Limited Act. The Second Schedule to the Saint George's University Limited Act, Chapter 294A is hereby amended in the Agreement as follows–

(a) in article 1, by inserting after paragraph (2) the following new paragraph–

"3. The Government shall:

(a) provide the letter requested regarding continuing authorisation of the University to grant degrees after the Current Change within three (3) business days after payment of the Current Grant;

(b) provide, from time to time after the Current Change promptly upon request by the University, so long as the University has all licences and other authorisations necessary to operate in good standing at the time of the request, assurances, documentation, and any other support required or requested by the United States Department of Education, or any other legal, regulatory or accreditation body, that the University is legally authorised by applicable Government authorities, including the Grenada Medical and Dental Council, to provide post-secondary education and confer degrees consistent with this Agreement.";

(b) by inserting after article 1 the following new article–

"ARTICLE 1 bis

DEFINITIONS OF TERMS

For the purposes of this Agreement:

"the Advance" means the advance payment of USD $10,000,000 paid together with the Current Grant as provided under article 12 bis (2) (a);

"affiliated persons" include but are not limited to shareholders (and any affiliates, trusts and family members of shareholders), employees and passive limited partners of private equity funds;

"Current Change" means the February 2022 change in majority ownership of the indirect parent of the University to an existing equity holder;

"Future Change" means any transaction that is not a Future Change of Control that results in a new unaffiliated third person becoming a direct or indirect owner of the University after the Current Change and to February 2032;

"Future Change of Control" means any transaction, or series of related transactions that results in a new unaffiliated third person becoming the direct or indirect majority owner of the University after the Current Change and to February 2032;

"Current Grant" means the Change of Control grant payment in relation to article 12 bis (1);

"Future Grant" means payments made by the University to the Government in relation to a Future Change of Control or Future Change;

"the Grants" means the Current Grant and Future Grants;

"new unaffiliated third person" means any person that is not an affiliated person;

"University Parties" means the University, its current and future direct or indirect shareholders and affiliates.";

(c) in article 4, by numbering the paragraph as paragraph (1) and inserting thereafter the following new paragraph–

"2. The University:

(a) shall not acquire or establish a School of Medicine in the Caribbean region (which includes but is not limited to all CARICOM countries, Cuba, the Dominican Republic, Haiti,

Martinique, Guadeloupe, Sint Maarten, the Netherland Antilles, Puerto Rico, the Virgin Islands of the United States, British Virgin Islands), that competes directly with the University without the consent of the Government;

(b) shall not be permitted to use the name "St. George's University" or "SGU" for another School of Medicine without the consent of the Government; provided that the University may use the "St. George's University" and "SGU" names anywhere in the world in connection with feeder program to the University; and

(c) commits to discussing any substantial change in operations of the University due to disruptive conditions in a collaborative process for forty-five (45) days in advance of such proposed change in operations including with respect to the University maintaining its operations in Grenada in a meaningful manner, unless the health and safety of the University community are imminently compromised and necessitates more urgent action but commits to resume operations in Grenada once the related health and safety issues are substantially resolved.";

(d) by inserting after article 12 the following new article–

"ARTICLE 12 bis

PAYMENT TO THE GOVERNMENT FOR CHANGE OR CHANGE OF CONTROL

1. The University shall pay a Change of Control grant of USD $20,000,000 on consummation of the Current Change within five (5) business days following the publication of the Order under section 5 of the Saint George's University Limited Act, in the *Government Gazette.*

2. The University shall:

(a) concurrent with the payment of the Current Grant, to pay to the Government USD $10,000,000 as an advance against the

Future Grant payable on the first Future Change of Control after the Current Change;

(b) collaborate with the Government on implementing a process to have Grenadian citizen scholarship recipients whilst attending the University execute bonding agreements to ensure post-graduate service or financial compensation to the Government;

(c) provide two incremental full-time physicians in addition to what the University provides currently to perform clinical services for the Government, and one full-time public health professional, and

(d) introduce a system for certain physicians on its staff to provide voluntary clinical services or support annually to the Government.

3. In connection with any Future Change of Control and Future Change, the University and the Government hereby establish a process to pay Future Grants in accordance with this article.

4. Subject to paragraphs (5), (9) and (11), with regards to each Future Change and each Future Change of Control, the amount of each Future Grant payable by the University to the Government shall be 3.0% of the Valuation of the Transaction.

5. Notwithstanding paragraph (4), but subject to paragraphs (9) and (11), the Grant in connection with the first Future Change of Control will be the greater of:

(a) 3.0% of the Valuation of the Transaction; or

(b) USD $30,000,000.

6. The "Valuation of the Transaction" shall be equal to:

(a) the valuation of all consideration (other than any direct or indirect interests retained by such selling equity holders) received by the selling equity holders in such transaction, as agreed between the buyer and the selling equity holders; and

(b) the proceeds of any direct or indirect dividend or distribution from the University (or its parent companies) received by such selling equity holders with respect to the equity being sold in the transaction during the twenty-four (24) months immediately preceding the consummation of such Further Change of Control or Future Change,

which sum shall be multiplied by the SGU Related Portion.

7. The "SGU Related Portion" shall be equal to the percentage of the total consolidated net revenue of the entity whose interests are sold in such Future Change of Control or Future Change attributable to the University, based solely on the review by an internationally recognised accounting firm as may be agreed by the University and the Government (which review shall be final and binding on the University and the Government, absent manifest error), of the audited financial statements of such entity for the last fiscal year completed prior to execution of the definitive agreements relating to such Future Change of Control or Future Change.

8. The Government will receive no less than USD $30,000,000 following the Current Grant through and including the first Future Change of Control, including grants paid with respect to the Future Changes and the Advance.

9. Where 3% of the Value of the Transaction with respect to the first Future Change of Control is less than USD $30,000,000, the total value of any Grants for Future Changes paid by the University prior to the first Future Change of Control shall be credited against the amount to be paid in respect of the first Future Change of Control and only the difference from USD $30,000,000 shall be payable to the Government.

10. For the avoidance of doubt in relation to paragraph (9), if at the time of the first Future Change of Control, the grants with respect to the Future Changes already tally to USD $30,000,000 or more, the University shall pay the Government 3% of the Valuation of the Transaction.

11. In all circumstances, the Advance shall be credited against and shall reduce the amount payable by the University in connection with the first Future Change of Control.

12. In the event that there is no Future Change and/or Future Change of Control, the University hereby confirms that it agrees to forego any and all rights to claim repayment of the Advance.

13. The parties agree that payment of any Future Grant shall constitute the sole obligation of the University, its current and future direct or indirect shareholders and affiliates in connection with any direct or indirect transfers of equity interests or any potential Future Changes of Control or Future Change and the University's continued legal authorisation by all applicable Government authorities to provide post-secondary education and confer degrees consistent with this Agreement following any such transaction.";

(e) in article 14, by inserting after paragraph (11) the following new paragraph–

"12. For the duration of this Agreement, there shall be no increase as to the payments required of the University, or elimination of the exemptions from payments, from those set forth in this Agreement.";

(f) in article 15 in paragraph (1) in the table, by–

(i) deleting the following row–

"Medical	15	0 (equivalent)"

and substituting therefor the following new row–

"Medical	22	0 (equivalent)";

(ii) deleting the following row–

"Undergraduate	60	90 (equivalent)"

and substituting therefor the following new row–

"Undergraduate	100	90 (equivalent)";

(g) by deleting article 17 and substituting therefor the following new article–

"ARTICLE 17

DISPUTE RESOLUTION

1. In this article:

"Consultation Period" means a period of twenty-one (21) business days;

"Government Action" means a case where:

(a) the Government proposes or requests any changes in law, rule or regulation that purports or is intended to impose any taxes, levies or other costs or assessments (or eliminate any exemptions therefrom) on the University Parties, or otherwise takes any other action inconsistent with this Agreement; or

(b) the Parliament makes any changes in law that may impose any taxes, levies or other costs or assessments (or eliminate any exemptions therefrom) on the University Parties, or otherwise takes any action inconsistent with this Agreement.

2. In the event of any Government Action, the Government shall consult with the University for the Consultation Period to attempt to reach an agreement with the University on such Government Action and receive the University's (or the applicable University Parties') written consent prior to the application of such Government Action to the University.

3. If the University and the Government cannot agree by the end of the Consultation Period, the parties shall designate a mutually acceptable mediator to work with the parties to try to come to agreement on such Government Action, which mediation process shall extend no further than sixty (60) business days after the

end of the Consultation Period, unless the University and the Government agree otherwise.

4. If, after such mediation, the written consent of the University Parties is not obtained, such Government Action shall not be applicable to the University Parties and the Government shall not take or seek to enforce any Government Action against the University Parties.

5. If, notwithstanding failure to get the written consent of the University Parties, the Government seeks to impose the Government Action on the University Parties the University Parties shall have the right to seek all legal remedies, including specific enforcement by way of litigation.

6. The University and the Government agree that all disputes in relation to this Agreement shall be subject to the exclusive jurisdiction of the Courts of Grenada, to be explicit, the West Indies Associated States Supreme Court of Grenada, and the Appellate Courts therefrom, including Her Majesty's Most Honourable Privy Council or as otherwise may be existing from time to time.

7. The Government hereby waives sovereign immunity in respect of litigation and adjudication, save that the Government has not waived sovereign immunity with respect to any execution or attachment or process in the nature thereof issued from any court for enforcing payment by the Government of any such money or costs in favour of the University, and no natural person shall be individually liable under any order for the payment by the Government of any such money or costs in favour of the University.

8. The provisions of this article apply vice versa (mutatis mutandis) to the University insofar as proposed changes to this Agreement are being undertaken by the University in consultation with the Government and, if the Government does not consent, the University imposes its decision.".

Made by the Minister this 27th day of January, 2022.

EMMALIN PIERRE
Minister responsible for Education.

Passed by the Senate this 8th day of February, 2022.

ANDREW AUGUSTINE
Clerk to the Senate.

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