RELATED FOUNDATIONS

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System-wide Policy:  
BT0029 - Policy on Related Foundations

| Version: 2 | Effective Date: 06/21/2019 |

Board of Trustees  
Policy on Related Foundations

SECTION 1. PURPOSE

The University of Tennessee Board of Trustees hereby acknowledges the advantages and benefits of related foundations in achieving the overall missions of the University. As an instrumentality of the State of Tennessee, the University has certain statutory, policy, and fiscal responsibilities. Foundations exist as a viable and constructive way to address unintended limitations imposed on public higher education while not circumventing legal or ethical considerations. Many institutions of higher education have multiple related foundations to address a variety of mission specific objectives. Accordingly, it is not an anomaly in higher education to have one or more related foundations as each foundation serves different roles and constituencies within the enterprise. However, accountability of related foundations, and of the institution as it relates to the foundation, are common concerns to the foundation, the institution, and the governing boards.

The University of Tennessee has three related supporting foundations. Each of the three foundations has a unique history, and each serves a unique purpose. Given this uniqueness in the history and purpose of the three foundations, differences in how the University relates to the foundations are reasonable and appropriate. The purpose of this policy is to articulate the role and responsibilities of the University Board of Trustees with respect to related foundations and thereby foster a sound and mutually supportive relationship that will strengthen foundation operations and enhance their advantages and benefits to the University.

SECTION 2. THE UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

A. Relationship to the University. The University of Tennessee Research Foundation (UTRF) is a legally separate tax-exempt entity formed in 2003 as a reformation of The University of Tennessee Research Corporation (founded in 1934). This reformation resulted from specific legislative action authorizing the University to form legal entities for the purpose of promoting, supporting, and carrying out the University’s research mission, to formulate the commercialization of research outcomes, and in furtherance of the economic development of the state (T.C.A. §§ 49-9-1401 to -1409). Under the terms of the amended corporate charter, The University of Tennessee is beneficiary of the remainder interest in UTRF upon its dissolution, after first providing for the payment and discharge of any UTRF liabilities. UTRF is governed
by a board of directors comprised of ten (10) individuals, including University representatives and external representatives, seven (7) of whom are voting directors and three (3) of whom are non-voting directors.

**B. Role and Responsibilities of the Board of Trustees.** The following activities will define the role and responsibilities of The University of Tennessee Board of Trustees in ascertaining that the UTRF is operating in an acceptable manner for the benefit of the University and is safeguarding public assets from waste and abuse.

1. The Board of Trustees will cause a cooperating agreement between UTRF and The University of Tennessee to be executed that describes the roles and responsibilities of each party. The cooperating agreement shall provide for at least one (1) appointed Trustee on the UTRF governing board. The cooperating agreement shall be subject to the approval of the Board of Trustees.
2. The Board of Trustees will review the cooperating agreement every five years to ascertain that all responsibilities and conditions continue to be represented in the cooperating agreement and reaffirm the advantages of having a related foundation supporting the University’s research mission.
3. An annual report will be delivered to the Board of Trustees that highlights UTRF operations for the year, presents the annual UTRF budget, and identifies any activities that could potentially give rise to a University liability.
4. UTRF activities that create a liability for the University shall be approved by officials designated in the agreement and reported to the Board of Trustees.
5. The annual UTRF audit will be presented to the Audit and Compliance Committee of the Board of Trustees at the committee meeting following receipt of the report by the University.
6. UTRF will be displayed as a discrete component unit of the University on its audited financial statements at such time its operations become “material” as defined by the state comptroller’s office.

**SECTION 3. THE UNIVERSITY OF CHATTANOOGA FOUNDATION**

**A. Relationship to the University.** The University of Chattanooga Foundation (UCF), formed in 1969 in conjunction with the merger of the private University of Chattanooga with The University of Tennessee, is a legally separate tax-exempt entity supporting The University of Tennessee at Chattanooga. The UCF acts primarily as a fund-raising organization to supplement the resources that are available to the University in support of the Chattanooga campus. The UCF is governed by a board of no fewer than seven (7) and no more than forty-two (42) elected, voting members.
The President of The University of Tennessee, the Chancellor of The University of Tennessee at Chattanooga, and the Chairman of the Chancellor’s Roundtable serve as ex officio, non-voting members of the board. Although the University does not control the timing or amount of receipts from the UCF, resources are held and invested by the UCF for the benefit of The University of Tennessee at Chattanooga. The UCF organization includes a subsidiary, the Campus Development Foundation, Inc. (CDFI), that was formed in 2001 to engage in charitable, scientific, and educational projects. The projects include but are not limited to the acquisition of real property and the construction, management, and operation of various physical facilities benefiting The University of Tennessee at Chattanooga.

B. Role and Responsibilities of the Board of Trustees. The following activities will define the role and responsibilities of The University of Tennessee Board of Trustees in ascertaining that the UCF is operating in an acceptable manner for the benefit of the University and is safeguarding public assets from waste and abuse.

1. The Board of Trustees will cause a cooperating agreement between UCF and The University of Tennessee to be executed that describes the roles and responsibilities of each party. The cooperating agreement shall provide for at least one (1) appointed Trustee on the UCF governing board. The cooperating agreement shall be subject to the approval of the Board of Trustees.

2. The Board of Trustees will review the cooperating agreement every five years to ascertain that all responsibilities and conditions continue to be represented in the cooperating agreement and reaffirm the advantages of having a related foundation to support The University of Tennessee at Chattanooga.

3. An annual report will be delivered to the Board of Trustees that highlights UCF operations for the year, presents the annual UCF budget support for the Chattanooga campus, and identifies any activities that could potentially give rise to a University liability.

4. UCF activities that create a liability for the University shall be approved by officials designated in the cooperating agreement and reported to the full Board of Trustees.

5. The annual UCF audit will be presented to the Audit and Compliance Committee of the Board of Trustees at the committee meeting following receipt of the report by the University.

6. UCF will be displayed as a discrete component unit of the University on its audited financial statements.
SECTION 4. THE UNIVERSITY OF TENNESSEE FOUNDATION

A. Relationship to the University. The University of Tennessee Foundation (UTF) was organized and incorporated in the State of Tennessee in 2000 as a nonprofit public benefit corporation formed exclusively for charitable, scientific, literary, and educational purposes with the meaning of IRC section 501(c)(3) and specifically for the exclusive purpose of benefiting the educational, research, and public service missions of the University. The General Assembly of the State of Tennessee has expressly authorized and empowered The University of Tennessee Board of Trustees to take such steps, to enter into such agreements, and to do whatever it may deem necessary for the establishment of foundations in support of the University (T.C.A. § 49-7-107). UTF acts as a fund-raising organization to supplement the resources available to the University for the support of its programs. The UTF is governed by a board of directors comprised of no fewer than eleven (11) and no more than thirty-five (35) elected, voting directors and various University officials who serve as ex officio, voting or non-voting directors. Although the University does not control the timing or amount of receipts from the UTF, the resources are held and invested by the UTF for the benefit of The University of Tennessee.

The UTF organization includes various single member LLC’s created for the acceptance and development of real property with related activities and revenues benefiting campuses of The University of Tennessee.

B. Role and Responsibilities of the Board of Trustees. The following activities will define the role and responsibilities of The University of Tennessee Board of Trustees in ascertaining that the UTF is operating in an acceptable manner for the benefit of the University and is safeguarding public assets from waste and abuse.

1. The Board of Trustees will cause a cooperating agreement between UTF and The University of Tennessee to be executed that describes the roles and responsibilities of each party. The cooperating agreement shall provide for at least one (1) appointed Trustee on the UTF governing board. The cooperating agreement shall be subject to the approval of the Board of Trustees.

2. The Board of Trustees will review the cooperating agreement every five years to ascertain that all responsibilities and conditions continue to be represented in the cooperating agreement and reaffirm the advantages of having a related foundation to supplement resources available to the University for the support of its programs.
3. An annual report will be delivered to the Board of Trustees that highlights UTF operations for the year, presents the annual UTF budget, and identifies any activities that could potentially give rise to a University liability.

4. UTF activities that create a liability for the University shall be approved by the officials designated in the cooperating agreement and reported to the full Board of Trustees.

5. The annual UTF audit will be presented to the Audit and Compliance Committee of the Board of Trustees at the committee meeting following receipt of the report by the University.

6. UTF will be displayed as a discrete component unit of the University on its audited financial statements.

History:

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OPERATING AGREEMENT
Between
THE UNIVERSITY OF TENNESSEE
and
UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

This Operating Agreement (hereinafter referred to as "Agreement") between The University of Tennessee (hereinafter referred to as "UT") and the University of Tennessee Research Foundation (hereinafter referred to as "UTRF") acknowledges and establishes the mutual financial benefits and commitments between UT and UTRF.

Witnesseth:

Whereas, UTRF is an educational, charitable, and scientific not-for-profit public benefit corporation, the charter of which was amended and restated in 2003 consistent with the provisions of Tennessee Code Annotated section 49-9-1401 et seq.; and

Whereas, UTRF is a legal entity separate from UT but, pursuant to its amended and restated charter, is formed for the purposes of promoting, supporting, and carrying out the research mission of UT, enhancing the competitive position of UT for research and development funding, otherwise to facilitate expanded research and development activities at UT, and to facilitate the commercialization of UT research outcomes and the transfer of research-generated technology from UT to commercial and industrial enterprises in furtherance of the economic development of the State of Tennessee; and

Whereas, to meet its obligations under federal law and otherwise, UT has the need for UTRF to accept assignment of and hold title to, develop, protect, administer, and commercialize discoveries, publications, inventions, and other intellectual property resulting from research conducted by UT faculty and staff; and

Whereas, Tennessee Code Annotated section 49-9-1401 et seq. expressly recognizes UT's authority to participate in legal entities such as UTRF for the purpose of promoting, supporting, and carrying out UT's research mission and to enter into joint ventures and other cooperative arrangements with entities such as UTRF in furtherance of the purpose of enhancing the competitive position of UT for research and development funding and facilitating the commercialization of UT research outcomes and the transfer of research-generated technology from UT to commercial and industrial enterprises in furtherance of the economic development of the State; and

Whereas, Tennessee Code Annotated section 49-9-1405 expressly authorizes entities such as UTRF to enter into agreements for the services of UT employees; and

Whereas, it benefits both parties to streamline procedures and communications for the efficient and timely handling of technology transfer and commercialization interests.
NOW, THEREFORE, in consideration of the mutual promises and benefits hereinafter stated, the parties agree as follows:

A. Domestic and foreign rights to inventions and creations heretofore or hereafter developed by UT personnel in the course of UT employment or through substantial use of UT facilities or funds are hereby assigned and will be assigned exclusively to UTRF for management and disposition, as appropriate in the judgment of UTRF, subject to UTRF's Revenue Sharing Policy for inventors and creators and further subject to rights of UT personnel in inventions and creations as set out in the UT Policy on Patent, Copyright, and Other Intellectual Property, as such policies may be amended from time to time. In its discretion, UTRF may reassign inventions and creations back to UT or to inventors and creators on a case-by-case basis or UTRF may transfer ownership or other rights in inventions and creations in whole or in part to research sponsors and/or other third parties, in accordance with such criteria as UTRF may develop.

B. UT has the resources and staff expertise to perform the work in the areas listed below, and in recognition of the advantages to UT and its research mission resulting from an active technology transfer and commercialization enterprise, UT agrees to provide services of its employees and related resources required to enable UTRF to accomplish the following tasks for UT:

1. General administration and management of operations and activities supporting research at UT, including without limitation financial accounting and recordkeeping related to the development, reporting, protection, commercialization and management of intellectual property.

2. Marketing and public relations for UT campuses, faculty, and staff and legislative and governmental relations related to technology development and commercialization.

3. Contract support in negotiating and monitoring research agreements.

4. Legal services to initiate, draft, coordinate and monitor patents, copyrights, and other intellectual property, as well as licenses, assignments, and other agreements involving intellectual property rights.

5. Market analysis and technology evaluations on intellectual properties.

6. Management of technology development and commercialization, including incubator/research park activities, start-up support and investments, and public or industry partnerships/economic development activities.

UT's financial commitment under this Agreement shall be limited to the amounts reflected in the attached budget documents, as amended from year to year, and in each case, shall be limited to the time period specified in the budget documents.
C. Under the management of its President and Board of Directors, UTRF, in its own name, shall have the following responsibilities under this Agreement as integral parts of an active technology transfer and intellectual property administration program, using as necessary the services of UT employees and related resources outlined in paragraph B above:

1. Hold, protect, commercialize, and dispose of inventions and creations, as UTRF deems appropriate on a case-by-case basis.

2. Upon request by UT, negotiate, execute, and/or monitor research agreements.

3. Perform marketing and outreach activities related to technology development and commercialization.


5. Hold, manage, and distribute or sell equity and other interests and royalty income.

6. Perform the tasks outlined in paragraph B above.

D. Further, to the extent of available resources and as UTRF deems appropriate, UTRF will provide the following services for the purpose of executing UT’s and UTRF’s mutually-agreed vision for UTRF of: promoting and supporting the UT research enterprise; harvesting, managing and marketing UT intellectual property; encouraging and supporting entrepreneurial education and ventures by UT faculty, staff, students and commercial partners/affiliates; and contributing to the well-being of the State of Tennessee through economic development.

1. Create, support, and/or develop new business opportunities, including subsidiary organizations, and facilitate start-up businesses’ access to UT and outside services, space, capital and other available resources needed to succeed in commercializing UT intellectual property.

2. Create, support, and develop research and technology development programs, activities, and entities.

3. Enter into agreements and participate with other institutions or governmental, public or private parties with regard to individual, joint or bundled inventions or creations, technology transfer and commercialization activities and development of infrastructure, incubator/research park, capital formation, public/private partnerships, and similar outreach activities.
4. Seek to encourage or provide educational opportunities in the area of entrepreneurial business activity, through classes, seminars, and/or other activities.

5. Promote UT personnel in individual efforts in technology transfer and commercialization areas to further develop and cultivate the entrepreneurial culture within UT.

6. Identify and participate in, through equity positions derived from intellectual property licenses, incubator leases or otherwise, opportunities for long-term capital appreciation in start-up and/or technology ventures, with a long-term goal of self-sustaining some or all UTRF functions.

E. UTRF acknowledges that it is indebted to UT under previous agreements for services and financings with its predecessor, the University of Tennessee Research Corporation (UTRC). This debt will continue owing under this Agreement, but UT will make no immediate demand provided each annual budget contains a line item repayment. Payments will be credited first to the revocable line of credit balance of $450,000, plus accrued interest, and then to the prior year operating deficits.

F. UTRF shall indemnify, hold harmless, and, at UT’s request, defend UT for injury or loss to third parties arising from UTRF’s acts or omissions. UTRF shall maintain such insurance coverage as may be specified in the annual budget.

G. The President of UTRF shall annually meet with and report in writing to the President of UT on UTRF’s accomplishments, expectations and obstacles to achievement of its purposes. The report shall include a copy of its audited financial statements and a summary of disclosures and patent activities; provided, however, the report shall not include confidential, proprietary or other non-public information in such report.

H. Nothing in this Agreement shall be deemed or construed to make UTRF an agency, department, instrumentality, political subdivision or other arm of the State. UTRF’s debts, liability, and other obligations shall not constitute debts, liabilities or obligations of the State or UT. Nothing in this Agreement shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the State or UT or any officer or employee of the State or UT, or to deprive any such officer or employee of any immunity to which such officer or employee is otherwise entitled under State law.

I. No part of UTRF’s net earnings shall inure to the benefit of any individual. No substantial part of UTRF’s activities shall consist of carrying on propaganda or otherwise attempting to influence legislation. UTRF shall not participate or intervene in any political campaign on behalf of a candidate for public office. Notwithstanding any other provision of this Agreement, UTRF shall not carry on any activities not permitted to be carried on by (i) an organization described in Internal Revenue Code sections
501(c)(3) and 509(a)(1), (2), or (3), or (ii) an organization contributions to which are deductible under the provisions of Internal Revenue Code section 170(c)(2).

J. Upon execution, this Agreement shall be retroactively effective to July 1, 2003 and shall be automatically renewed on an annual basis upon written approval of the annual budget required pursuant to paragraph B. of this Agreement. The written approval of UT and UTRF affixed to the budget document shall serve as an amendment to this Agreement for the budget year reflected on the approved budget document. In addition, this Agreement may be modified from time to time by written amendment signed by authorized officials of UT and UTRF.

K. This Agreement may be canceled by either party by giving ninety (90) days' written notice to the other party.

L. This Agreement supersedes all previous agreements between the parties concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed this ______ day of ____________, 2004.

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION
By: John Pontius
Name: John Pontius
Title: Chairman

THE UNIVERSITY OF TENNESSEE
By: Joseph E. Johnson
Name: Joseph E. Johnson
Title: Interim President
Affiliation and Services Agreement
among
University of Chattanooga Foundation, Inc.
and
The University of Tennessee, on behalf of
The University of Tennessee at Chattanooga,
and
The University of Tennessee Foundation, Inc.

This Affiliation and Services Agreement (hereinafter referred to as “Agreement”), entered into as of the 28th day of June 2017 (“Signing Date”) by and among the University of Chattanooga Foundation, Inc. (hereinafter referred to as the “Foundation”), The University of Tennessee (hereinafter referred to as the “University”) on behalf of The University of Tennessee at Chattanooga (hereinafter referred to as “UTC”), and The University of Tennessee Foundation, Inc. (hereinafter referred to as the “UT Foundation”) supersedes the Affiliation and Services Agreement among the parties entered into as of December 13, 2011:

WITNESSETH:

WHEREAS, the Foundation was organized and incorporated in the State of Tennessee in 1889 as a nonprofit educational institution, and in 1969, when it contributed substantially all its academic assets to the University to form UTC, the Foundation amended its name to change it from the University of Chattanooga to the University of Chattanooga Foundation, Inc. The Foundation remains a public benefit corporation formed exclusively for charitable, scientific, literary and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and specifically for the exclusive purpose of benefitting the educational, research, and public service missions of the University of Tennessee at Chattanooga; and

WHEREAS, the University is a public institution of higher education chartered in 1794 by the General Assembly of the State of Tennessee as a body politic and corporate with enumerated powers and all rights, privileges and powers usually conferred upon universities; and

WHEREAS, UTC is a public institution of higher education established as a campus of the University in 1969; and
WHEREAS, the UT Foundation was organized and incorporated in the State of Tennessee in 2000 as a nonprofit public benefit corporation formed exclusively for charitable, scientific, literary, and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and specifically for the exclusive purpose of benefiting the educational, research, and public service missions of the University; and

WHEREAS, the administrations of the University and of UTC, the Board of Directors of the UT Foundation, and the Boards of Trustees of the University and of the Foundation agree that the Foundation can provide an invaluable service to UTC by maximizing private gifts to UTC, by sharpening the focus of UTC’s fundraising efforts, by enhancing outreach and services available to the University of Chattanooga and UTC alumni, and by providing means to increase the development and alumni operation (staffing, activities, and other initiatives); and

WHEREAS, the Boards of Trustees of the Foundation and of the University and the President of the University and Chancellor of UTC agree that a commitment to private gift fundraising and decision making between UTC and the Foundation is paramount to successfully reaching the desired outcomes of increasing private gift fundraising and overall alumni engagement for UTC; and

WHEREAS, the Foundation believes it is consistent with its mission and purpose and is in the best interest of UTC for private gift fundraising to be coordinated through the Foundation to increase efficiency and effectiveness and to expand the current sources of support for UTC, and, therefore, the Foundation is willing to assume the roles and responsibilities set forth in this Agreement; and

WHEREAS, it is prudent and beneficial to have a clear statement, agreed upon by the parties, of the respective responsibilities, authority, and the relationship of the University, UTC, the UT Foundation and the Foundation, including the employment and supervision of development and alumni affairs staffs, the allocation of costs for employment and other services, and the standards and procedures for accounting for and auditing of accounts of the Foundation, while at the same time preserving the private and independent status of the Foundation;

NOW THEREFORE, in consideration of the premises, mutual covenants, and agreements contained herein, the parties agree as follows:
ARTICLE I
RELATIONSHIP AMONG THE FOUNDATION, THE UNIVERSITY, UTC AND THE UT FOUNDATION

1. The Foundation is a separately incorporated, nonprofit organization that exists to receive, hold, invest, and administer private gifts and other private resources solely for the benefit of UTC and with fiduciary responsibilities both to the past donors and alumni of the University of Chattanooga and to the past, present and future donors and alumni of UTC.

2. By approval of this Agreement, the Board of Trustees of the University designates the Foundation to receive all private gifts for support of UTC, except as may be otherwise specifically directed by the donor in writing.

3. The Foundation shall employ, directly or by lease, a UTC Vice Chancellor for Development and Alumni Affairs (or other Vice Chancellor title selected by the Chancellor of UTC), who shall also serve as Executive Director of the Foundation (or other title selected by the Foundation) (hereinafter “Vice Chancellor/Foundation Executive Director”) and who shall report to the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Chair of the Foundation’s Board of Trustees (“Foundation Chair”) or his or her designee. Development and Alumni-related goal setting for the Vice Chancellor/Foundation Executive Director shall be established annually by the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee. Performance reviews of the Vice Chancellor/Foundation Executive Director shall be initiated by the Chancellor of UTC, and carried out jointly with the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair. Due to the recognized need to coordinate development and alumni activities throughout the University of Tennessee system, the Foundation and the Vice Chancellor/Foundation Executive Director will coordinate activities with the University’s Vice President for Development and Alumni Affairs and Programs; provided, it is understood that the primary function of the Foundation is to support and enhance the development and alumni affairs functions of UTC. Appendix A further outlines the management responsibility and lines of reporting for the Vice Chancellor/Foundation Executive Director.
4. The Vice Chancellor/Foundation Executive Director, in consultation with the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair, or his or her designee, will prepare an annual plan and budget for the UTC development and alumni affairs programs (hereinafter “Programs”) that shall include, but not be limited to, initiatives and staffing growth and changes. The annual plan and budget will be presented to the Foundation Board of Trustees for approval. Upon approval, changes in staffing levels will be coordinated with the University. Funds to cover all salary, benefits, and operating expenses of new development and alumni affairs staff (hereinafter “Staff”) of the Foundation to implement the Programs for the benefit of UTC, and any increased costs for current Staff, shall be included in this budget. The Foundation will handle payroll (through the University for leased employees), travel reimbursement, and other operating expenses for current and new Staff. Therefore, these budgeted funds will be placed in an account from which the Foundation can authorize funding and expense reimbursement. The parties agree that the purpose of this Agreement is to increase private gift support for the benefit of UTC’s students and faculty/staff. The Foundation will provide funds to support programs up to and including the amount approved annually by the Foundation Board. These funds will come from normal fees associated with the investment of gifts and gift income, endowment administration fees, investment earning fees from the Foundation’s daily cash management program, accruing and using interest earnings on cash gifts to the Foundation prior to transfer to UTC, marketing programs, assessing fees for services, gift administrative fees and other unrestricted revenue of the Foundation in excess of that required to honor Foundation commitments to fund certain UTC programs. The Foundation shall disclose any assessment of fees to donors.

5. The parties agree that accountability and public trust are paramount to the success of the Foundation and its mission to support UTC.

6. The Foundation reserves all rights and powers granted to it under its charter and bylaws, under Tennessee law applicable to non-profit entities and under the federal law of tax-exempt entities that are not specifically limited or abridged by this Agreement. Nothing in this Agreement shall constitute an amendment of the Foundation’s charter.
7. The parties acknowledge that each is an independent entity and agree that neither will be liable, nor 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, members, staff or activity participants. The foregoing notwithstanding, the parties recognize that the Vice Chancellor for Development and Alumni Affairs for UTC will be designated as the Foundation Executive Director, and the other Staff may have business cards and other material which indicate an affiliation with the Foundation. The parties also acknowledge that the Foundation accepts the obligation to fund budgeted expenses incurred by the Staff. Nothing in this Agreement, however, shall be construed to give the Staff any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the Foundation beyond matters contained in the operating budget approved by the Foundation or as otherwise specifically approved by the Foundation.

8. The parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the parties or to impose any such obligation or liability upon any party. The foregoing notwithstanding, the parties recognize that the Vice Chancellor for Development and Alumni Affairs for UTC, while an employee of the University or the Foundation, will be designated as the Foundation Executive Director, and the other Staff, while also employees of the University or Foundation, may have business cards and other material which indicate an affiliation with the Foundation. The parties also acknowledge that the Foundation accepts the obligation to fund budgeted expenses incurred by the Staff up to and including the amount approved annually by the Foundation Board. Nothing in this Agreement, however, shall be construed to give the Staff any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the Foundation beyond matters contained in the operating budget approved by the Foundation or as otherwise specifically approved by the Foundation. Nothing in this Agreement shall be construed to give the Foundation any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the University, UTC or the UT Foundation; provided, it is understood that actions taken by the Staff, other than at the specific direction of the Foundation, which bind the University, UTC or the UT Foundation are not actions of the Foundation.
9. Debts, liabilities, and other financial obligations of the Foundation shall not constitute debts, liabilities or obligations of the State of Tennessee, the UT Foundation, the University or UTC and shall be payable only from unrestricted assets of the Foundation. Neither the State of Tennessee, the UT Foundation, the University nor UTC shall have any legal or other obligation to finance the deficits of the Foundation. Neither the State of Tennessee, the UT Foundation, the University nor UTC shall have any legal, financial or other responsibility or liability for the operations of the Foundation except as expressly agreed to in this Agreement or in other written agreements executed by the respective parties.

10. Debts, liabilities, and other obligations of the University, UTC or the UT Foundation shall not constitute debts, liabilities or obligations of the Foundation and shall be payable only from assets of the University, UTC or the UT Foundation as applicable. The Foundation shall have no legal or other obligation to finance the deficits of UTC, the UT Foundation or the University.

11. The Foundation shall maintain the insurance coverage specified in Appendix B at all times, and the University and the UT Foundation shall be named as an additional insured. The Foundation shall provide the University’s Chief Financial Officer and the UT Foundation’s President with a Certificate of Insurance evidencing compliance with the insurance requirements. The Foundation will provide the Vice Chancellor/Foundation Executive Director a certificate of insurance evidencing the insurance requirements also specified in Appendix B.

12. Nothing contained in this Agreement shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the State of Tennessee, the University or UTC, or any official, officer, or employee of the State, the University or UTC or to deprive any official, officer, or employee of the State, the University or UTC of any other immunity to which the official, officer, or employee is otherwise entitled under state law. The University’s and UTC’s liability for any claims, damages, losses, or costs to the Foundation and to third parties shall be subject to the terms, limits, and conditions of the Tennessee Claims Commissions Act, Tenn. Code Ann. §§ 9-8-301 et seq.
ARTICLE II

FOUNDATION COMMITMENT TO SUPPORT UTC

The mission of the Foundation is to support UTC’s educational, research, and public service activities by soliciting, receiving, and administering private funds to support programs beyond the scope of the University’s or UTC’s Education and General budget, and specifically does not include making or influencing University or UTC policy, procedures, or management/operational decisions.

1. Organizational Structure

a. The Vice Chancellor/Foundation Executive Director shall be managed directly by the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee. The Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair shall hire, supervise and, if necessary, terminate the Vice Chancellor/Foundation Executive Director; the Board of Trustees of the Foundation, through the Foundation Chair, shall be involved in the search process, evaluation and all other employment decisions involving the Vice Chancellor/Foundation Executive Director, including as set forth on Appendix A. Compensation of the Vice Chancellor/Foundation Executive Director shall be set by the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee prior to the approval by the Foundation of its annual budget. All Staff (both current and new) shall be employed by the Foundation directly, or by lease from the University, and shall be assigned by the Foundation to implement the Programs for the benefit of UTC. The Vice Chancellor/Foundation Executive Director shall be responsible for the supervision of all Staff.

b. Because of the close relationship between the Foundation and UTC, the Vice Chancellor/Foundation Executive Director will coordinate activities and work closely with the Chancellor of UTC and the other Vice Chancellors of UTC.
In accordance with the Foundation's Bylaws, the Foundation's Board of Trustees shall include the following members:

i. At least two (2) of the appointed members of the University of Tennessee Board of Trustees who are from the greater Chattanooga area or who are alumni of UTC and who accept the opportunity to serve on the Foundation's Board of Trustees;

ii. the General Alumni Association of The University of Tennessee at Chattanooga may be represented by three (3) Alumni Associate Trustees who shall have full rights and privileges and terms of three (3) years, one such Trustee being elected at each annual meeting;

iii. the President of the University, the Chancellor of UTC and the Chairman of the Chancellor's Roundtable at The University of Tennessee at Chattanooga shall be ex officio, non-voting members of the Foundation Board.

2. Foundation's Investment in Growth of the Programs; Receipt and Management of Private Gifts

a. The University acknowledges that the Foundation's constituency includes both alumni and supporters of the University of Chattanooga and alumni and supporters of UTC, and the colors, images, mascots and branding that are particular to UTC have significance to both alumni groups. The Foundation, therefore, shall have discretion in the promotion of UTC within its constituency, including by the utilizing of school colors, branding, images and the like that may be particular to UTC and that may differ from the school colors, branding, images and the like utilized by the University. The foregoing notwithstanding, the Foundation always will present UTC as part of the University of Tennessee system, and in any circumstances in which the UTC reference is in conjunction with the University identity, it will comply with established University graphic standards.

b. The Foundation shall receive and manage all private gifts for the benefit of UTC unless the donor has specifically directed otherwise in writing. If a donor expressly requests in writing, by a gift agreement or otherwise, that a private gift be received and held by the
University rather than the Foundation, the Foundation will remit the funds to the University for deposit to the University bank account, and the appropriate University account in the accounting system will be credited with the gift.

c. The Foundation shall transfer gift funds to UTC once each year on June 30 in accordance with the Foundation’s current policies.

d. The Foundation shall provide additional fundraising options for UTC by receiving private gifts for the benefit of UTC, including those that because of unacceptable risks or other business reasons the University could not accept (for example, encumbered real property, a going business, leveraged endowments, partnerships, and gift annuities). While under no obligation to accept such gifts or to undertake such ventures, the Foundation, prior to accepting such gifts, will discuss any such opportunities with the Chancellor of UTC, who shall, in turn, consult the University’s President, Chief Financial Officer, and General Counsel. The Foundation shall not accept gifts that create a direct or indirect financial liability for the University or UTC (for example, accepting a gift that requires the assuming of another’s debt) without the prior written approval of the President of the University and Chancellor of UTC, which shall be given only after consultation with the University’s Chief Financial Officer and the University’s General Counsel and only after receiving the written concurrence of the Vice Chair of the Board of Trustees of the University.

e. The Foundation shall engage, as may be specifically approved in advance by the Foundation Board of Trustees, in real estate development, entrepreneurial ventures, and other revenue-producing activities for the benefit of UTC that are more appropriately conducted by the Foundation, subject to the veto power of the President of the University provided in Article IV, Section 6, and further subject to providing prior written notice of any real estate development to the State Building Commission and compliance with the terms of Article II, Section 3.f. of this Agreement if applicable.

f. The Vice Chancellor/Foundation Executive Director or Staff shall advise donors that restrictive terms and conditions imposed on UTC’s use of gifts must be approved by
the Chancellor of UTC or his or her designee prior to the Foundation’s acceptance of such gifts. The Vice Chancellor/Foundation Executive Director shall provide a copy of all gift agreements through the prospect management database system.

g. The Vice Chancellor/Foundation Executive Director, or designees, shall notify all designated UTC beneficiaries of gifts and contributions to the Foundation for their benefit, including the terms of any restrictions on such gifts, and make available regular reports of fund balances and expenditures.

h. The Vice Chancellor/Foundation Executive Director, or designees, shall provide all necessary receipts and acknowledgements, as required by the Internal Revenue Code, for all private gifts received by the Foundation for the benefit of UTC. Gifts that are expressly designated to the University rather than the Foundation will be receipted and acknowledged by the Vice President for Development and Alumni Affairs.

i. Within budgetary constraints, the Foundation shall coordinate with UTC-related volunteer groups as specifically requested by the Chancellor of UTC.

j. The Foundation shall work where appropriate with the designated offices of UTC to arrange press conferences, releases, and radio and television communications to acknowledge significant gifts and coordinate such activities with the Chancellor of UTC and UTC deans, department heads and other staff or faculty as required.

k. The Vice Chancellor/Foundation Executive Director shall be responsible for maintaining records concerning gifts and contributions to the Foundation.

l. The Foundation shall coordinate with the UTC Scholarship and Financial Aid Office and other UTC units as determined by the Vice Chancellor/Foundation Executive Director in the management and recognition of awards and other established scholarship programs funded by the Foundation.

m. The Foundation shall coordinate with UTC any recognition of major donors to UTC and donors to UTC through deferred gifts.
n. The Foundation shall develop policies for the payment of Foundation expenses, including check writing or payment authority of the Vice Chancellor/Foundation Executive Director, levels at which dual signature or signatures of Foundation officers are required and required approvals by the Foundation or Foundation committees. The Vice Chancellor/Foundation Executive Director shall maintain books and records of Foundation income and expenses and shall make regular financial reports to the Foundation Executive Committee or to such other committee as may be designated by the Foundation. All such financial records shall be included in the Foundation’s annual audit.

o. The Foundation shall develop and manage any required operating policies and procedures.

3. Foundation Asset Management and Fiduciary Responsibilities

The Foundation Board of Trustees is responsible for the control and management of all assets of the Foundation.

a. The Foundation shall establish or cause to be established asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act and the Uniform Prudent Management of Institutional Funds Act.

b. The Foundation shall fund its operating budget by using any or all of the following revenue sources, subject to the written concurrence of the Chancellor of UTC and the President of the University as to the sources of revenue: normal fees associated with the investment of gifts and gift income, endowment administration fees, investment earning fees from Foundation daily cash management program, accruing and using interest earnings on cash gifts to the Foundation prior to transfer to UTC, marketing programs, assessing fees for services, gift administrative fees and other unrestricted revenue of the Foundation in excess of that required to honor Foundation commitments.
to fund certain UTC programs. The Foundation shall disclose any assessment of fees to donors.

c. The Foundation is responsible for the performance and oversight of all aspects of its operations in accordance with its bylaws and a comprehensive set of policies that clearly address the fiduciary responsibilities of the Foundation’s Board of Trustees. Article VI, Section 1 of the Bylaws of the Foundation, which establishes an Endowment Committee as a standing committee of the Board of Trustees and Article VI, Section 3, which provides for the duties and responsibilities of the Endowment Committee, are incorporated herein specifically by reference. The Foundation, further, shall establish record retention, operating and finance policies and shall maintain copies of plans, budgets, and other records developed in connection with the performance of its obligations according to those policies.

d. The Foundation shall maintain an office that will serve as the legal address of the Foundation and the place where Foundation records will be held. Except to the extent such costs are included as in-kind support of UTC in Article III, the Foundation shall be responsible for all costs associated with this office, including but not limited to the cost of Staff or personnel, office space, parking, computers and other office equipment, information technology services, and telephone services. As of the date of this Agreement, the Foundation office space, located UTC’s Office of Development at 615 McCallie Avenue, Chattanooga, Tennessee, is provided by UTC. The Foundation is not obligated to lease space from UTC.

e. The Foundation may have its own legal counsel and accountant and shall be responsible for all costs for Foundation legal and accounting services. The parties understand that legal counsel for the University and the UT Foundation cannot provide legal advice to the Foundation, nor can legal counsel to the Foundation provide legal advice to the University or the UT Foundation.

f. The Foundation shall establish procurement policies which shall be reasonably consistent with procurement policies and procedures of the University and UTC and shall submit such policies to the Chancellor of UTC and the President of the University for written approval. The procurement policies shall include the prohibition against
using the Foundation to avoid or circumvent UTC or University procurement policies and procedures. The procurement policies shall be filed with the State Comptroller of the Treasury. The Foundation shall provide access to data and records to the appropriate UTC and University officials in accordance with applicable laws and Foundation and University policies and guidelines. The Foundation shall provide UTC and the University with its annual report and other information that may be publicly released. The Foundation’s financial statements will be treated as a component unit of the University’s audited financial statements in accordance with Generally Accepted Accounting Principles (GAAP) and thereby subject to all GAAP reporting requirements. The Foundation will strive for transparency and strong internal controls.

g. The Foundation will abide by the statutory provisions over real property provided in Tennessee Code Annotated 4-15-102 which include approval by the State Building Commission of any acquisition of or improvements to real property for which the intent exists to transfer ownership to the University. The University shall obtain approval of the State Building Commission for any improvement to University real property using Foundation funds. The University shall report to the State Building Commission prior to acting on any planned acquisitions of or improvements to real property. The University shall obtain approval from the State Building Commission prior to acceptance of any real property gift/conveyance by the Foundation, if the Foundation anticipates UTC will contribute to the property’s upkeep, payment of debt, or other financial obligation or use.

h. The Foundation acknowledges that under Tennessee Code Annotated 49-7-140, personally identifiable records and information concerning gifts to the University for the benefit of UTC are protected against disclosure. While not directly subject to such law, the Foundation, as recipient of gifts for the benefit of UTC, agrees to establish and enforce policies to protect the confidentiality of donors and alumni and their records consistent with such law.

i. The Foundation shall establish, adhere to, and periodically assess its gift management and acceptance policies.
j. Under no circumstance shall any of the net earnings or assets of the Foundation inure to or be distributed to the benefit of the Board of Trustees of the Foundation, officers, or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the overall purpose of the Foundation.

k. In order for the Foundation to perform the services under this Agreement, the University may provide to the Foundation certain student “education records,” as defined in the Family Education Rights and Privacy Act (FERPA), and regulations thereunder, 20 USC § 1232g; 34 CFR Part 99. The University and the Foundation acknowledge that the services or functions to be performed by the Foundation related to education records are services or functions that the University otherwise would undertake, and that there is a legitimate education interest in disclosing the education records to perform the services or functions. The Foundation agrees that in the performance of such services or functions, its actions in relation to the use and maintenance of education records shall comply fully with FERPA, including but not limited to all confidentiality and re-disclosure requirements. The Foundation acknowledges that any records directly related to a student that it maintains or receives are education records, including any new records the Foundation may create that are directly related to an individual’s attendance as a student.

4. Support of the University and UT Foundation

The UT Foundation shall provide the Vice Chancellor/Foundation Executive Director and Staff access to the alumni donor base (currently known as ANDI) or similar services either maintained by the UT Foundation or accessed by the UT Foundation from the University, including donor prospecting and other databases, donor coordination services, support services such as research, receipting and fund management, and other present and future development and alumni affairs services. The reasonable costs of the use by the Foundation of such services shall be charged to the UTC Development and Alumni Affairs budget. The Vice Chancellor/Foundation Executive Director shall be responsible for transmitting a record of all gifts to the Foundation for posting in the alumni donor base.
ARTICLE III

UNIVERSITY AND UTC COMMITMENT TO THE FOUNDATION

The University and UTC support the use of the Foundation to maximize private gift support to UTC. In consideration of the services provided by the Foundation to UTC, the University and UTC shall provide the following in support of the Foundation:

I. University and UTC Commitment

a. The University and UTC recognize the need to increase UTC’s private gift fundraising and alumni outreach and encourage the growth of development and alumni staff and operations by using all revenue sources available including those outlined in Article I, Section 4.

b. The Chancellor of UTC, as well as the academic deans, and other key UTC personnel shall commit to supporting private gift fundraising and alumni outreach including, but not limited to:

   i. communicating UTC priorities and long-range plans to the Foundation;
   ii. participating in solicitations of major gift prospects;
   iii. communicating development and alumni goal activities;
   iv. participating in search committees for new development and alumni professionals;
   v. participating in performance reviews of development and alumni professionals; and
   vi. participating in key alumni programs/events.

c. The University and UTC will maintain policies and controls for the use of gift funds transferred from the Foundation to the University in accordance with donor restrictions.
d. To the extent allowed by applicable law, regulations, and policies, UTC will provide Staff who are leased by the Foundation from the University and assigned to provide services for the benefit of UTC with access to the following UTC privileges or benefits at the same cost as they are available to UTC employees: parking, athletic ticket discounts, bookstore discount, interest-free computer purchases through the bookstore by payroll deduction, use of libraries, use of recreation and fitness programs and facilities and discount on any membership fee, and UT training programs.

e. Confidential Records. The University and UTC acknowledge that under Tennessee Code Annotated 49-7-140, personally identifiable records and information concerning gifts received by the University for the benefit of UTC are protected against disclosure.

ARTICLE IV
ENSURING UNIVERSITY COORDINATION AND TRANSPARENCY

1. The Foundation will operate in a transparent manner to ensure there is public trust.

a. As required by Tennessee Code Annotated § 49-9-113(e)(1), all full board meetings of the Foundation Board of Trustees shall be open to the public except for executive sessions that include, but are not limited to, any of the following matters: litigation; audits or investigations; human resource issues; gift acceptance deliberations; board training; governance; donor strategy sessions; and security measures.

b. Minutes of open Foundation Board meetings will be available at its offices and on its website.

c. The Foundation will create an annual report (electronic or written).

d. The Foundation annually will present a report to the University Board of Trustees.

e. The Foundation will file an IRS 990 report and meet all applicable requirements thereof.

2. The Board of Trustees of the Foundation shall maintain an audit committee as a standing committee of the Board.

3. The Foundation shall engage an independent certified public accounting firm annually to conduct an audit of the Foundation’s financial and operational records and shall provide the University and the State Comptroller of the Treasury with a copy of the annual audited
financial statements (including management letters). The Foundation shall coordinate its annual audit to allow for the results to be included in the University’s annual financial report. In addition, the Foundation shall provide such other reports, schedules, and records as may be reasonably requested by the University. All annual reports and all books of accounts and financial records (including revenues and expenditures) of the Foundation shall be subject to audit by the State Comptroller of the Treasury or his designee.

4. The Foundation Board will cause regular, documented assessments of the Foundation’s risk of fraud, waste, and abuse to be performed. The Foundation Board will establish and implement a system of internal controls that adequately mitigates those risks and ensures compliance with all applicable laws and regulations. The risk assessment and the documented mitigating controls will be submitted to the audit committee of the Foundation for review and approval.

5. The Foundation has adopted policies that require full disclosure of all conflicts and potential conflicts of interest (the definition of which shall include those enumerated in Tennessee Code Annotated § 12-4-101) that any member of the Foundation Board of Trustees may have in his or her role as a member of the Foundation Board of Trustees. The policies shall also include provisions prohibiting any director, officer, or staff member of the Foundation from accepting or giving any gift or gratuity that is offered, or reasonably appears to be offered, because of the individual’s position with the Foundation. Notwithstanding any other provision of law to the contrary, the Foundation Board of Trustees may remove any appointed member for a material violation of its policies.

6. Upon finding that a real estate development, entrepreneurial venture, or other revenue producing activity the Foundation proposes to undertake is not in the best interest of UTC or the University, the President of the University shall have power to veto the proposed activity.

7. The Foundation shall not pay any compensation, directly or indirectly, to the President of the University, Chancellor of UTC, or any other University employee, except insofar as the Foundation is responsible for some or all of the payroll and related costs for the Vice Chancellor/Foundation Executive Director and Staff that the Foundation leases from the University. This provision shall not be construed to prohibit the transfer of funds from the
Foundation to the University for professorships, chairs, and similar programmatic support of UTC.

8. All Foundation allocations and expense disbursements to or on behalf of UTC will be reasonable business expenses that support UTC, will be made in accordance with the terms of the Amended and Restated Charter of the Foundation, will be consistent with donor intent, and will not conflict with applicable law, regulations and policies. Foundation allocations and expense disbursements shall be subject to review and audit by the State Comptroller of the Treasury or internal auditor of the University.

9. Nothing in this Agreement shall be construed to permit the purchase of goods and services on behalf of UTC with the expectation of reimbursement by UTC. Goods and services may be purchased by the Foundation as a gift for UTC subject to the normal review and approval for gift acceptance; however, neither UTC nor the Foundation shall use the Foundation as a means to procure goods and services in circumvention of UTC or University purchasing policies and procedures.

ARTICLE V
FOUNDATION’S USE OF UTC’S NAME, SEAL AND LOGO

1. Consistent with its exclusive purpose to support the educational, research, and public service missions of UTC, the Foundation is granted permission to use UTC’s name, nicknames, and logos for the duration of this Agreement in furtherance of the Foundation’s purpose. The Chancellor of UTC and the President of the University reserve the right to object to any particular use by the Foundation, and in the event of such an objection, the Foundation shall cease and desist the use and shall cooperate with UTC to achieve an acceptable use.

2. Upon prior written approval by the Chancellor of UTC and the President of the University, the Foundation may authorize others to use UTC’s name, nicknames, and logos as long as the use is in furtherance of the Foundation’s purpose and is for a defined period of time not exceeding the term of this Agreement. The University and UTC reserve the right to object to any particular use by the third party, and in the event of such objection, the Foundation shall cause
the third party to cease and desist the use and cooperate with the University and UTC to achieve an acceptable use.

3. All correspondence, solicitations, activities and advertisements concerning the Foundation shall be clearly discernible as being from the Foundation and not the University or UTC.

ARTICLE VI
MISCELLANEOUS TERMS

1. Notices. Any notice, request, demand, or other communication required to be given hereunder shall be in writing (which shall include an electronic transmission that is the legal equivalent of a writing) and shall be deemed to be duly given when personally delivered to an officer of the Foundation, the University, UTC, or the UT Foundation, as the case may be, at the respective addressees of the Foundation, the University, UTC, or the UT Foundation as shown below, or to such other address as any party shall designate by written notice to the others. Any notice, request, demand, or other communication that is permitted, but is not required, to be given hereunder may be given electronically to the Foundation Chair, to the President of the University, to the President of the UT Foundation, or to the Chancellor of UTC or appropriate Vice Chancellor of UTC at such electronic addresses as are provided by the parties from time-to-time, or may be sent by certified or registered mail (effective upon receipt) to the appropriate individual and address listed below:

As to the University: President
The University of Tennessee
800 Andy Holt Tower
Knoxville, Tennessee 37996-0180

With a copy to: General Counsel
The University of Tennessee
719 Andy Holt Tower
Knoxville, Tennessee 37996-0170

As to UTC: Chancellor
2. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.

3. **Applicable Law.** This Agreement shall be construed, interpreted, and the rights and duties of the parties determined in accordance with the laws of the State of Tennessee.
ARTICLE VII
TERM, TERMINATION, AND AMENDMENT
OF THE AGREEMENT

1. The term of this Agreement shall begin on the date hereof and continue thereafter until terminated according to the provisions of this Agreement. As required by state law, the University, on behalf of UTC, may terminate this Agreement at the end of any fiscal year if sufficient funds are not available to carry out their obligations under the Agreement. Any party may terminate this Agreement at any time for any reason upon one hundred eighty (180) days' prior written notice to the other party. In addition, either party may terminate this Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within sixty (60) days after receiving written notice of the default.

2. In the event of termination of this Agreement, the parties anticipate, but recognize that there is no obligation, that the University or the Foundation will absorb the Staff.

3. It is anticipated that periodic amendments will have to be made to this Agreement, and both parties agree to the process outlined below:

   a. The Board of Trustees of the Foundation and the Chancellor of UTC, with the concurrence of the President of the University, may in writing request an amendment of the Agreement. The parties will negotiate the requested amendment and develop appropriate language. The parties recognize that amendment of this Agreement will be necessary upon the Transition Date contemplated by the Employee Services Agreement between the University of Tennessee, signing on behalf of the University of Tennessee at Chattanooga, and the University of Chattanooga Foundation, Inc., and they agree to negotiate and execute such necessary amendments.

   b. In a joint letter to the State Comptroller of the Treasury, the parties will articulate the reason for the proposed amendment and seek approval from the State Comptroller of the Treasury. Once the Comptroller has approved the amendment, it will be submitted to the Foundation Board of Trustees, the University Board of Trustees, and the UT Foundation.
Board of Directors for approval. After approval, the amendment will be executed by duly authorized representatives of the parties.

ARTICLE VIII
DISSOLUTION OF FOUNDATION

In the event of permanent dissolution and liquidation of the Foundation, the Foundation Board of Trustees shall cause the assets of the Foundation to be applied and distributed in accordance with its non-profit Charter, including distributions to the University or its successor. The University will honor to the extent possible any donor restrictions on assets held by the Foundation, including, but not limited to, retaining endowment funds as permanent endowments for the purposes specified by the donor. If a donor agreement limits or precludes any portion of the Foundation’s assets from matriculating to the University for the benefit of UTC, the Foundation Board of Trustees shall make all available effort to effectuate the transfer of such assets to the University for the benefit of UTC. Prior to the permanent dissolution or liquidation of the Foundation, a complete accounting of the Foundation will be attested to by the Foundation’s independent accounting firm.

ARTICLE IX
EFFECT OF AGREEMENT

1. This Agreement shall not be effective until approved by the State Comptroller of the Treasury, Foundation Board of Trustees, the Board of Trustees of the University, and the UT Foundation Board of Directors and thereafter executed by the respective authorized officers of the parties.

2. This Agreement shall supersede all previous agreements among the parties dealing specifically with the subject matter discussed herein; provided, however, this Agreement shall not be construed to supersede the 1969 Agreement and Plan of Transition between the University and the University of Chattanooga.

3. A waiver by any party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.
4. If any provisions of this Agreement shall, for any reasons, be held violation of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision, which shall remain in full force and effect.

5. The headings of the several Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Remainder of this page is intentionally left blank. Signature page follows.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the Signing Date.

Stevan R. Angle
Chancellor
The University of Tennessee at Chattanooga

James H. Moffatt
Chair, Board of Trustees
University of Chattanooga Foundation, Inc.

John D. Petersen
President
The University of Tennessee

Richard W. McCurry
President
The University of Tennessee Foundation, Inc.

Vice Chair, Board of Trustees
The University of Tennessee

Chair, Board of Directors
The University of Tennessee Foundation, Inc.
Appendix A

Management Responsibilities
with respect to
UTC Vice Chancellor/Foundation Executive Director

As provided in Article 1, Section 3, the Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee will manage the UTC Vice Chancellor/Foundation Executive Director. Development related goal setting for the University of Tennessee at Chattanooga shall be established annually by the University’s President. The annual goals for the Vice Chancellor/Foundation Executive Director will be established by the Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair. Performance reviews of the Vice Chancellor/Foundation Executive Director shall be initiated by the Chancellor of UTC and conducted with the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair. The procedure for compensation adjustments and other management responsibilities is also outlined below.

Responsibilities of Vice Chancellor/Foundation Executive Director

The responsibilities and job duties of the Vice Chancellor/Executive Director shall be divided among the parties as follows:

1. Seventy percent to the Foundation.
2. Twenty-Five percent to UTC.
3. Five percent to the UT Foundation.

Procedure for Goal Setting of the Vice Chancellor/Foundation Executive Director:

1. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair will establish performance metrics (visits, solicitations, dollars raised, etc.) that are expected for the UTC Vice Chancellors/Foundation Executive Director.

2. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair or his or her designee will agree upon campaign goals and annual goals in non-campaign years.

3. The Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs
and Programs, and the Foundation Chair may agree to other goals such as critical success factors.

**Procedure for Annual Performance Review of the Vice Chancellor/Foundation Executive Director:**

1. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair will review the Vice Chancellor/Foundation Executive Director’s development and alumni related performance and foundation management for the past year in relation to the annual performance letter.

2. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair will then draft a performance review letter.

3. This letter will be signed by the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee and delivered to the Vice Chancellor/Foundation Executive Director in advance of a meeting of the Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair.

**Procedure for Compensation Increases for the Vice Chancellor/Foundation Executive Director:**

1. Upon completion of the annual performance review process, the Chancellor of UTC will submit any proposed increase in the Vice Chancellor/Foundation Executive Director’s compensation to the University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair.

2. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair or his or her designee will meet with the Vice Chancellor/Foundation Executive Director to discuss the Vice Chancellor/Foundation Executive Director’s compensation for the following year.

**Procedure for Recruiting and Selecting the Vice Chancellor/Foundation Executive Director:**

The Chancellor of UTC, the University’s Vice President for Development and Alumni Affairs and Programs and Foundation Chair will coordinate the recruiting and search for any new Vice Chancellor/Foundation Executive Director, including advertising the position, coordinating background checks, and scheduling interviews.

1. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and...
Programs, and the Foundation Chair or his or her designee shall agree upon a final candidate pool to interview.

2. The Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair will agree upon the appointment of the new Vice Chancellor/Foundation Executive Director and his or her compensation.

Procedure for Terminating the Vice Chancellor/Foundation Executive Director:
A decision to terminate the Vice Chancellor/Foundation Executive Director shall be made by the Chancellor of UTC, University’s Vice President for Development and Alumni Affairs and Programs and the Foundation Chair in compliance with applicable human resources policies and procedures as articulated in the Foundation’s human resources handbook.
Appendix B

Foundation’s Duty to Maintain Insurance

In accordance with the provisions of Article I of this Agreement, the Foundation shall maintain the following insurance coverage at all times and shall provide a Certificate of Insurance evidencing such insurance to the University’s Chief Financial Officer and the UT Foundation’s President:

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Each Occurrence</th>
<th>Aggregate</th>
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<tr>
<td>Commercial General Liability Insurance</td>
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<tr>
<td>Damage to Rented Premises</td>
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</tr>
<tr>
<td>Med Exp (any one person)</td>
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<tr>
<td>General Aggregate</td>
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<tr>
<td>Products – Comp/Op Agg</td>
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Excess/Umbrella Liability

Aggregate

10,000,000
First Amendment to the
Affiliation and Services Agreement
among
The University of Tennessee
and
The University of Chattanooga Foundation, Inc.
and
The University of Tennessee Foundation, Inc.

This First Amendment, effective June 21, 2019, amends the Affiliation and Services Agreement (the “Agreement”), entered into as of June 28, 2017, by and among the University of Tennessee (“University”), on behalf of The University of Tennessee at Chattanooga (“UTC”), The University of Tennessee Foundation, Inc. (“UT Foundation”), and The University of Chattanooga Foundation, Inc. (“Foundation”).

WITNESSETH

WHEREAS, the Board of Trustees of the University (the “Board”) has been reduced in size and the number of members of the Board designated to serve on the Foundation’s Board of Trustees needs to be reduced accordingly;

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article II, Section 1.c.i. is amended and restated as follows:

i. At least one (1) of the appointed members of the University of Tennessee Board of Trustees who is from the greater Chattanooga area or who is an alumnus/alumna of UTC and who accepts the opportunity to serve on the Foundation’s Board of Trustees.

2. Except as revised by this First Amendment, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized officers as of the day and date first above written.

Steven R. Angle
Chancellor
The University of Tennessee at Chattanooga

Kim White
Chair, Board of Trustees
University of Chattanooga Foundation, Inc.

Randy Boyd
Interim President
The University of Tennessee

Kerry Withers
President and CEO
The University of Tennessee Foundation, Inc.

John Cowan
Chair, Board of Trustees
The University of Tennessee

Michael K. Littlejohn
Chair, Board of Directors
The University of Tennessee Foundation, Inc.
Affiliation and Services Agreement
between
The University of Tennessee
and
The University of Tennessee Foundation, Inc.

This Affiliation and Services Agreement (hereinafter referred to as “Agreement”), entered into and effective as of July 1, 2014, by and between The University of Tennessee (hereinafter referred to as “University”) and The University of Tennessee Foundation, Inc. (hereinafter referred to as “Foundation”) amends and supersedes the previous 2011 Agreement and related amendments:

WITNESSETH:

WHEREAS, the University is a public institution of higher education chartered in 1794 by the General Assembly of the State of Tennessee as a body politic and corporate with enumerated powers and all rights, privileges and powers usually conferred upon universities; and

WHEREAS, the General Assembly of the State of Tennessee has expressly authorized and empowered the Board of Trustees of the University to take such steps, to enter into such agreements, and to do whatever it may deem necessary for the establishment of foundations in support of the University; and

WHEREAS, the Foundation was organized and incorporated in the state of Tennessee in 2000 as a nonprofit public benefit corporation formed exclusively for charitable, scientific, literary, and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and specifically for the exclusive purpose of benefiting the educational, research, and public service missions of the University; and

WHEREAS, the Board of Trustees of the University and the Board of Directors of the Foundation agree that the Foundation can provide an invaluable service to the University by
maximizing private gifts to the University by sharpening the focus on the University’s fundraising efforts, enhancing outreach and services available to alumni, providing a mechanism to increase the development and alumni operation (staffing, activities, and other initiatives); and

WHEREAS, the Board of Trustees, University President, Chancellors, Vice Chancellors for Alumni Affairs and Development, Deans, and the Foundation Board of Directors agree that a collaborative effort of shared commitment to private gift fundraising and decision making between the University and the Foundation is paramount to successfully reaching the desired outcomes of increasing private gift fundraising; and overall alumni engagement; and

WHEREAS, the University and the Foundation believe it is in the best interest of the University for private gift fundraising to be coordinated through the Foundation to increase efficiency and effectiveness and to expand the current sources of support for the University system, and therefore the University desires to engage the services of the Foundation in accordance to the terms and conditions set forth in this Agreement; and

WHEREAS, because of the close association of the Foundation with the University, it is prudent and beneficial to have a clear statement, agreed upon by the parties, of the responsibilities, authority, and the relationship of the University and the Foundation and to agree on the standards and procedures for accounting for and auditing of accounts of the Foundation, while at the same time preserving the private and independent status of the Foundation;

NOW THEREFORE, in consideration of the premises, mutual covenants, and agreements contained herein, the parties agree as follows:
ARTICLE I
RELATIONSHIP BETWEEN THE FOUNDATION AND THE UNIVERSITY

1. The Foundation is a separately incorporated nonprofit organization that exists to receive, hold, invest, and administer private gifts and other private resources solely for the benefit of the University.

2. By its approval of this Agreement, the Board of Trustees of the University designates the Foundation to receive all private gifts for support of the University made on or after the effective date of enabling legislation enacted by the Tennessee General Assembly, except any gift for which the donor has specifically directed in writing that the gift be received and held by the University.

3. The Foundation President, in partnership with an Advisory Foundation Committee consisting of the University President, the campus Chancellors or their designees, the Chair of the Foundation Board of Directors, and the Executive Director of the UT Alumni Association will prepare an annual plan that shall include but not be limited to Foundation programs, initiatives, and staffing growth and changes that will be presented to the Foundation Board of Directors for approval.

4. The Foundation President and the campus Chancellors will jointly manage the campus Vice Chancellors for Development with dual direct reporting lines. Development related goal setting and performance reviews of Vice Chancellors for Development shall be initiated by the President of the Foundation annually and conducted jointly with the Chancellors. Appendix C further outlines this dual management responsibility.

5. The Foundation and the University agree that accountability and public trust are paramount to the success of the Foundation and its mission to support the University.
6. The Foundation reserves all rights and powers granted to it under the charter and bylaws, under the Tennessee law of non-profit entities and under the federal law of tax-exempt entities that are not specifically limited or abridged by this Agreement.

7. The Foundation and the University acknowledge that each is an independent entity and agree that neither will be liable, nor 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, members, staff or activity participants.

8. The parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the parties or to impose any such obligation or liability upon either party. Nothing in this Agreement shall be construed to give either party any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the other party.

9. Debts, liabilities, and other obligations of the Foundation shall not constitute debts, liabilities or obligations of the State of Tennessee or the University and shall be payable only from unrestricted assets of the Foundation. Neither the University nor the State shall have any legal or other obligation to finance the deficits of the Foundation. Effective on the date of this Agreement, neither the State nor the University shall have any legal, financial or other responsibility or liability for the operation of the Foundation except as expressly agreed to by the University in this Agreement.

10. Debts, liabilities, and other obligations of the University shall not constitute debts, liabilities or obligations of the Foundation and shall be payable only from assets of the University. The Foundation shall have no legal or other obligation to finance the deficits of the University.

11. The Foundation shall indemnify, hold harmless, and, at the University’s request, defend the University, the State of Tennessee, and their agents, trustees, officers, employees, and successors against any claims, damages, losses, or costs to third parties in any way
arising out of, attributable to, or in connection with any act or omission of the Foundation and its agents, directors, officers, employees, leased University employees, and successors. The Foundation shall maintain the insurance coverage specified in Appendix D at all times, and the University shall be named as an additional insured. The Foundation shall provide the University’s Chief Financial Officer with a Certificate of Insurance evidencing compliance with the insurance requirements.

12. Nothing contained in this Agreement shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the State of Tennessee or the University, or any official, officer, or employee of the State or University or to deprive any official, officer, or employee of the State or University of any other immunity to which the official, officer, or employee is otherwise entitled under state law. The University’s liability for any claims, damages, losses, or costs to the Foundation and to third parties shall be subject to the terms, limits, and conditions of the Tennessee Claims Commissions Act, Tenn. Code Ann. §§ 9-8-301 et seq.

ARTICLE II

FOUNDATION COMMITMENT TO UNIVERSITY SERVICE

The mission of the Foundation is to support the University’s educational, research, and public service activities by soliciting, receiving, and administering private funds to support programs beyond the scope of the University’s Education and General budget, and specifically does not include making or influencing University policy, procedures, or management/operational decisions.

1. Organizational Structure

   a. The University’s Vice President for Development and Alumni Affairs shall serve as President and chief executive officer of the Foundation and shall report directly to both the University President and the Foundation Board of Directors. The University President and Foundation Board of Directors will coordinate the Vice
President for Development and Alumni Affairs annual review. In accordance with the University's bylaws, the Vice President for Development and Alumni Affairs shall be elected by the University's Board of Trustees upon the recommendation of the University President and shall serve at the pleasure of the Board of Trustees. Accordingly, the authority to hire, terminate, and set the compensation of the President and chief executive officer of the Foundation lies ultimately with the University's Board of Trustees.

b. The Foundation Board of Directors shall include the following University members:

i. two appointed members of the University Board of Trustees, who shall be designated by the Vice Chair of the Board of Trustees and serve as voting members of the Foundation Board of Directors;

ii. one University of Tennessee Alumni Association (UTAA) representative, who shall serve as a voting member of the Foundation Board of Directors and be appointed through the Foundation nominations process from a pool of candidates identified by the UTAA Executive Committee and the UTAA Executive Director;

iii. President of the University, who shall serve ex officio and as a voting member of the Foundation Board of Directors; and

iv. One Chancellor and one Dean designated by the University President and rotated among the campuses, both of whom shall serve ex officio and as non-voting members of the Foundation Board of Directors.

2. Private Gift Fundraising

The Foundation shall:

a. Be responsible for conducting on behalf of the University, as specifically requested by the President of the University, the overall development and alumni programs, such as planning and coordinating capital campaigns and initiatives, planning and implementing a variety of programs and services to all alumni
(collectively, the “Programs”), in close cooperation with the University, campuses, and colleges, for the purpose of securing financial support for the benefit of the University and strengthening alumni engagement with the institution.

b. Solicit, receive and manage private gifts for the benefit of the University. If a donor expressly requests in writing, by a gift agreement or otherwise, that a private gift be received and held by the University rather than the Foundation, the Foundation will deposit the funds into the University bank account, and the appropriate University account in the accounting system will be credited with the gift.

c. Transfer gift funds to the University not less than annually

d. Receive and manage such grants from state or federal agencies as the University President and the Foundation Board of Directors may agree to accept.

e. Provide additional fund raising options for the University by receiving private gifts for the benefit of the University including those that because of unacceptable risks or other business reasons, the University could not accept (for example, encumbered real property, a going business, leveraged endowments, partnerships, and gift annuities). While under no obligation to accept such gifts or to undertake such ventures, prior to accepting such gifts, the Foundation will discuss any such opportunities with the President of the University and the Chancellor of the involved campus, who shall in turn consult the University’s Chief Financial Officer and the University’s General Counsel. The Foundation shall not accept gifts that create a direct or indirect financial liability for the University (for example, accepting a gift that requires the assuming of another’s debt) without the prior written approval of the President of the University, which shall be given only after consultation with the University’s Chief Financial Officer and the University’s General Counsel and only after receiving the written concurrence of the Vice Chair of the University’s Board of Trustees.
f. Engage, as may be specifically approved in advance by the Foundation Board of Directors, in real estate development, entrepreneurial ventures, and other revenue-producing activities for the benefit of the University that are more appropriately conducted by a private organization, subject to the University President’s veto power as provided in Article IV, Section 6, and further subject to providing prior written notice of any real estate development to the State Building Commission and compliance with the terms of Article II, Section 4.h. of this Agreement if applicable.

g. Advise donors that restrictive terms and conditions imposed on the University’s use of gifts must be approved by the University prior to the Foundation’s acceptance of such gifts.

h. Notify all designated University beneficiaries of gifts and contributions to the Foundation for their benefit, including the terms of any restrictions on such gifts, and make available regular reports of fund balances and expenditures.

i. Provide all necessary receipts and acknowledgements, as required by the Internal Revenue Code, for all private gifts for the benefit of the University, including gifts that will be held by the University.

j. Within budgetary constraints, coordinate with University related volunteer groups as specified by the President of the University.

k. Provide the services for fundraising and alumni activities such as prospect research, marketing, donor stewardship, property management, database management, accounting and disbursements, etc.

l. Work where appropriate with the designated offices of the University to arrange press conferences, releases, and radio and television communications to acknowledge significant gifts and coordinate with chancellors, deans, department heads and other staff or faculty as required.
m. Maintain records concerning gifts and contributions to the Foundation and the University (unless the donor has requested that the gift or contribution be received and held by the University).

n. Provide the services of trained development and alumni professionals to campuses, colleges, units, departmental offices or programs of the University (hereinafter "Unit" or "Units"), as appropriate. The addition or reduction of development and alumni professionals will be in accordance with the annual plan (Article I section 3.) based upon analysis of the Unit’s potential for private gift fundraising success as well as needed growth in alumni outreach and reflected in the Foundation’s budget.

o. Coordinate with each campus Student Financial Aid and Honors Program the management and recognition of awards and other established scholarship programs.

p. Coordinate any University-wide recognition of major donors and deferred gift donors through the formal stewardship programs established by the University and advising/coordinating with Unit-based stewardship activities.

q. Provide for timely reimbursement of expenses or payment of vouchers approved in accordance with Foundation policy approved by the University.

r. Develop and manage operating policy and procedures including donor coordination.

s. Perform such other duties as the University President may reasonably request as necessary or desirable to effectively conduct the Programs. In consultation with the Foundation and subject to approval by the Foundation Board, the University may contract for development services beyond the Foundation’s budgetary capacity for needs or special projects benefiting the University and which the Foundation is best suited to provide in accordance with its specialized knowledge.
and experience. If such additional services are needed on a one-time basis, the University and the Foundation shall enter into a separate contract for the additional services. If such additional services are needed on an ongoing basis, an amendment to this Agreement shall be executed in accordance with the provisions of Article VII.

t. Coordinate fundraising and other activities with other fundraising foundations established within the UT system, provided that the University does not make any contract or commitment with any other individual, corporation, association, or partnership concerning such activities without first notifying the Foundation. The Foundation shall provide the donor coordination, support services such as research, receipting and fund management in the current and future anticipated model regardless of the number of foundations established. The Foundation will be the central fundraising foundation and provide all support services to any fundraising foundation deemed affiliated by the Board of Trustees.

3. Foundation Asset Management and Fiduciary Responsibilities

The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation.

a. The Foundation shall have the authority to create an Investment Committee comprised of members of the Foundation Board of Directors, UT Investment Officer and the President of the University, or the President’s designee.

b. The Foundation shall establish or cause to be established asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act and the Uniform Prudent Management of Institutional Funds Act. The University administers a Consolidated Investment Pool (CIP) for endowments that the Foundation may elect to participate in by accepting the CIP’s established asset-allocation,
disbursement, and spending policies all of which adhere to federal and state laws including the Uniform Prudent Management of Institutional Funds Act.

c. The Foundation shall have the authority to assess normal fees associated with the collection and disbursement of gifts and gift income as approved by the President of the University. Additional funding to enable a growth in private gift support for the University will be accomplished using any or all of the following revenue sources: annual unrestricted funds given to the Foundation, endowment administration fee, investment earning fee from Foundation daily cash management program, accruing and using interest earnings on cash gifts to the Foundation prior to transfer to the University, marketing programs, assessing fees for services, and/or imposing gift administrative fees to support its operations from any sources outlined by the University or in the Association of Governing Boards list attached as Appendix B. All revenue sources will be agreed upon in writing between the President of the Foundation and the University President and approved by the Foundation Board of Directors. The Foundation shall disclose any assessment of fees or taxes to donors.

d. The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws and policies that clearly address the Board of Director’s fiduciary responsibilities.

4. Foundation Administration

a. Subject to enactment of enabling legislation, the Foundation and the University may enter into a separate Employee Services Agreement (ESA) for the lease of certain University development and alumni employees to the Foundation. The ESA may provide that development and alumni employees hired after the effective date of the ESA shall be hired as University employees and then leased to the Foundation. Alternatively, the ESA may provide that development and alumni employees hired after the effective date of the ESA shall be hired as Foundation employees. The ESA shall set forth the agreement of the University
and the Foundation concerning compensation policies and other human resource
policies applicable to leased University employees. The ESA shall recognize that
the compensation of the Vice President for Development and Alumni Affairs,
who also shall serve as President of the Foundation, must be approved by the
University Board of Trustees upon the recommendation of the University
President, as required by the University bylaws. The ESA shall also provide that
the Foundation President and the respective Chancellor shall agree on the salary
of the Vice Chancellor for Development.

b. The Foundation will have the authority to hire employees of the
Foundation and otherwise develop its own human resource infrastructure and
compensation policies to accomplish the mission of the Foundation.

c. The Foundation Board shall set compensation standards, including salary ranges
and fringe benefits, for any development and alumni professionals or other staff
hired as employees of the Foundation as part of the annual budget consideration
and approval.

d. The Foundation shall maintain an office that will serve as the legal address of the
Foundation and the place where Foundation records will be held. The Foundation
shall be responsible for all costs associated with this office, including but not
limited to the cost of personnel, office space, parking, computers and other office
equipment, information technology services, and telephone services. As of the
date of this Agreement, the Foundation office space, located at 600 Henley Street,
Suite #100, is leased from the University. The Foundation is not obligated to
lease space from the University.

e. The Foundation shall have its own legal counsel and shall be responsible for all
costs for Foundation legal services.

f. The Foundation shall establish record retention, operating, finance, and human
resource policies and maintain copies of plans, budgets, and other records
developed in connection with the performance of its obligations according to those policies. The Foundation shall provide access to data and records to the appropriate University officials in accordance with applicable laws, Foundation policies and guidelines, and University policies and guidelines.

g. The Foundation shall establish procurement policies and submit such policies to the President of the University for written approval. The procurement policies shall include the prohibition against using the Foundation to avoid or circumvent University procurement policies. The procurement policies shall be filed with the State Comptroller of the Treasury.

h. The Foundation shall provide the University with its annual report and other information that may be publicly released. The Foundation’s financial statements will be treated as a component unit of the University’s audited financial statements in accordance with Generally Accepted Accounting Principles (GAAP) and thereby subject to all GAAP reporting requirements. The Foundation will strive for transparency and strong internal controls.

i. The Foundation will abide by the statutory provisions over real property provided in TCA 4-15-102 and include approval by the State Building Commission of any acquisition of or improvements to real property for which the intent exists to transfer ownership to the University. The University shall obtain approval of the State Building Commission for any improvement to University real property using Foundation funds. The University shall report to the State Building Commission prior to acting on any planned acquisitions of or improvements to real property. The University shall obtain approval from the State Building Commission prior to acceptance of any real property gift/conveyance by the Foundation, if the Foundation anticipates the University will contribute to the property’s upkeep, payment of debt, or other financial obligation or use.
j. The Foundation shall establish and enforce policies to protect the confidentiality of donors and alumni and their records to the fullest extent allowable under the laws of the State of Tennessee.

k. The Foundation shall establish, adhere to, and periodically assess its gift management and acceptance policies.

l. Under no circumstance shall any of the net earnings or assets of the Foundation inure to or be distributed to the benefit of its Board of Directors, officers, or other private persons except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and make payments and distributions in furtherance of the overall purpose of the Foundation.

ARTICLE III
UNIVERSITY COMMITMENT TO THE FOUNDATION

The University supports the growth of the Foundation to maximize private gift support to the University. In consideration of the services provided by the Foundation to the University, the University shall provide the following in support of the Foundation:

1. University Commitment
   
   a. The University recognizes the need to increase its private gift fundraising and alumni outreach and encourages the growth of development and alumni staff and operations by using all revenue sources available and as agreed upon in writing between the President of the Foundation and the President of the University and approved by the Foundation Board of Directors.

   b. The President of the University, as well as the campus chancellors, academic deans, and other key university personnel shall commit to supporting private gift fundraising and alumni outreach including, but not limited to:
i. communicating university and unit priorities and long range plans to the Foundation;
ii. participating in solicitations of major gift prospects;
iii. communicating development and alumni goal activities to their assigned unit professionals;
iv. participating in search committees for new development and alumni professionals for their unit;
v. participating in joint performance reviews of their assigned development and alumni professionals; and
vi. participating in key alumni programs/events.

c. The University will maintain policies and controls for the use of gift funds transferred from the Foundation to the University in accordance with donor restrictions.

d. To the extent allowed by applicable law, regulations, and policies, the University will provide both Foundation and leased University employees with identification cards for access to the following University privileges or benefits at the same cost as they are available to University employees: parking, athletic ticket benefits and events, libraries, and recreation and fitness programs and facilities.

2. Compensation for Services by the Foundation. In consideration of the Foundation’s services described in this Agreement, the University will provide the following compensation to the Foundation:

a. Direct Support. The University will make payments to the Foundation in the amounts shown as University Direct Support in the Projected Foundation Budget set forth in Appendix A (which also includes other revenue sources consistent with those identified by the Association of Governing Boards and listed in Appendix B). The University will remit the University Direct Support payments to the Foundation no later than the tenth (10th) day of each month.
The University commits to continuing to make the University Direct Support payments outlined in the agreed upon Projected Foundation Budget set forth in Appendix A for fiscal year 2015, and as adjusted annually as part of the development of the annual plan and budget, subject to the University’s right under Article VII to terminate this agreement at the end of any fiscal year if sufficient funds are not available to carry out the University’s obligations under Agreement. Changes to the University Direct Support payments will be reviewed annually and approved by the Advisory Foundation Committee prior to submission for approval by the Foundation Board of Directors and the University Board of Trustees. Predictable revenue sources to support development budgets can help minimize the distraction and loss of focus towards securing private gifts for the benefit of the University.

b. Endowment Assessment: Except when circumstances require or warrant separate investment, University endowment funds and Foundation endowment funds are co-mingled and invested in the Consolidated Investment Pool. An administrative fee is assessed on the Consolidated Investment Pool for accounting and development services. In consideration of the Foundation’s services under this Agreement, the University will pay the Foundation the net administrative fee (net of direct University investment expenses) assessed on the University and Foundation funds invested in the Consolidated Investment Pool. The administrative fee as of the date of the execution of this Agreement is 100 basis points of the previous calendar year market value of the Consolidated Investment Pool.

c. In-Kind Support: The University will provide appropriate offices in University buildings for all development and alumni staff, whether they are leased University employees or employees of the Foundation, information technology services, telephone services (but not including cellular phones, personal digital assistants, or similar mobile devices), utilities, and clerical staff as necessary and appropriate. Furniture, office supplies, computers and other office equipment in
use by leased employees at July 1, 2011 are provided to the Foundation as part of 
the In-Kind Support. Any new or replacement furniture, office supplies, 
computers or other office equipment in the future are part of the annual budget 
development and included in Direct Support. The University will provide to the 
foundation the value of the In-Kind Services for each fiscal year-end to be 
included in the Foundation’s annual financial statements.

d. The University will be responsible to provide and maintain the alumni donor data 
base (ANDI). This includes IT support for development, programming, and 
report writing. Licensing for the data base and related software and hardware, 
upgrades, electronic screening, and imaging software are part of the Direct 
Support payments and not included in this In-Kind Support. In addition the 
Foundation in consultation with the University shall periodically evaluate new or 
improved data bases or social networking, constituency management systems, or 
other such hardware or software systems as necessary for the Foundation to meet 
the University’s needs. If future circumstances require that the Foundation 
assume responsibility for the alumni donor system, new or renewed licenses and 
infrastructure, such costs will be included in the annual budget development and 
agreed upon by the University and Foundation Advisory Committee.

3. Confidential Records. The University acknowledges that under Tennessee Code 
Annotated 49-7-140, personally identifiable records and information concerning gifts 
received by both the University and the Foundation are protected against disclosure.

ARTICLE IV
ENSURING UNIVERSITY COORDINATION AND TRANSPARENCY

1. The Foundation will operate in a transparent manner to ensure there is public trust.

a. Minutes of open Foundation Board meetings will be available at its website.
b. The Foundation will create an annual report (electronic or written).
2. The Foundation Board of Directors shall maintain an audit committee as a standing committee of the Board.

3. The Foundation shall engage an independent certified public accounting firm annually to conduct an audit of the Foundation’s financial and operational records and shall provide the University and the Comptroller of the Treasury with a copy of the annual audited financial statements (including management letters). The Foundation shall coordinate its annual audit to allow for the results to be included in the University’s annual report. In addition, the Foundation shall provide such other reports, schedules, and records as may be reasonably requested by the University. All annual reports and all books of accounts and financial records (including revenues and expenditures) of the Foundation shall be subject to audit by the Comptroller of the Treasury or his designee.

4. The management of the Foundation will perform regular, documented assessments of the Foundation’s risk of fraud, waste, and abuse. The management of the Foundation will establish and implement a system of internal controls that adequately mitigates those risks and ensures compliance with all applicable laws and regulations. Management of the Foundation will submit the risk assessment and the documented mitigating controls to the audit committee for review and approval.

5. Pursuant to Tennessee Code Annotated § 49-7-107(c), the Foundation has adopted a code of ethics and shall maintain such a code at all times. The code of ethics shall require full...
disclosure of all conflicts and potential conflicts of interest, the definition of which shall be consistent with Tennessee Code Annotated § 12-4-101, that any member of the Foundation Board of Directors may have in his or her role as a member of the Foundation Board of Directors. The code shall also include provisions prohibiting any director, officer, or staff member of the Foundation from accepting or giving any gift or gratuity that is offered, or reasonably appears to be offered, because of the individual’s position with the Foundation. Notwithstanding any other provision of law to the contrary, the Foundation Board of Directors may remove any appointed member for a material violation of the code of ethics in accordance with the provisions of Tennessee Code Annotated § 49-7-107(d).

6. Upon finding that a real estate development, entrepreneurial venture, or other revenue producing activity the Foundation proposes to undertake is not in the best interest of the University, the President of the University shall have power to veto the proposed activity.

7. The Foundation shall not pay any compensation, directly or indirectly, to the President of the University or any other University employee; provided, however, that this provision shall not be construed to prohibit the Foundation’s lease of University development and alumni employees pursuant to a duly authorized and executed Employee Services Agreement; nor shall this provision be construed to prohibit the transfer of funds from the Foundation to the University for professorships, chairs, and similar programmatic support.

8. All Foundation disbursements on behalf of the University will be reasonable business expenses that support the University, are consistent with donor intent, and do not conflict with applicable law, regulations and policies. Foundation disbursements shall be subject to University review and audit by the Comptroller of the Treasury or internal auditor of the University.

9. Nothing in this Agreement shall be construed to permit the purchase of goods and services on behalf of any University unit with the expectation of reimbursement from that unit. Goods and services may be purchased by the Foundation as a gift for the University subject to the normal review and approval for gift acceptance. However, neither the
University nor the Foundation shall use the Foundation as a means to procure goods and services in circumvention of University purchasing policies.

ARTICLE V
FOUNDATION'S USE OF UNIVERSITY NAME, SEAL AND LOGO

1. Consistent with its exclusive purpose to support the educational, research, and public service missions of the University, the Foundation is granted permission to use the University's name, nicknames, and logos for the duration of this Agreement in furtherance of the Foundation's purpose. The President of the University reserves the right to object to any particular use by the Foundation, and in the event of such an objection, the Foundation shall cease and desist the use and cooperate with the University to achieve an acceptable use.

2. Upon prior written approval by the President of the University, the Foundation may authorize others to use the University's name, nicknames, and logos as long as the use is in furtherance of the Foundation's purpose and is for a defined period of time not exceeding the term of this Agreement. The University reserves the right to object to any particular use by the third party, and in the event of such objection, the Foundation shall cause the third party to cease and desist the use and cooperate with the University to achieve an acceptable use.

3. All correspondence, solicitations, activities and advertisements concerning the Foundation shall be clearly discernible as being from the Foundation and not the University.
ARTICLE VI
MISCELLANEOUS TERMS

1. Notices. Any notice, request, demand, or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to an officer of the Foundation or the University, as the case may be, or when deposited in the United States mails, by certified or registered mail, return receipt requested, postage prepaid, at the respective addressees of the Foundation and the University as shown below, or to such other address as either party shall designate by written notice to the other:

As to the University: President
The University of Tennessee
800 Andy Holt Tower
Knoxville, Tennessee 37996

With a copy to: General Counsel and Secretary
The University of Tennessee
719 Andy Holt Tower
Knoxville, Tennessee 37996

As to the Foundation: President & CEO
The University of Tennessee Foundation, Inc.
1525 University Avenue
Knoxville, Tennessee 37996

With a copy to: Chair of the UTFI Board of Directors
The University of Tennessee Foundation, Inc.
1525 University Avenue
Knoxville, Tennessee 37996TBD

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2. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.

3. **Applicable Law.** This Agreement shall be construed, interpreted, and the rights and duties of the parties determined in accordance with the laws of the State of Tennessee.

**ARTICLE VII**

**TERM, TERMINATION, AND AMENDMENT OF THE AGREEMENT**

1. The initial term of this Agreement shall be for a period beginning on the date hereof and ending on June 30, 2018, and shall continue thereafter from year to year; provided that as required by state law, the University may terminate this Agreement at the end of any fiscal year if sufficient funds are not available to carry out the University’s obligations under the Agreement. Either party may terminate this Agreement at any time for any reason upon one hundred eighty (180) days prior written notice to the other party. Notwithstanding the foregoing notice provision, either party may terminate this Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within sixty (60) days after receiving written notice of the default.

2. In the event of termination of this Agreement:

   a. In the absence of any further agreement between the parties, the relationship between the parties will be governed by their prior Memorandum of Agreement dated December 1, 2005.

   b. The parties anticipate, but recognize that there is no obligation, that the University will absorb the Foundation’s development staff.

3. It is anticipated that periodic amendments will have to be made to this Agreement, and both parties agree to the process outlined below:
a. **Budget Amendments.** The Projected Foundation Budget set forth in Appendix A will be annually determined to reflect changes (increases or decreases) in the University's investment into its alumni and development programs as deemed necessary by the parties. Examples may include requesting additional development and alumni services from the Foundation or jointly funding new development and alumni staff members. Budget amendments resulting during any fiscal year under $250,000 shall be executed by the University President, after review and approval by the University Chief Financial Officer, and by the Foundation President and reported annually to the University Board of Trustees, the Foundation Board of Directors, and the Comptroller of the State of Tennessee. Budget amendments resulting in an increase during any fiscal year of $250,000 or more shall be processed in accordance with the provisions of Section 3.b. below concerning all other amendments to this Agreement.

b. **All Other Amendments.**

i. The Board of Directors of the Foundation or the President of the University may in writing request an amendment of the Agreement. The parties will negotiate the requested amendment and develop appropriate language.

ii. In a joint letter to the Comptroller of the State of Tennessee, both parties will articulate the reason for the proposed amendment and seek approval from the Comptroller of the State of Tennessee.

iii. Once the Comptroller has approved the amendment, it will be submitted to the University Board of Trustees and the Foundation Board of Directors for approval. After approval by the two boards, and after any required state government reviews and/or approvals, the amendment will be executed by duly authorized representatives of the parties.
ARTICLE VIII
DISSOLUTION OF FOUNDATION

In the event of permanent dissolution and liquidation of the Foundation, the Foundation Board of Directors shall cause the assets of the Foundation to be applied and distributed in accordance with its non-profit Charter, including distributions to the University or its successor. The University will honor to the extent possible any donor restrictions on assets held by the Foundation, including, but not limited to, retaining endowment funds as permanent endowments for the purposes specified by the donor. If a donor agreement limits or precludes any portion of the Foundation's assets from matriculating to the University, the Foundation Board of Directors shall make all available effort to effectuate the transfer of such assets to the University. Prior to the permanent dissolution or liquidation of the Foundation, a complete accounting of the Foundation will be attested to by the Foundation's independent accounting firm.

ARTICLE IX
EFFECT OF AGREEMENT

1. This Agreement shall not be effective until approved by the University Board of Trustees and the Foundation Board of Directors and thereafter executed by their respective authorized officers.

2. This Agreement shall supersede all previous agreements between the University and the Foundation.

3. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

4. If any provisions of this Agreement shall, for any reasons, be held violation of any applicable law, and so much of said Agreement is held to be unenforceable, then the
invalidity of such specific provision shall not be held to invalidate any other provision, which shall remain in full force and effect.

5. The headings of the several Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the dates written below.

Vice Chair, Board of Trustees
The University of Tennessee
March 23, 2015
Date

Chair, Board of Directors
The University of Tennessee Foundation, Inc.
3-12-15
Date

President
The University of Tennessee
03-19-2015
Date

President and Chief Executive Officer
The University of Tennessee Foundation, Inc.
03-10-2015
Date

Treasurer and Chief Financial Officer
The University of Tennessee
March 10, 2015
Date

Chief Financial Officer and Treasurer
The University of Foundation, Inc.
03-10-2015
Date

25
Appendix B

Association of Governing Boards
Recommended Guidelines for Revenue Sources

College and university respondents in the survey reported using a total of 20 sources of revenue to fund their fund-raising budgets.

Here are the sources and the number of foundations (institutions) that reported using each:

<table>
<thead>
<tr>
<th>Source</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrestricted gifts</td>
<td>28</td>
</tr>
<tr>
<td>Endowment management fees</td>
<td>25</td>
</tr>
<tr>
<td>Income on daily cash balances</td>
<td>19</td>
</tr>
<tr>
<td>Employees on institutional payroll</td>
<td>17</td>
</tr>
<tr>
<td>Administrative fees assessed on new gifts</td>
<td>12</td>
</tr>
<tr>
<td>Alumni funds</td>
<td>11</td>
</tr>
<tr>
<td>State and institutional funds budgeted for</td>
<td></td>
</tr>
<tr>
<td>fund-raising operations</td>
<td>7</td>
</tr>
<tr>
<td>Contract for services</td>
<td>6</td>
</tr>
<tr>
<td>In-kind from the institution</td>
<td>6</td>
</tr>
<tr>
<td>Academic unit charge backs</td>
<td>5</td>
</tr>
<tr>
<td>Endowment designated for fund-raising</td>
<td>3</td>
</tr>
<tr>
<td>Real estate sales</td>
<td>1</td>
</tr>
<tr>
<td>Real estate leases</td>
<td>1</td>
</tr>
<tr>
<td>Unrestricted endowment</td>
<td>1</td>
</tr>
<tr>
<td>Special events</td>
<td>1</td>
</tr>
<tr>
<td>Designated gifts</td>
<td>1</td>
</tr>
<tr>
<td>Endowment growth</td>
<td>1</td>
</tr>
<tr>
<td>Foundation reserves</td>
<td>1</td>
</tr>
<tr>
<td>Overhead added for specific projects</td>
<td>1</td>
</tr>
<tr>
<td>Entrepreneurial projects</td>
<td>1</td>
</tr>
<tr>
<td>Unstated</td>
<td>4</td>
</tr>
</tbody>
</table>

The five sources that appear to have the greatest capacity for providing significant increases in fund-raising budgets are:

- Institutional support – a category that includes several sources: state and/or institutional funds, contracted services, employees on institutional payroll, in-kind institutional support (usually space and various services), and school, college, departmental or project charge-backs;
  - Unrestricted gifts;
  - Endowment management fees;
  - Income on daily cash balances; and
  - Fees assessed on gifts.
Appendix D

Foundation’s Duty to Maintain Insurance

In accordance with the provisions of Article I of this Agreement, the Foundation shall maintain the following insurance coverage at all times and shall provide a Certificate of Insurance evidencing compliance with these requirements to the University’s Chief Financial Officer:

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Coverage Details</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability Insurance</td>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Damage to Rented Premises</td>
<td>100,000</td>
</tr>
<tr>
<td></td>
<td>Med Exp (any one person)</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>Personal &amp; Adv Injury</td>
<td>1,000,000</td>
</tr>
<tr>
<td></td>
<td>General Aggregate</td>
<td>2,000,000</td>
</tr>
<tr>
<td></td>
<td>Products – Comp/Op Agg</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Excess/Umbrella Liability</td>
<td>Aggregate</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Directors &amp; Officers</td>
<td></td>
<td>5,000,000</td>
</tr>
<tr>
<td>EPLI</td>
<td></td>
<td>5,000,000</td>
</tr>
</tbody>
</table>
First Amendment to the 2014 Affiliation and Services Agreement between The University of Tennessee and The University of Tennessee Foundation, Inc.

This First Amendment, effective June 28, 2017 amends the Affiliation and Services Agreement between the University of Tennessee (“University”) and The University of Tennessee Foundation, Inc. (“Foundation”) effective July 1, 2014 (“Agreement”).

WITNESSETH

WHEREAS, the University and Foundation and have identified certain parts of the Agreement that need to be amended to reflect that the University of Chattanooga Foundation, Inc. (“UC Foundation”) has a separate affiliation agreement with the University and will have a separate employee services agreement with the University and to reflect changes relating to the position of Vice President for Development and Alumni Affairs.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article I, Section 2 is amended and restated as follows:

   By approval of this Agreement, the Board of Trustees of the University designates the Foundation to receive all private gifts for support of the University made on or after the effective date of enabling legislation enacted by the Tennessee General Assembly, except as may be otherwise specifically directed by the donor in writing.

2. Article II, Section 1.a. is amended and restated as follows:

   The University’s Vice President for Development and Alumni Affairs and Programs (hereinafter sometimes referred to as “Vice President”) shall serve as President and Chief Executive Officer of the Foundation and shall report directly to both the University President and the Foundation Board of Directors. In accordance with the University’s bylaws, the appointment and initial compensation and other terms of employment of the Vice President shall be approved by the University’s Board of Trustees upon the recommendation of the University President. Annually thereafter, the University President shall evaluate and set the compensation and other terms of employment of the Vice President in coordination with the Foundation Board of Directors. The Vice President shall serve at the pleasure of the University President, and the University President shall have authority to remove the Vice President at any time.
3. Article II, Section 4.a. is amended by deleting the fifth sentence and substituting the following:

The ESA shall recognize that the initial compensation and other terms of employment of the Vice President for Development and Alumni Affairs and Programs, who also shall serve as President of the Foundation, must be approved by the University Board of Trustees upon the recommendation of the University President; and that annually thereafter the University President shall evaluate and set the compensation and other terms of employment of the Vice President in coordination with the Foundation Board of Directors.

4. Article II, Section 4(d) is amended by deleting the third sentence and replacing it with the following:

As of the date of this Agreement, the Foundation office space, located at 1525 University Avenue, Knoxville, Tennessee 37996, is leased from the University.

5. A new section, Article II, Section 4(m), shall be added and shall read as follows:

(m) In order for the Foundation to perform the services under this Agreement, the University may provide to the Foundation certain student “education records,” as defined in the Family Education Rights and Privacy Act (FERPA), and regulations thereunder, 20 USC § 1232g; 34 CFR Part 99. The University and the Foundation acknowledge that the services or functions to be performed by the Foundation related to education records are services or functions that the University otherwise would undertake, and that there is a legitimate educational interest in disclosing the education records to perform the services or functions. The Foundation agrees that in the performance of such services or functions, its actions in relation to the use and maintenance of education records shall be under the direct control of the University and shall comply fully with FERPA, including but not limited to all confidentiality and re-disclosure requirements. The Foundation acknowledges that any records directly related to a student that it maintains or receives are education records, including any new records the Foundation may create that are directly related to an individual’s attendance as a student.

6. Article VI, Section 1 is amended by deleting the words “and Secretary” from the title of the University’s General Counsel, and further amended by revising the name and address to which a copy of notices to the Foundation will be sent as follows:

With a copy to: Holbrook Peterson Smith PLLC
Tyson Place, Suite 150
2607 Kingston Pike
Knoxville, TN 37919
7. Article VII, Section I is amended by deleting the first sentence and replacing it with the following:

The term of this Agreement shall begin on the date hereof and continue thereafter until terminated according to the provisions of this Agreement. As required by state law, the University may terminate this Agreement at the end of any fiscal year if sufficient funds are not available to carry out the University’s obligations under the Agreement.

8. Appendix A, Budget FY 2015, is hereby replaced with Appendix A, Budget FY 2017, attached hereto.

9. Appendix C, Joint Management Responsibilities with respect to Vice Chancellors for Development, is hereby restated as Appendix C attached hereto.

10. Except as revised by this First Amendment, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, after approval by the Comptroller for the State of Tennessee and the governing boards of the University and the Foundation, this First Amendment to the Agreement has been executed by the President of the University and by the President and Chief Executive Officer of the Foundation.

THE UNIVERSITY OF TENNESSEE
Joseph A. DiPietro, President
Date: 6/21/17

THE UNIVERSITY OF TENNESSEE FOUNDATION, INC.
Rickey N. McCurry, President and CEO
Date: 6/28/17
### APPENDIX A

**The University of Tennessee Foundation**

#### Budget FY 17

<table>
<thead>
<tr>
<th></th>
<th>FY 16 Budget</th>
<th>FY 17 Budget</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>University Direct Support</td>
<td>$20,681,911</td>
<td>$21,677,182</td>
<td>$995,271</td>
<td>5%</td>
</tr>
<tr>
<td>Endowment Assessment</td>
<td>$7,037,836</td>
<td>$7,121,604</td>
<td>$83,768</td>
<td>1%</td>
</tr>
<tr>
<td>UTFI Interest Earnings</td>
<td>$700,000</td>
<td>$977,500</td>
<td>$277,500</td>
<td>40%</td>
</tr>
<tr>
<td>UTAA Revenue</td>
<td>$245,000</td>
<td>$281,000</td>
<td>$36,000</td>
<td>15%</td>
</tr>
<tr>
<td>UTK Funds</td>
<td>$1,028,189</td>
<td>$758,233</td>
<td>(269,956)</td>
<td>-26%</td>
</tr>
<tr>
<td>UTM Funds</td>
<td>$49,836</td>
<td>$23,651</td>
<td>(26,185)</td>
<td>-53%</td>
</tr>
<tr>
<td>UTRF Direct Support</td>
<td>$100,000</td>
<td>$100,000</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL REVENUE</strong></td>
<td>$29,842,772</td>
<td>$30,939,170</td>
<td>$1,096,398</td>
<td>4%</td>
</tr>
<tr>
<td>Prepayments from Campus Carryover</td>
<td>$718,505</td>
<td>$1,757,729</td>
<td>$1,039,224</td>
<td>145%</td>
</tr>
<tr>
<td>Prepayments from Central Carryover</td>
<td>$455,120</td>
<td>$310,112</td>
<td>(145,008)</td>
<td>-32%</td>
</tr>
<tr>
<td><strong>EXPENDITURES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>$14,824,190</td>
<td>$15,685,966</td>
<td>$861,776</td>
<td>6%</td>
</tr>
<tr>
<td>Operating</td>
<td>$4,129,097</td>
<td>$5,556,897</td>
<td>$1,427,800</td>
<td>35%</td>
</tr>
<tr>
<td><strong>TOTAL DEVELOPMENT</strong></td>
<td>$18,953,287</td>
<td>$21,242,864</td>
<td>$2,289,577</td>
<td>12%</td>
</tr>
<tr>
<td>Alumni Affairs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>$2,767,242</td>
<td>$2,824,327</td>
<td>$57,085</td>
<td>2%</td>
</tr>
<tr>
<td>Operating</td>
<td>$1,197,859</td>
<td>$1,076,334</td>
<td>(121,525)</td>
<td>-10%</td>
</tr>
<tr>
<td><strong>TOTAL ALUMNI AFFAIRS</strong></td>
<td>$3,965,101</td>
<td>$3,900,661</td>
<td>(64,440)</td>
<td>-2%</td>
</tr>
<tr>
<td>Central Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>$5,565,891</td>
<td>$5,231,584</td>
<td>(334,307)</td>
<td>-6%</td>
</tr>
<tr>
<td>Operating</td>
<td>$2,316,118</td>
<td>$2,138,402</td>
<td>(177,716)</td>
<td>-8%</td>
</tr>
<tr>
<td><strong>TOTAL CENTRAL DEV. &amp; SERVICES</strong></td>
<td>$7,882,009</td>
<td>$7,369,986</td>
<td>(512,022)</td>
<td>-6%</td>
</tr>
<tr>
<td><strong>TOTAL EXPENDITURES</strong></td>
<td>$30,800,397</td>
<td>$32,513,510</td>
<td>$1,713,114</td>
<td>6%</td>
</tr>
<tr>
<td><strong>NET SURPLUS</strong>*</td>
<td>$216,000</td>
<td>$493,500</td>
<td>$277,499</td>
<td>128%</td>
</tr>
</tbody>
</table>
Appendix C

Joint Management Responsibilities with respect to Vice Chancellors for Development

As provided in Article 1, Section 4, the Foundation President and the campus Chancellors will jointly manage the Vice Chancellors for Development. It is the responsibility of the Foundation President to initiate the goal setting, annual performance reviews, and compensation adjustments jointly with the campus Chancellors as outlined below. The procedure for other joint management responsibilities is also outlined below.

Procedure for Goal Setting of Vice Chancellors:
1. The UT President, Foundation President and campus Chancellor will agree upon annual fundraising goals for each campus and institute. These campus goals then become the goal for each respective vice chancellor.
2. The Foundation President will establish uniform performance metrics (visits, solicitations, dollars raised, etc.) for all Vice Chancellors.
3. The Foundation President and Chancellor may agree to other goals and include them in the annual performance letter such as critical success factors.

Procedure for Annual Performance Reviews of Vice Chancellors:
1. The Foundation President and Chancellor will review the Vice Chancellor’s development and alumni related performance for the past year.
2. The Chancellor will then draft the performance review letter with input from the Foundation President.
3. This letter will be signed by both the Foundation President and the Chancellor and delivered to the Vice Chancellor in advance of a joint meeting with the Vice Chancellor.

Procedure for Compensation Increases for Vice Chancellors:
1. Upon completion of the annual performance review process, the Chancellor will send any proposed increase in the Vice Chancellor’s compensation to the Foundation President for review.
2. The Foundation President and Chancellor will meet to discuss the Vice Chancellor’s compensation and agree upon any increase.
**Procedure for Recruiting and Selecting Vice Chancellors:**
The Foundation President and Chancellor will coordinate the recruiting and search for all new Vice Chancellors, including advertising the position, coordinating background checks, and scheduling interviews.

1. The Foundation President and Chancellor shall agree upon the chair and members of the search committee as well as the use of an outside search firm.
2. The Foundation President and Chancellor shall agree upon a final candidate pool to interview.
3. The Foundation President and Chancellor will agree upon the appointment and compensation of the new Vice Chancellor.

**Procedure for Terminating Vice Chancellors:**
A decision to terminate the Vice Chancellor shall be made jointly by the Foundation President and the Chancellor in compliance with applicable human resources policies and procedures as articulated in the Employee Services Agreement and the Foundation’s human resources handbook.
Second Amendment to the
2014 Affiliation and Services Agreement
between
The University of Tennessee
and
The University of Tennessee Foundation, Inc.

This Second Amendment, effective June 21, 2019 amends the Affiliation and Services Agreement between the University of Tennessee ("University") and The University of Tennessee Foundation, Inc. ("Foundation") effective July 1, 2014, as amended by the First Amendment to the 2014 Affiliation and Services Agreement between the University and the Foundation effective as of June 28, 2017 (the "First Amendment") (collectively, the "Agreement").

WITNESSETH

WHEREAS, the Board of Trustees of the University (the "Board") has been reduced in size and the number of members of the Board designated to serve on the Board of Trustees of the Foundation needs to be reduced accordingly;

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article II, Section 1.b.i. is amended and restated as follows:

   i. At least one member of the University Board of Trustees, who shall be designated by the Chair of the Board of Trustees and serve as a voting member of the Foundation Board of Directors.

2. Except as revised by this Second Amendment, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, after approval by the Comptroller for the State of Tennessee and the governing boards of the University and the Foundation, this Second Amendment to the Agreement has been executed by the President of the University and by the President and Chief Executive Officer of the Foundation.

THE UNIVERSITY OF TENNESSEE

Randy Boyd, Interim President

Date: 7-1-19

THE UNIVERSITY OF TENNESSEE FOUNDATION, INC.

Kerry Witcher, President and CEO

Date: 7-1-19
EMPLOYEE SERVICES AGREEMENT
BETWEEN
THE UNIVERSITY OF TENNESSEE
AND
THE UNIVERSITY OF TENNESSEE FOUNDATION, INC.

THIS EMPLOYEE SERVICES AGREEMENT ("Agreement") is entered into this 1 day of July, 2011 (the "Signing Date") between THE UNIVERSITY OF TENNESSEE ("UT") and THE UNIVERSITY OF TENNESSEE FOUNDATION, INC., a Tennessee non-profit corporation ("UTFI"). (All capitalized terms not otherwise defined are defined herein in Article 12).

WHEREAS, UT desires to increase its fundraising ability to promote continued excellence in carrying out its mission to engage in education, research, and service for the benefit of the citizens of the State of Tennessee;

WHEREAS, The General Assembly of the State of Tennessee has determined that it is in the best interests of UT, the State of Tennessee, and the citizens of the State of Tennessee to enhance the fundraising ability of UT through its affiliation with UTFI;

WHEREAS, UT and UTFI together desire to maintain the skills and services of UT employees who have been involved in development and alumni activities for UT;

WHEREAS, The General Assembly of the State of Tennessee has passed Enabling Legislation, codified at Tenn. Code Ann. § 49-9-113, to accommodate these goals; and

WHEREAS, contemporaneously with execution of this Agreement, UT has entered into an Affiliation and Services Agreement with UTFI ("Affiliation Agreement"); and

WHEREAS, UT and UTFI are entering into this Agreement to enable UTFI to operate initially with the services of current UT development and alumni employees through an employee leasing arrangement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS HEREBY AGREED AS FOLLOWS:

Article 1. Development and Alumni Affairs Employee Services for UTFI.

1.1 Lease of Current Development and Alumni Affairs Employees. UT and UTFI agree that all UT development and alumni affairs employees as of the Effective Date, as that term is defined in Article 3 of this Agreement, will be leased by UT to UTFI pursuant to the terms and conditions of this Agreement. Schedule 1 contains a list of the employees leased to UTFI pursuant to this Section 1.1 ("Current Leased Employees"). UTFI shall assign the Current
Leased Employees to provide development or alumni services for the benefit of the campus, institute, or other unit of UT where they are located as of the Effective Date.

1.2 Lease of New Development and Alumni Affairs Employees. UT and UTFI agree that for a transition period not to exceed ten (10) years from the Effective Date, all new development and alumni affairs employees shall be hired by UT, at the request of UTFI, and simultaneously leased by UT to UTFI pursuant to the terms and provisions of this Agreement. The hiring of new development and alumni affairs employees pursuant to this Section 1.2 ("New Leased Employees") shall be subject to and consistent with UT's normal policies (except compensation policies), procedures, and processes. As provided in Article I, Section 3, of the Affiliation Agreement, UTFI, in partnership with an Advisory Foundation Committee consisting of the University President, the Chancellors or their designees, the Chair of the Foundation Board of Directors, and the Executive Director of the UT Alumni Association, shall assign New Leased Employees to provide development or alumni affairs services for the benefit of a particular campus, institute, or other unit of UT.

1.3 UTFI's Right to Direct and Control Leased Employees. Except as otherwise provided in this Agreement and the Affiliation Agreement with respect to the Vice President for Development and Alumni Affairs ("Vice President") and the Vice Chancellors for Development/Advancement and the Chief Development Officer for UT Knoxville Athletics (hereinafter collectively referred to as "Vice Chancellors"), UTFI shall at all times have the exclusive right to direct and control the Current Leased Employees and New Leased Employees (hereinafter collectively referred to as "Leased Employee" or "Leased Employees") not only as to the result to be accomplished by the work, but also as to the task and means by which that result is to be accomplished and as to the time and the place where services shall be performed by Leased Employees. UTFI recognizes the important role of Chancellors, Deans, and other academic leaders in development and alumni affairs activities and is committed to direct the Leased Employees to work in a cooperative manner with the academic leaders of the campus or institute to which they are assigned.

1.4 Preservation of Benefits. In accordance with the Enabling Legislation, Leased Employees shall remain eligible for participation in the UT benefit plans described in Schedule 2 ("UT Benefit Plans") to the extent they are otherwise eligible for participation and subject to any changes that may be made from time to time in any of the UT Benefit Plans as long as such changes apply equally to all eligible UT employees. Leased Employees will also continue to be eligible for the following benefits as long as and to the same extent as UT employees are eligible for them: athletic ticket discounts; bookstore discount; interest-free computer financing through the bookstore; use of athletic facilities and discount on any membership fee; and UT training programs.

1.5 Transition Date. At a future date agreed upon by the UT President and the Foundation Board of Directors, but in no event later than ten (10) years from the Effective Date, UTFI will establish its own human resources administrative infrastructure and mechanisms to hire employees and to provide its own payroll services and human resources services. The date on which UTFI assumes such duties shall be the Transition Date.
1.5.1 **Human Resources Services Prior to the Transition Date.** Prior to the Transition Date, in consideration of the services provided by UTFI under the Affiliation Agreement and as part of the in-kind support provided by UT to UTFI, UT will provide Human Resources Services for UTFI with respect to the Leased Employees. UTFI agrees that UT’s providing of Human Resources Services for UTFI with respect to the Leased Employees shall not in any way diminish, invalidate, or void UTFI’s liability and indemnification obligations under Article 9 of this Agreement, and UTFI shall not to seek to avoid its obligations under Article 9 of this Agreement on the ground that Human Resources Services were provided by UT.

1.5.2 **Status of Leased Employees After the Transition Date.** The status of Leased Employees as Leased Employees will not be affected by the Transition Date.

1.6 **UTFI Hiring of Employees After the Transition Date.** All employees hired to perform services for UTFI after the Transition Date will be hired directly by UTFI as UTFI Employees. Except as otherwise provided in this Agreement and in the Affiliation Agreement with respect to the hiring of the Vice President and the Vice Chancellors, UTFI shall have the decision-making authority to make hiring decisions and to hire individuals as UTFI Employees after the Transition Date. UTFI recognizes the important role of Chancellors, Deans, and other academic leaders in development and alumni affairs activities and is committed to hiring individuals that will work in a cooperative manner with the academic leaders of the campus or institute to which they are assigned. The process outlined in the Affiliation Agreement, and specifically Appendix C, will be followed to hire Vice Chancellors.

1.6.1 **Human Resources Services After the Transition Date.** After the Transition Date, UT shall provide no Human Resources Services for UTFI, and UTFI will provide all human resources services with respect to both Leased Employees and UTFI employees.

1.6.2 **Payroll Services After the Transition Date.** After the Transition Date, UTFI will operate its own payroll system for UTFI Employees.

1.6.3 **UTFI Employees and Benefits Plan.** UTFI has the authority to implement and modify one or more benefits plans for UTFI Employees referred to herein as the “UTFI Benefits.” UTFI Employees will not be eligible for participation in the UT Benefit Plans, but will be eligible for UTFI Benefits in accordance with policies and procedures adopted from time to time by UTFI in its sole discretion.

1.7 **UTFI Human Resources Policies and Procedures.**

1.7.1 **Compensation Policies.** UTFI will adopt its own compensation policies and plans, which shall apply to both Leased Employees and UTFI Employees. Longevity payments pursuant to Tenn. Code Ann. § 8-23-206, as amended from time to time, will continue for all Leased Employees as long as such payments are provided to UT employees. After the Effective Date, Leased Employees will not be eligible for any increase in compensation implemented by UT or the State of Tennessee, including but not limited to any mandatory salary increase for state employees.
1.7.2 Compensation of Vice President/Foundation President. Initial compensation and changes to compensation for the Vice President, who shall also serve as President of UTFI, must be approved by the UT Board of Trustees upon recommendation of the UT President.

1.7.3 Compensation of Vice Chancellors. Initial compensation and changes to compensation for the Vice Chancellors shall be agreed upon by the Vice President/Foundation President and, as applicable, the campus/institute Chancellor or the UT Knoxville Director of Athletics, in accordance with the process outlined in Appendix C of the Affiliation Agreement.

1.7.4 Other Human Resources Policies and Procedures. Prior to the Effective Date, UTFI will adopt other human resources policies, including but not limited to policies relating to equal employment opportunity, discipline, and termination of employment. Except as otherwise provided in this Agreement and the Affiliation Agreement with respect to the Vice President and the Vice Chancellors, and except as otherwise provided in Section 1.2 of this Agreement with respect to the process of hiring new development and alumni affairs employees prior to the Transition Date, Leased Employees will be subject to UTFI human resources policies and procedures on and after the Effective Date and will not be subject to UT human resources policies and procedures, except that UT may apply its human resources policies and procedures to collect debts and obligations owed to UT by Leased Employees or funds subject to garnishment. UT shall have no obligation to apply its policies and procedures to collect debts owed by Leased Employees to UTFI.

1.8.1 At-Will Employment. Leased Employees will remain at-will employees subject to termination by UTFI at any time in accordance with UTFI human resources policies and procedures, except as otherwise provided in this Agreement and the Affiliation Agreement with respect to the Vice President and the Vice Chancellors.

1.8.2 Grievance Procedure for Non-exempt Leased Employees. UTFI human resources policies and procedures shall include a grievance procedure for Non-exempt Leased Employees consistent in all respects with the provisions of Tenn. Code Ann. § 49-8-117 as amended from time to time. This grievance procedure shall apply to a grievance by a Non-exempt Leased Employee about demotion, suspension without pay, termination for cause (including both unsatisfactory performance and misconduct), or work assignments or conditions of work that violate a statute or UTFI policy.

1.8.3 Termination of Exempt Leased Employees for Gross Misconduct. UTFI human resources policies and procedures concerning termination of Exempt Leased Employees for gross misconduct or other reasons that would result in the loss of accrued annual leave shall include a requirement for the Exempt Leased Employee to receive notice of the charge(s) and an opportunity to meet with his or her supervisor to respond to the charge(s) prior to termination and a post-termination opportunity for a hearing to contest the termination.

1.8.4 Prohibitions Against Smoking. UTFI policies and procedures shall include prohibitions against smoking consistent in all respects with UT smoking policies and state law.

1.8.5 Use of UT Vehicles and UT Plane. Leased Employees will be allowed to use UT vehicles only in accordance with the terms and conditions of a separate agreement between UT
and UTFI. In accordance with the UT policy on University Aircraft, when a flight has been scheduled for UT official purposes and unassigned seats are available on the aircraft, Leased Employees may use those unassigned seats when traveling for development or alumni affairs purposes. UT will charge UTFI for use of seats in accordance with the UT policy on University Aircraft.

1.8.6 Participation of Leased Employees in UT Employee Relations Advisory Board Meetings. The Leased Employees may elect one non-exempt and one exempt Leased Employee to attend meetings of the UT Employee Relations Advisory Board.

Article 2. Financial Arrangements.

2.1 Payment For Services of Leased Employees. As consideration for the provision of services by the Leased Employees, UTFI shall be responsible for the UT Costs, as that term is defined below in Section 2.1.2, paid or incurred by UT with respect to the Leased Employees.

2.1.1 Timing of Payment. UTFI shall pay the UT Costs (in immediately available funds) as reasonably required by UT to match the need for the applicable UT Costs, as that term is defined below in Section 2.1.2.

2.1.2 UT Costs. "UT Costs" shall mean all actual sums of money incurred or expended by or on behalf of UT during the applicable Payroll Period on: (a) wages and salaries paid to Leased Employees for the services provided under this Agreement; (b) federal, state and local taxes paid on the amounts described in (a); (c) the required contributions on behalf of Leased Employees under UT Retirement Plans, 401(k) match plan, group health insurance, and life insurance plans with respect to the amounts described in (a); (d) amounts paid for unemployment insurance as required by Tennessee law with respect to the amounts described in (a); (e) amounts paid to terminating Leased Employees for accrued annual leave; (f) death benefits paid with respect to Leased Employees; (g) cost of fee waivers and discounts for Leased Employees, and spouses, and dependents at UT or non-UT institutions; (h) cost of UT training programs attended by Leased Employees; (i) cost of all UT Benefit Plans with respect to Leased Employees not specified in subsections (a) –(h) above; and (j) any other direct expense (not including a system charge or similar charge) relating to Leased Employees not otherwise specified in this Agreement or the Affiliation Agreement. Amounts described in subsections (c) and (d) of this Section 2.1.2 shall be at rates uniformly applied to all UT employees. With respect to the amounts described in subsections (c) and (f) of this Section 2.1.2, for any Leased Employee who retires within three (3) years of the Effective Date, UT and UTFI will use their best efforts to apportion the liability for accrued benefits between UT and UTFI, with UT being liable for the portion of the benefits accrued before the Effective Date and UTFI being liable for the portion of the benefits accrued on or after the Effective Date. Beginning on the third anniversary of the Effective Date, UTFI will be liable for all accrued benefits of all Leased Employees.

2.1.3 No Duty to Change UT Payroll Process. UT will not be required to make any system or procedure changes to its payroll process to conform to UTFI guidelines or procedures; provided, however, that UT will continue to accommodate new job classifications, salary increases out of the normal cycle, and similar kinds of changes UT routinely made prior to the Effective Date. After the Effective Date, UT will continue to make the payroll deductions it was
making for Leased Employees before the Effective Date, but UT will not be required to make any new types of payroll deductions for Leased Employees.

2.1.4 Effective Date Payroll Period. For the portion of the payroll period which includes the Effective Date, UTFI shall pay the UT Costs for such payroll period.

Article 3. Effective Date.

This Agreement and the Affiliation Agreement shall be effective simultaneously on July 1, 2011, or on such other date as mutually agreed by UT and UTFI.

Article 4. Representations and Warranties of UT.

UT makes the following representations and warranties to UTFI as of the Signing Date and the Effective Date:

4.1 Organization. UT, a land grant institution of higher education, is an instrumentality of the State of Tennessee and is duly organized, validly existing, and in good standing under the laws of the State of Tennessee.

4.2 Power and Authority. UT has full power and authority pursuant to the Enabling Legislation to enter this Agreement, to carry out the transactions contemplated hereunder, and to carry out its obligations hereunder.

4.3 Authorization. UT has duly authorized the execution, delivery and performance of this Agreement.

4.4 No Violation. Except as previously disclosed to UTFI in writing, UT is not subject to any claim or restriction, or is not subject to any provision contained in UT’s statutory provisions, creating, authorizing, or establishing UT’s existence, Board of Trustees rules, charter, ordinances or bylaws or in any evidence of indebtedness, indenture, commitment, agreement or contract to which UT is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon UT, which prevents UT from entering into this Agreement or performing any of its obligations hereunder.

4.5 Enforceability. This Agreement and the Affiliation Agreement executed by UT of even date herewith constitute the valid obligations of UT enforceable in accordance with their respective terms. With respect to these agreements, the State of Tennessee has not waived UT’s immunity from suit or extended its consent to be sued. However, current state law, the Tennessee Claims Commission Act, provides that certain monetary claims against UT for breach of its contractual obligations may be heard and determined exclusively in the forum of the Tennessee Claims Commission, an administrative tribunal.

4.6 No Litigation. Except as previously disclosed to UTFI in writing and to the best of UT’s knowledge, there are no Material claims, actions, suits, arbitrations, governmental investigations, inquiries or proceedings pending or threatened against UT, at law or in equity, or
before any governmental or administrative board, agency or authority relating to UTFI or arising out of the operation or management of UTFI.

4.7 Consents and Approvals. Except for approval by the UT Board of Trustees, and except for those consents and approvals required by the Enabling Legislation, the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated by this Agreement, UT will not require any consent, approval, authorization, order, declaration, filing or registration of or with any federal, state or local governmental or regulatory authority (the "Governmental Authorities") or other Person or Persons, and no other action on the part of UT or any other Person is necessary to authorize the execution, delivery, and consummation of this Agreement.

4.8 Taxes. With regard to all periods of time through the Effective Date, UT has paid in full all federal and state withholding taxes, unemployment taxes, social security taxes, franchise taxes, payroll taxes, and all other applicable federal, state or local taxes, including, but not limited to, any sales, gross receipts or excise taxes which have or may have an impact on UTFI or the transaction contemplated by this Agreement, and all penalties and interest with respect thereto, which were assessed, confirmed, accrualable or which relate to periods of time prior to Effective Date or has made satisfactory provision therefore and shall pay such taxes when due if such occurs after the Effective Date.

4.9 Employment Claims. Except as previously disclosed to UTFI in writing, and to the best of UT's actual knowledge, no Person has made any claim relating to any Leased Employee or arising out of operation or management of UT development and alumni affairs offices under any statute, ordinance or regulation relating to wages, collective bargaining, discrimination in employment or employment practices or occupational safety and health standards (including, but not limited to, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, as amended, the Occupational Safety and Health Act or the Age Discrimination in Employment Act of 1967).

4.10 No Omissions or Misstatements. To the best of UT's actual knowledge, there is no fact Material to this Agreement which has not been set forth or described in this Agreement, or the Affiliation Agreement, or on the Schedules attached hereto or thereto, which is Material to this Agreement. To the best of UT's actual knowledge, none of the information included in this Agreement and Schedules, or other documents furnished, or to be furnished, by UT, or any of its representatives, contains any untrue statement of a Material fact, or is misleading in any Material respect, or omits to state any Material fact necessary in order to make any of the statements herein or therein not misleading. Copies of all documents referred to in any Schedule hereto have been delivered or made available to UTFI, and constitute true, accurate, correct and complete copies thereof, and include all amendments, exhibits, schedules, appendices, supplements or modifications thereto or waivers thereunder.

Article 5. Representations and Warranties by UTFI.

UTFI makes the following representations and warranties to UT as of the Signing Date and the Effective Date:
5.1 **Organization.** UTFI is a non-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Tennessee.

5.2 **Power and Authority.** UTFI has full power and authority to enter into this Agreement, to carry out the transactions contemplated hereunder, and to carry out its obligations hereunder.

5.3 **Authorization.** UTFI is duly authorized to execute, deliver and perform this Agreement.

5.4 **Tax-Exempt Status.** (a) UTFI is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), as exempt from federal income tax under Section 501(a) of the Code; and (b) UTFI is not a private foundation as defined in Section 509(a) of the Code.

5.5 **No Violation.** Except as previously disclosed to UT in writing, UTFI is not subject to any limitation, restriction or provision of any nature whatsoever contained in UTFI’s charter or bylaws, or in any evidence of indebtedness, indenture, commitment, agreement or contract to which UTFI is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon UTFI, which in any way limits, restricts or prevents UTFI from entering into this Agreement or performing any of its obligations hereunder.

5.6 **Enforceability.** This Agreement, and the Affiliation Agreement executed by UTFI of even date herewith, constitute the valid obligations of UTFI, enforceable in accordance with their respective terms, except insofar as: (a) enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application with creditors; and (b) the remedy of injunctive and other forms of equitable relief may be subject to equitable defenses (including commercial reasonableness, good faith and fair dealing) and to the discretion of the court before which any proceeding therefore may be brought.

5.7 **Insurance.** UTFI will maintain at all times the insurance coverage described in Article I and Appendix D of the Affiliation Agreement. UT shall have the right to approve UTFI’s Employment Practices Liability Insurance policy, which approval shall not be unreasonably withheld.

5.8 **No Omissions or Misstatements.** To the best of UTFI’s actual knowledge, there is no fact Material to this Agreement which has not been set forth or described in this Agreement, or the Affiliation Agreement, or on the Schedules attached hereto or thereto, which is Material to this Agreement. To the best of UTFI’s actual knowledge, none of the information included in this Agreement and Schedules, or other documents furnished, or to be furnished, by UTFI, or any of its representatives, contains any untrue statement of a Material fact, or is misleading in any Material respect, or omits to state any Material fact necessary in order to make any of the statements herein or therein not misleading. Copies of all documents referred to in any Schedule hereto have been delivered or made available to UT, and constitute true, accurate, correct and complete copies thereof, and include all amendments, exhibits, schedules, appendices, supplements or modifications thereto or waivers thereunder.
5.9 No Litigation. Except as previously disclosed to UT in writing, there are no Material claims, actions, suits, arbitrations, license revocations, governmental investigations, inquiries or proceedings pending or, to the best actual knowledge of UTFI, threatened against UTFI, at law or in equity, or before any governmental or administrative board, agency or authority.

Article 6. Covenants of UTFI and UT.

The following covenants contained in this Article 6 shall be effective from and after the Signing Date:

6.1 Tax-Exempt Status. UTFI covenants and agrees that it will maintain its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. UTFI further covenants and agrees that it shall not willfully or knowingly perform any act or enter into any agreement which shall adversely affect the federal income tax status of UTFI and shall conduct its operations so as to maintain UTFI's status as a charitable organization within the meaning of Section 501(c)(3) of the Code which is exempt from federal income taxes under Section 501(a) of the Code, or any successor provisions of federal income tax law.

6.2 Consents and Notices. UT shall use its best efforts to obtain all consents and shall give all notices which may be required in connection with this Agreement. UT shall provide UTFI with satisfactory evidence that all such Material consents have been obtained and notices have been given upon UTFI's written request.

6.3 Continued Existence. UT and UTFI each covenant to continue their respective legal existence and shall not voluntarily dissolve or take steps to terminate their continued legal existence without the prior written consent of the other.

6.4 Cooperation. UTFI and UT each covenant to: (a) cooperate in the administration of this Agreement; (b) retain and make available during normal business hours all personnel and payroll records relating to Leased Employees, including, but not limited to, all such personnel and payroll records maintained by UTFI; and (c) to hold all such information confidential from third parties to the fullest extent allowed by law.

6.5 No Discrimination. The following non-discrimination provisions shall bind UTFI: (a) UTFI shall not discriminate on any basis prohibited by applicable federal, state or local law; (b) UTFI shall not otherwise act unlawfully with respect to the Leased Employees; (c) UTFI will implement its own diversity plan; and (d) UTFI will implement its own affirmative action plan if required by federal law or regulations to do so.

6.6 Continued Validity of Representations and Warranties. UTFI and UT each covenant that they will make reasonable efforts to cause their respective representations and warranties herein to remain true, accurate, correct and complete during the term of this Agreement.
Article 7. **Conditions Precedent to Obligations of UTFI.**

The obligations of UTFI hereunder are, at the option of UTFI, subject to the satisfaction, on or prior to the Effective Date, of the following conditions unless waived in writing by UTFI:

7.1 **Continued Accuracy of Representations and Warranties.** Each of the representations and warranties of UT must be true, correct and complete.

7.2 **Approvals Required by Enabling Legislation.** Each of the approvals required by the Enabling Legislation must have been properly received.

7.3 **Affiliation Agreement.** All the conditions precedent to the obligations of UTFI in the Affiliation Agreement must have been satisfied.

Article 8. **Conditions Precedent to Obligations of UT.**

The obligations of UT hereunder are, at the option of UT, subject to satisfaction, on or prior to the Effective Date, of the following conditions, unless waived in writing by UT:

8.1 **Continued Accuracy of Representations and Warranties.** Each of the representations and warranties of UTFI must be true, correct and complete.

8.2 **Approvals Required by Enabling Legislation.** Each of the approvals required by the Enabling Legislation must have been properly received.

8.3 **Affiliation Agreement.** All of the conditions precedent to obligations of UT in the Affiliation Agreement must have been satisfied.

8.4 **Insurance.** UT shall have reasonably consented to the insurance arrangements described in Article I and Appendix D of the Affiliation Agreement.

Article 9. **Contingent Liabilities.**

9.1 **Survival.** The provisions of Section 9.2 and Section 9.3 of this Agreement shall survive the termination of this Agreement and thereafter remain in full force and effect until any right of recovery is barred by any applicable statute of limitation. The provisions of Section 9.4, Section 9.5 and Section 9.6 of this Agreement shall survive the termination of this Agreement and thereafter remain in full force and effect for five (5) years after expiration of the statute of limitation applicable to any claim.

9.2 **Right of Recovery by UTFI.** UTFI will be entitled to recover from UT the amount of any Damages arising, directly or indirectly, from or in connection with: (a) any Breach of any representation or warranty made by UT in this Agreement or the Affiliation Agreement; or (b) any Breach by UT of any covenant or obligation of UT in this Agreement or the Affiliation Agreement. In all cases, recovery under this Section 9.2 shall be limited to the terms, limits, and conditions of the Tennessee Claims Commission Act, including that recovery shall be limited to actual Damages and shall not include punitive Damages.
9.3 Right of Recovery by UT. UT will be entitled to recover from UTFI the amount of Damages arising, directly or indirectly, from or in connection with: (a) any Breach of any representation or warranty made by UTFI in this Agreement or the Affiliation Agreement; or (b) any Breach by UTFI of any covenant or obligation of UTFI in this Agreement or the Affiliation Agreement.

9.4 Liability With Respect To Leased Employees. Leased Employees performing services under this Agreement are "loaned employees" of UTFI or of any other UT-affiliated fundraising foundation to which UTFI has assigned Leased Employees. As of the Effective Date, any and all liability, including but not limited to respondeat superior and any other agency liability, for the acts and omissions of Leased Employees shall not lie with UT but shall lie with UTFI and any other UT-affiliated fundraising foundation to which UTFI has assigned Leased Employees. In addition, all workers' compensation liability for occurrences on or after the Effective Date with respect to Leased Employees shall not lie with UT but shall lie with UTFI and any other UT-affiliated fundraising foundation to which UTFI has assigned Leased Employees. At all times during the Term of this Agreement, and at its expense, UTFI shall maintain workers' compensation insurance coverage for Leased Employees in accordance with applicable Tennessee law, and the University shall be named as an additional insured. UTFI shall provide UT's Chief Financial Officer with a Certificate of Insurance evidencing compliance with this insurance requirement. Nothing in this section shall affect the rights and obligations of UT or UTFI under Article 1.

9.5 Protection For Leased Employees. UT and UTFI understand and agree that in performing services under this Agreement, the Leased Employees are "employed in the service of the state" and their "compensation is payable by the state" within the meaning of Tenn. Code Ann. § 8-42-101(3)(A) and Tenn. Code Ann. § 8-34-101(18). Therefore, UT and UTFI understand and agree that the Leased Employees remain eligible to participate in the UT Benefit Plans and remain eligible to raise the absolute immunity defense provided in Tenn. Code Ann. § 9-8-307(h) against individual or personal liability for acts or omissions within the scope of their employment. Notwithstanding the above, UT and UTFI agree that any and all liability, including, but not limited to respondeat superior and other agency liability, for the acts and omissions of UTFI's agents, including but not limited to the Leased Employees, shall not lie with UT but shall lie with UTFI and any other UT-affiliated fundraising foundation to which UTFI has assigned Leased Employees. UTFI shall indemnify, defend, and hold harmless Leased Employees against all individual or personal liability for Damages arising out of, attributable to, or in connection with, any act or omission of a Leased Employee in the performance of services under this Agreement, except for willful, malicious, or criminal acts or omissions, or for acts or omissions done for personal gain.

9.6 Indemnification of UT, State, UT and State Employees, and Leased Employees.

9.6.1 UTFI shall indemnify, defend, and hold harmless UT, the State, and their agents, trustees, officers, employees, and successors, and the Leased Employees against all Damages in any way arising out of, attributable to, or in connection with: (1) operations of UTFI on or after the Effective Date; or (2) any act or omission of a UTFI Employee or a Leased Employee on or after the Effective Date. Without limiting the generality and scope of the preceding sentence, the
obligations of UTFI under this Section 9.6 shall include, without limitation, the following liabilities: tort liability, workers’ compensation liability, premises liability, environmental liability, professional liability, malpractice liability, employment discrimination liability, civil rights liability and liability for breach of any constitutional, statutory, common law or contractual duty. The indemnification and hold harmless obligation of UTFI under this Article 9 shall be construed as an obligation to pay Damages and not merely as an obligation to reimburse UT, the State and their agents, trustees, officers, employees and successors, and the Leased Employees for Damages paid by them. The obligations of UTFI under this Article 9 shall not be deemed or construed to waive or abrogate in any way the sovereign immunity or Eleventh Amendment immunity of UT, the State, or any officer or employee of UT or the State.

9.6.2 UTFI’s obligation under this Article 9 to defend a claim for Damages filed against UT, the State, or a UT or state employee or against a Leased Employee shall be subject to the following provisions:

(i) In the event of a claim (a) arising out of, attributable to, or in connection with an occurrence on or after the Effective Date, including a claim arising in part out of acts or omissions taking place prior to the Effective Date and in part out of acts or omissions taking place after the Effective Date, and (b) filed under the Tennessee Claims Commission Act, UT shall appear and seek dismissal at its own attorney expense. If the claim is not dismissed, UT, in its sole discretion, may elect to defend the claim. In that event, UTFI shall pay all UT defense costs, including without limitation the cost of UT attorney time, at a rate agreed upon in writing, and reasonable private attorney fees incurred to assist UT in defending the claim, as agreed upon in writing. If UT elects not to defend the claim, UT shall file a petition for removal of the claim to the appropriate chancery or circuit court with venue, pursuant to applicable removal provisions of the Tennessee Claims Commission Act. Upon removal of the claim, UTFI shall defend the claim in the chancery or circuit court, subject to obtaining any applicable statutory approvals.

(ii) In the event of a claim (a) arising out of, attributable to, or in connection with an occurrence on or after the Effective Date, including a claim arising in part out of acts or omissions taking place prior to the Effective Date and in part out of acts or omissions taking place after the Effective Date, and (b) filed in a state or federal court or administrative agency, UT or the State, in their sole discretion, may elect to appear and seek dismissal at its own attorney expense. If UT and the State elect not to appear and seek dismissal or the claim is not dismissed, UTFI shall defend the claim, subject to obtaining any applicable statutory approvals.

9.6.3 In accordance with its indemnification and hold harmless obligations under this Article 9, UTFI shall pay all Damages under a claim defended by UT or the State pursuant to Section 9.6.2; provided, however, that the obligation of UTFI to pay attorney expenses of UT and the State shall be limited by applicable provisions of Section 9.6.2. Notwithstanding any provision of Section 9.6 to the contrary, UTFI shall have the right to participate in the defense of any claim for Damages for which it may become liable under this Agreement or applicable law;
provided, however, UTFI understands and agrees that under current law, UTFI is not entitled to appear and defend a claim under the Tennessee Claims Commission Act.

9.6.4 UT and the State shall have the right, through legal counsel, to monitor and review the defense by UTFI of any claim for Damages in which UT, the State, or UT or state employees, or Leased Employees are named as defendants. UTFI shall obtain the approval of legal counsel for UT or the State prior to raising sovereign immunity, Eleventh Amendment immunity, or other legal defenses on behalf of UT, the State, or UT or state employees. UTFI shall not raise the defense of sovereign immunity or Eleventh Amendment immunity as to any claim for Damages against UTFI, its agents (including Leased Employees), officers, directors, employees or successors if the claim arose out of, was attributable to, or was in connection with any act or omission on or after the Effective Date by UTFI, its agents (including Leased Employees), officers, directors, employees or successors. Nothing herein shall be construed to prohibit UTFI from raising the defense of sovereign immunity or Eleventh Amendment immunity as to any claim arising out of, attributable to, or in connection with an act or omission by UT, the State, a UT or state employee, or a Leased Employee as long as the defense would have been properly raised by UT, the State, a UT or state employee, or a Leased Employee.

9.6.5 Nothing in Section 9.6 shall be construed to obligate UTFI to indemnify, defend and hold harmless a Leased Employee against individual or personal liability for Damages arising out of, attributable to, or in connection with willful, malicious or criminal acts or omissions, or acts or omissions done for personal gain.

9.7 Injunctive Relief. In addition to the other remedies described in this Article 9, to the extent permitted by law, the parties may pursue injunctive relief with a court of competent jurisdiction for enforcement of the provisions of this Agreement; provided however that injunctive relief against UT or the State shall be available, if at all, only pursuant to the provisions of the Tennessee Claims Commission Act.

Article 10. Term and Termination.

10.1 Term. The initial term of this Agreement shall be for a period beginning on the Effective Date and ending on June 30, 2015, and shall continue thereafter from year to year, subject to earlier termination as provided in Section 10.2, Section 10.3, Section 10.4, and Section 10.5 below.

10.2 Early Termination. This Agreement will terminate upon the death, retirement or separation from service of the last remaining Leased Employee, or the earlier termination of the Affiliation Agreement.

10.3 Termination for Convenience. Either party may terminate this Agreement at any time for any reason upon one hundred eighty (180) days’ prior written notice to the other party.

10.4 Termination for Breach. A Breach of this Agreement which is not cured after sixty (60) days’ written notice to the other party specifying the nature of the Breach and requesting that it be cured shall be grounds for termination of this Agreement. The tolling of this sixty (60) day cure period will be suspended during any mediation under Section 11.2, with the
tolling period beginning on the date written notice of intent to mediate is given. Any termination under this Section 10.4 shall become effective only if exercised no sooner than one hundred and eighty (180) days following expiration of the sixty (60) day cure period and no later than one (1) year following the expiration of the sixty (60) day cure period.

10.5 Termination by UT for Insufficiency of Funds. Notwithstanding any provision herein to the contrary, as required by state law, UT may terminate this Agreement at the end of any fiscal year if sufficient funds are not available to carry out UT’s obligations under this Agreement.


11.1 Governing Law. This Agreement is made, entered into under, and shall be construed in accordance with, the laws of the State Tennessee.

11.2 Non-Binding Mediation. In the event a dispute arises out of or relating to this Agreement, or the Breach thereof, and if said dispute cannot be settled through negotiation involving senior management of UT and UTFI, the parties hereto agree to attempt in good faith to settle the dispute by non-binding mediation under non-binding mediation rules mutually acceptable to both UT and UTFI. The parties must participate in good faith in non-binding mediation before resorting to any other dispute resolution procedure, including litigation.

11.3 No Waiver. Subject to the provisions of the Tennessee Claims Commission Act, a party's failure to respond to a Breach by the other party shall not operate as a waiver of its rights under this Agreement or otherwise. Any delay or omission by a party in its exercise of any right or power accruing upon any Breach shall not impair or constitute a waiver of such right or power by that party and any such right or power may be exercised from time to time and as often as may be deemed expedient. No act or omission of either party shall constitute a waiver of any provisions of this Agreement unless the waiver has been agreed to in writing by the party granting the waiver.

11.4 Notice. Notice must be given in a writing (including facsimile, but not electronic mail) which identifies itself as a notice under this Agreement. Notice is effective on the date which is the later of: (a) the actual date received; (b) five (5) business days after the notice is deposited with the U.S. Postal Service, postage prepaid, certified mail, return receipt requested; or (c) three (3) business days after the notice is deposited prepaid with a national overnight package delivery service for overnight delivery. Notice must be given to the following addresses, unless the parties have given prior notice of a change of address:

If to UT: President
University of Tennessee
800 Andy Holt Tower
Knoxville, Tennessee 37996
11.5 **Entire Agreement.** This Agreement, together with the Affiliation Agreement, constitutes the entire understanding between the parties hereto regarding the subject matter of this Agreement. Any prior oral or written agreements, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.

11.6 **Independent Contractors.** The relationship between the parties under this Agreement is that of independent contractors and nothing contained herein shall create an employer-employee relationship between the parties.

11.7 **No Third-Party Beneficiaries.** This Agreement does not confer any benefit or right upon any Person other than UT and UTFI, and no party claiming third-party beneficiary status shall be entitled to enforce any obligation, responsibility or claim of either party to this Agreement.

11.8 **Nonassignment.** This Agreement may not be assigned without the express prior written consent of the other party, except that this Agreement may be assigned to an Affiliate, including a parent, subsidiary, or brother-sister corporation created pursuant to the Enabling Legislation.

11.9 **Article and Section Headings.** All article and section headings are included for convenience only and shall not be considered a part of nor shall they affect in any manner the construction or interpretation of this Agreement.

11.10 **Severability.** If any provision of this Agreement shall be, or shall be adjudged to become, unlawful or contrary to public policy, then that provision shall be deemed null and severable from the remaining provisions and shall in no way affect the validity of this Agreement.
11.11 Amendment. This Agreement may be amended only by a writing signed by both UT and UTFI.

11.12 Covenants Considered Material. All covenants made by UT or UTFI herein shall be considered Material to this Agreement.

11.13 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

11.14 No Personal Liability. Notwithstanding anything to the contrary contained herein, or in the Affiliation Agreement, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present or future member, director, trustee, affiliate, officer, employee or agent of UT or UTFI or of any incorporator, member, director, trustee, affiliate, officer, employee or agent of any successor to UTFI, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be personally liable for a breach or nonobservance of, or for any failure to perform, fulfill, or comply with any such stipulations, covenants, agreements or obligations, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released.

11.15 Good Faith. Good faith is the essence of this Agreement. UT and UTFI each agrees to exercise good faith and commercial reasonableness in the interpretation, performance and enforcement of this Agreement.

11.16 Auditing Records. UTFI shall maintain documentation for all charges against the State of Tennessee or UT under this Agreement. The books, records, and documents of UTFI, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit, at any reasonable time, and upon reasonable notice, by the State, the Comptroller of the Treasury, UT, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.


"Affiliation Agreement" shall mean the Affiliation and Services Agreement between The University of Tennessee and The University of Tennessee Foundation, Inc. executed as of the date hereof, a form of which without schedules is attached hereto as Schedule 3 and incorporated herein by this reference.

"Agreement" shall mean this Employee Services Agreement.

"Breach" -- a Breach of a representation, warranty, covenant, obligation, or other provision of this Agreement, or any instrument delivered pursuant to this Agreement, will be deemed to have occurred if there is or has been (a) any inaccuracy in, or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision, or (b) any
claim (by any Person) or other occurrence or circumstance that is or was inconsistent with such representation, warranty, covenant, obligation, or other provision, and the term Breach means any such inaccuracy, breach, failure, claim, occurrence, or circumstance.

"Effective Date" shall have the meaning described in Article 3.

"Code" shall mean the Internal Revenue Code 1986, as amended, and all applicable existing, proposed, and temporary regulations that may from time to time be issued thereunder.

"Compensation" shall mean wages, salaries and other cash paid for services as an employee or independent contractor.

"Damages" shall mean the amount any loss, liability, claim, settlement, award, judgment, release, damage, expense or diminution of value, whether or not involving a third-party claim.


"Exempt Leased Employees" shall mean those employees whom UT has classified as exempt from the provisions of the Fair Labor Standards Act.

"Governmental Authorities" shall have the meaning described in Section 4.7.

"Human Resources Services" shall mean the services described in Schedule 4 as the responsibility of UT Human Resources.

"Leased Employee" shall have the meaning described in Section 1.3.

"Material" shall mean a condition, noncompliance, error, defect, claim or other fact which would cost, in the aggregate, in excess of $50,000 and, with respect to any single defect or fact, would cost in excess of $25,000.

"Non-exempt Leased Employees" shall mean those employees whom UT has classified as not exempt from the provisions of the Fair Labor Standards Act.

"Payroll Period" shall mean the bi-weekly, monthly, supplemental, or other period during which Leased Employees are paid.

"Person" shall mean any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, government or governmental agency, or any other entity.

"Signing Date" shall mean the date first written above.

"State" shall mean the State of Tennessee.
"Tennessee Claims Commission Act" shall mean Tenn. Code Ann. §9-8-101, et seq., as amended from time to time or any subsequent enactment governing claims against UT.

"UTFI" shall mean The University of Tennessee Foundation, Inc. and its successors.

"UTFI Benefits" shall have the meaning described in Section 1.6.3.

"UTFI Board" shall mean the Board of Directors of UTFI.

"UTFI Employees" shall have the meaning described in Section 1.6.

"University-wide Administration" shall mean the UT administrative offices that provide administrative services centrally on behalf of the component units of UT.

"UT" shall mean The University of Tennessee, or its successor, including all its campuses, institutes, and any other component parts.

"UT Benefit Plans" shall have meaning described in Section 1.4.

"UT Costs" shall have the meaning described in Section 2.1.2.

"UT Payroll Office" shall mean the office within UT which is responsible for the payroll function for UT.

"UT Retirement Plans" shall mean the Optional Retirement Plan, Tennessee Consolidated Retirement System and Joint Contributory Retirement System.

"UT Retirement Services" shall mean the office within UT which provides administration and information to UT employees regarding UT Retirement Plans.

IN WITNESS WHEREOF, the parties hereto have entered into this AGREEMENT by their duly authorized representatives as of the date first written above.

THE UNIVERSITY OF TENNESSEE

By: [Signature]

Its: [Position]

UNIVERSITY OF TENNESSEE FOUNDATION, INC.

By: [Signature]

Its: [Position]

[Approval as to Form and Legality Follows]
Approved as to form and legality:

ATTORNEY GENERAL AND REPORTER
FOR THE STATE OF TENNESSEE

By: [Signature]
SCHEDULE 2

UT BENEFIT PLANS

1. Annual leave
2. Benefit in the event of an employee death
3. CPS salary benefit
4. Continuous service credit
5. Court leave
6. Days of administrative closing
7. Education assistance (fee waiver)
8. Educational Assistance (student fee discount) for spouses and dependent children employees
9. Educational leave
10. Family & medical leave
11. Flexible benefits
12. Funeral & bereavement leave
13. Holidays
15. Leave of absence
16. Leave transfer between the University and State Agencies
17. Life planning seminars
18. Longevity pay
19. Military leave
20. Personal leave day
21. Retirement plans (including TCRS, JCRS and ORP)
22. Sick leave
23. Sick leave bank
24. Sick leave transfer between University employees
25. Social Security benefits
26. Tax deferred income program
27. Time off to vote
First Amendment to the
2011 Employee Services Agreement
between
The University of Tennessee
and
The University of Tennessee Foundation, Inc.

This First Amendment, effective on June 28, 2017 ("Amendment"), amends the Employee Services Agreement between The University of Tennessee ("UT") and The University of Tennessee Foundation, Inc. ("UTFI") entered into on July 1, 2011 ("Agreement").

WITNESSETH

WHEREAS, UT and UTFI have been operating under the terms of the Agreement since July 1, 2011 and have identified certain parts of the Agreement that need to be amended to acknowledge that the University of Chattanooga Foundation, Inc. ("UC Foundation") is entering a separate employee services agreement with UT.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article I, Section 1.1 is amended and restated as follows:

Lease of Current Development and Alumni Affairs Employees. UT and UTFI agree that all UT development and alumni affairs employees as of the Effective Date, as that term is defined in Article 3 of this Agreement, will be leased by UT to UTFI pursuant to the terms and conditions of this Agreement, excluding UT development and alumni affairs employees leased by UT to the University of Chattanooga Foundation, Inc. ("UC Foundation"), who are covered by the terms of a separate employee services agreement between UT and UC Foundation. The terms of this Agreement shall not apply to employees leased by UT to UC Foundation. Schedule I contains a list of the employees leased to UTFI pursuant to this Section 1.1 ("Current Leased Employees"). UTFI shall assign the Current Leased Employees to provide development or alumni services for the benefit of the campus, institute, or other unit of UT where they are located as of the Effective Date.

2. The first sentence of Article I, Section 1.2 is amended and restated as follows:

Lease of New Development and Alumni Affairs Employees. UT and UTFI agree that for the initial term of this Agreement stated below in Section 10.1, all new development and alumni affairs employees shall be hired by UT, at the request of UTFI, and simultaneously leased by UT to UTFI pursuant to the terms and provisions of this Agreement.
3. Article I, Section 1.3 is amended and restated as follows:

**UTFI’s Right to Direct and Control Leased Employees.** Except as otherwise provided in this Agreement and the Affiliation Agreement with respect to the Vice President for Development and Alumni Affairs and Programs (“Vice President”) and the Vice Chancellors for Development, UTFI shall at all times have the exclusive right to direct and control the Current Leased Employees and New Leased Employees (hereinafter collectively referred to as “Leased Employee” or “Leased Employees”) not only as to the result to be accomplished by the work, but also as to the task and means by which that result is to be accomplished and as to the time and the place where services shall be performed by Leased Employees. UTFI recognizes the important role of Chancellors, Deans, and other academic leaders in development and alumni affairs activities and is committed to direct the Leased Employees to work in a cooperative manner with the academic leaders of the campus or institute to which they are assigned.

4. Article I, Section 1.5 is amended and restated as follows:

**Transition Date.** At a future date agreed upon by the UT President and the UTFI Board of Directors, but in no event later than the end of the Term of this Agreement stated below in Section 10.1, UTFI will establish its own human resources administrative infrastructure and mechanisms to hire employees and to provide its own payroll services and human resources services, as it deems appropriate. The date on which UTFI assumes such duties shall be the Transition Date.

5. Article I, Section 1.7.2 is amended and restated as follows:

The initial compensation and other terms and conditions of employment of the Vice President, who shall also serve as President of UTFI, must be approved by the UT Board of Trustees upon the recommendation of the UT President. Annually thereafter, the UT President shall evaluate and set the compensation and other terms and conditions of employment of the Vice President in coordination with the UTFI Board of Directors.

6. Article I, Section 1.7.3 is amended by deleting the words and punctuation “, as applicable,” and the words “or the UT Knoxville Director of Athletics” so that the section reads as follows:

**Initial compensation and changes to compensation for the Vice Chancellors shall be agreed upon by the Vice President/Foundation President and the campus/institute Chancellor in accordance with the process outlined in Appendix C of the Affiliation Agreement.**
7. Article 10, Section 10.1 is amended and restated as follows:

Term. The initial term of this Agreement shall be for a period beginning on the Effective Date and ending on June 30, 2036, and shall continue thereafter from year to year, subject to earlier termination as provided in Section 10.2, Section 10.3, Section 10.4 and Section 10.5 below (collectively, “Term”).

8. Article 11, Section 11.4 is amended by revising the addresses for notice to UTFI to read as follows:

If to UTFI: President & CEO
The University of Tennessee Foundation, Inc.
1525 University Avenue
Knoxville, TN 37921-4848

With a copy to: Holbrook Peterson Smith PLLC
Tyson Place, Suite 150
2607 Kingston Pike
Knoxville, TN 37919

9. Article 11, Section 11.14 is amended by deleting “and all such liability of any such person, in his individual capacity, is hereby expressly waived and released” from the last sentence of such section.

10. Article 11, Section 11.16 is amended and restated as follows:

Auditing Records. UTFI shall maintain documentation for all charges against the State of Tennessee or UT under this Agreement. The books, records and documents of UTFI, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit, at any reasonable time, and upon reasonable notice, by the State, the Comptroller of the Treasury, UT, or their duly appointed representatives. The financial statements shall be prepared in accordance with general accepted accounting principles.

11. Article 12 is amended by revising the definition of “Affiliation Agreement” as follows:

“Affiliation Agreement” shall mean the Affiliation and Services Agreement between The University of Tennessee and The University of Tennessee Foundation, Inc., effective July 1, 2014, as amended or restated from time to time and incorporated herein by reference.

12. Schedule 1 to the Agreement is amended and restated in the form attached as Exhibit A to this Amendment.
13. The Agreement is amended by deleting Schedule 3, the form of the initial Affiliation and Services Agreement between the parties entered into on July 1, 2011.

14. Except as revised by this First Amendment, the Agreement remains in full force and effect.

Remainder of this page is intentionally left blank. Signature page follows.
IN WITNESS WHEREOF, this First Amendment to the Agreement has been executed by the
President of UT and by the President and Chief Executive Officer of UTFI.

THE UNIVERSITY OF TENNESSEE

Joseph A. DiPietro, President
Date: 6/28/17

THE UNIVERSITY OF TENNESSEE FOUNDATION, INC.

Rickey M. McCurry, President and CEO
Date: 6/28/17

Remainder of this page is intentionally left blank. Approval as to form and legality follows.
First Amendment to the 2011 Employee Services Agreement between the University of Tennessee and the University of Tennessee Foundation, Inc.

Approved as to form and legality:

ATTORNEY GENERAL AND REPORTER FOR THE STATE OF TENNESSEE

[Signature]

01/29/2017

Date
EXHIBIT A
**SCHEDULE 1**

<table>
<thead>
<tr>
<th>UTFI Employee Name</th>
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<tbody>
<tr>
<td>Carper, Mary R</td>
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<td>Fowler, Brittany Stack</td>
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Geller, Mark Joseph
Gibson IV, Robert Marion
Gulley, Jane Smethells
Hardin, Natalia Piekosz
Hardy, Brian W.
Harrell, Betsy Rhea
Hathorn, Taylor Annese
Hulette, Meredith Tribble
Hurt, Adlai Andrew
Jackson-Sullivan, Holly Denise
Johnson, Elfreda L
Johnston, Amy Haga
Kim-Baker, Kathleen D
Loken, Krista Liv
Mabins-Adenekan, Deloris
Mason, Amy LeAnn
McAfee, Jennifer Barnhardt
McCallum Jr, Rickey Alan
McDonald, Kimberly Scott
Morris, Sara Elizabeth
Munoz, Mai Li
Obear, James Frederick
Palado, Stacy-Ann Vadala
Parsons, Christina Hildur
Passano, Jill Lindsay
Piper, Stephanie Beaudouin
Powell, Daniel Patrick
Powell, Deborah Lovell
Reagan, Statler Seth
Schimmoeller, Eric Michael
Sheehy, Andrew Thomas
Shupe, Brian Douglas
Spiceland, Jonathan Kendall
Stewart-Crutch, Andrea Nicole
Taylor, Bradley Lance
Tenpenny, Laura Kristen
Treacy, Pamela Cannella
Williams, Amy Hudson
Yates, Carol Hurst
Allen, Michael Ricardo
Bateman, Casey Todd
Bevillard, Caroline Mary
English, Alicia Michelle
Haun, Tina Marie
Hulen, Gregory W.
Johnson, Blake McKinley
Kai, Tyler Jon Harrison
Kain, Megan Zeager
Lester, Melissa Ann
Metzger, Phoebe Carol
Miller, Suzanne O
Piercy, Andrea Bower
Robbins, Katherine McCauley
Spurlock, Brandon Kelly
Warren, Nathan William
Wilgus, Adam Bonner
Anderson, Jared Keith
Deal, Charles T
Johnson, Jacquelyn T.
Seratt, Sarae W
Trevathan, Kelley J
Baker, Mary F
Curtis-Swafford, Jeanna K
Dethloff, Holly Cheree
Holford, Toni Lynn
Jennings, George Ashton
Prince, Dana L
Suiter, Laura Lee
Sullivan, Jason Lewis
Tuck, Lisha C
Wilson, Andrew Allen
Attaway, Kristin Lisa
Davis, Stephanie Renee
Lanier, Timothy P
Tuggle, Chandra A
Wyatt, Elizabeth
Ballin, Eve Josephine
Briggs, Shawn Starr
Carbaugh, Margaret E
Davis, Kelly Owen
Farmer, Randy Leon
Goolsby, Bethany Kathleen
Henley, Linda Marie
Hixon Day, Cora Adele
Lewis, Cherisa Anne Tisdale
Martin, Tretobia D
Matthews, Mary Karen
Nixon, Michelle Elizabeth
Phillips, Creshunda Y
Pretzer, Zachary M
Rawlinson-Stubbs, Jeanette L
Rivers, Denise Z
Whiting, William Alan
Williams, Jada K
Wright, David Randal
Barber, Keith Duane
Beech, Thomas Evan
Boozer, Evelyn Reanee
Ford, Lisa Ann
Haefs, Robin R
Howard, Tiffany Lee Mullins
Hudson, Winford Blake
Johnson, Karen D
Looney, Thomas K
Nystrom, Angelia Morie
Sides, Stephanie Michele
Todd, Kiplynn Fritts
Vath, Lauren Patricia
Denning, Susan I
Gentry, Linda Tate
Harris-McCray, Chandra Jada
Hart, William Andrew
James, Jasmine Breanna
Johnson, Terry Deakins
McBee, Patricia A
Parreco, Jacqueline Mary Wise
Parton, Angela Rene
Smith, Melissa Ann
Snow, Ginny S
Weber, A Erick
Witcher, Kerry W
Clayton, Barry Owen
Friedland, Linda Natiello
Henderson, Woodrow M
LeBlanc, Rachael Renee
Lusby, Beth B
McCurry, Rickey Neal
Adams, Suzanne Hope
Amuti, Emma Diane
Aslinger, Timothy Andrew
Ballard, Daniel Ray
Brimer, Katherine Heubach
Brothers, Charlotte Gregory
Bryant, Lynn B
Burian, Lori Ann
Byrd, Amy Shree
Carter, Michael O
Chandler, Benjamin Joseph
Coffey, Laura Danielle
Coleman, Elizabeth Yvette Sinor
Cook, Amanda Nicole
Cooper, Brandy Deann
Craig, Lee Ann
Edwards, Melanie Beth
Fletcher, Sandra Sutton
Harris, Denise Nichelle
Hollingsworth, Kristin Shannon
Houser, Carol B
Hughes, Darren Scott
Ingram, Mary E
Johnson, Melissa Ann
King, Amy Liles
Lemon, Nathan Andrew
McMahon, Katherine Marie
McMillan, Carla L
Moss, Lucas Randolph
Poe, Kristy Joy
Sidenstick, Robert Louis
Sims, David William
Taylor, Lisa Nicely
Vaden, Tami M
Ward, Donna Gail
Wynn, Jennifer Marie