

**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).

- c. The University will submit the approved annual Foundation budget (Article III, section 2) showing Direct Support to the State Comptroller each year.
 - d. The Foundation will annually present a report to the University Board of Trustees.
 - e. The Foundation will file an IRS 990 report and meet all applicable requirements.
 - f. All full board meetings of the Foundation will be open to the public except for executive sessions that shall include but not be limited to the following matters: litigation; audits or investigations; human resource issues; gift acceptance deliberations; board training; governance; donor strategy sessions; and security measures.
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

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.

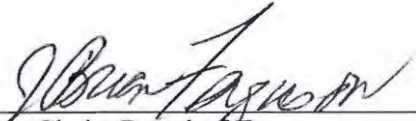
ARTICLE IX
EFFECT OF AGREEMENT

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.

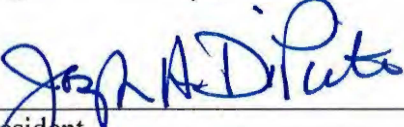
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the dates written below.



Vice Chair, Board of Trustees
The University of Tennessee

March 23, 2015


Date



President
The University of Tennessee

03-19-2015


Date



Treasurer and Chief Financial Officer
The University of Tennessee

March 10, 2015


Date



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

3-12-15

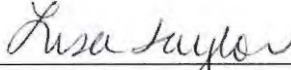
Date



President and Chief Executive Officer
The University of Tennessee Foundation, Inc.

03-10-2015

Date



Chief Financial Officer and Treasurer
The University of Foundation, Inc.

03-10-2015

Date

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:

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

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:

Commercial General Liability Insurance	Each Occurrence	\$1,000,000
	Damage to Rented Premises	100,000
	Med Exp (any one person)	5,000
	Personal & Adv Injury	1,000,000
	General Aggregate	2,000,000
	Products – Comp/Op Agg	2,000,000
Excess/Umbrella Liability	Aggregate	10,000,000
Directors & Officers		5,000,000
EPLI		5,000,000

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 1 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 FY17, 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.

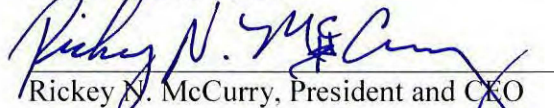
THE UNIVERSITY OF TENNESSEE


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



Budget FY 17

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

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 _____, 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

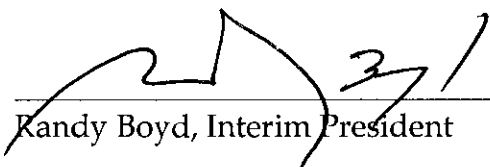
WHEREAS, the Board of Trustees of the University (the "Board") has been reduced in size and the number of members of the Board designated to serve on the Board of Trustees of the Foundation needs to be reduced accordingly;

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.

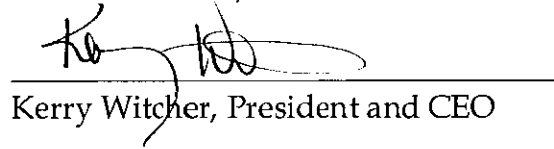
THE UNIVERSITY OF TENNESSEE



Randy Boyd, Interim President

Date: 7-1-19

THE UNIVERSITY OF TENNESSEE
FOUNDATION, INC.



Kerry Witcher, President and CEO

Date: 7/1/19