

**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 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 (e) 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, accruable 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.I 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.

**Article 11. Miscellaneous Provisions.**

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 some 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

With a copy to: General Counsel  
Office of the General Counsel  
The University of Tennessee  
700 Andy Holt Tower  
Knoxville, Tennessee 37996

If to UTFI: President & CEO  
The University of Tennessee Foundation, Inc.  
Suite 100, UT Conference Center  
600 Henley Street  
Knoxville, TN 37996

With a copy to: Executive Vice President & COO  
The University of Tennessee Foundation, Inc.  
Suite 100, UT Conference Center  
600 Henley Street  
Knoxville, TN 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.

## **Article 12. Definitions.**

"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.

"Enabling Legislation" shall mean the Tennessee statute codified at Tenn. Code Ann. §§49-9-113.

"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.I.2.

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

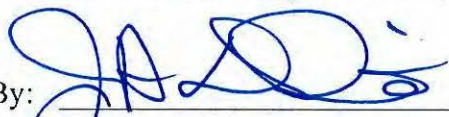
"UT Retirement Plans" shall mean the Optional Retirement Plan, Tennessee Consolidated Retirement System and Joint Contributory Retirement System.

"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

UNIVERSITY OF TENNESSEE FOUNDATION, INC.

By: 

By: 

Its: President

Its: President & CEO

[Approval as to Form and Legality Follows]

Approved as to form and legality:

ATTORNEY GENERAL AND REPORTER  
FOR THE STATE OF TENNESSEE

By: RE Cooper

## 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
14. Insurance (health, dental, life, optional special accident, optional universal life, term life, long term care)
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 1, 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 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.

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 1, 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 1, 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 1, 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.

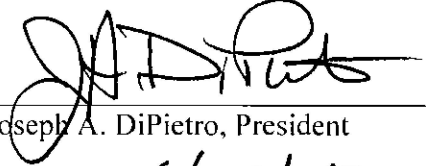
14. Except as revised by this First Amendment, the Agreement remains in full force and effect.

*Remainder of this page is intentionally left blank. Signature page follows.*



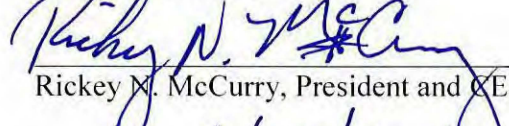
IN WITNESS WHEREOF, this First Amendment to the Agreement has been executed by the President of UT and by the President and Chief Executive Officer of UTFI.

THE UNIVERSITY OF TENNESSEE

  
\_\_\_\_\_  
Joseph A. DiPietro, President

Date: 6/28/17

THE UNIVERSITY OF TENNESSEE  
FOUNDATION, INC.

  
\_\_\_\_\_  
Rickey M. McCurry, President and CEO

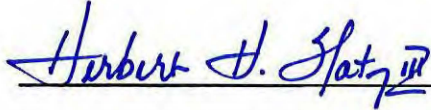
Date: 6/28/17

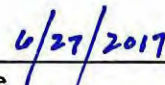
Remainder of this page is intentionally left blank. Approval as to form and legality follows.

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

  
\_\_\_\_\_

  
Date \_\_\_\_\_

# EXHIBIT

A

SCHEDULE 1

UTFI Employee Name
--------------------

Carper, Mary R
Fowler, Brittany Stack
Haag, Eric Russell
Herbstritt, Lauren Kelly
Howard, Avery Greer
Kizer, Holly Buchanan
Kline, Margaret
Kramer, Jane B
Lawrence, Jessica Marie
Marshall, Haylee Reynolds
Martin, Virginia Grace
Moore, Phyllis Ann
Mullock, Eleanor
Orr, Paula S
Patouillet, Leland Dwight
Sharp, Deborah Elizabeth
Shields, Susan Renfro
Thomas, Robert Taylor
Weatherholt, Krista Lynn
Wise, Kristin Kathryn
Young, John A
Akins Jr, Floyd
Allen, Kyle Brandon
Atkins, Marcus Rand
Blessinger, Jamie Kay
Brown, Richard Todd
Broyles, Brian Paul
Bryant Jr, William Rock
Bryson, Dorothy B
Campbell, Jennifer Stines
Catlett, Stephen Hays
Clark, Mark Eugene
Compton, Ruth Kemp
Cox, Christopher David
Duncan, Jan Francine
Eisenberg, Donald Lawrence
Evans, Stephen James
Finger, Constance Ann
Garnes, Myisha Lena

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