

Affiliation and Services Agreement
among
University of Chattanooga Foundation, Inc.
and
The University of Tennessee, on behalf of
The University of Tennessee at Chattanooga,
and
The University of Tennessee Foundation, Inc.

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

WITNESSETH:

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

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

WHEREAS, UTC is a public institution of higher education established as a campus of the University in 1969; and

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

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

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

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

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

NOW THEREFORE, in consideration of the premises, mutual covenants, and agreements contained herein, the parties agree as follows:

ARTICLE I
RELATIONSHIP AMONG THE FOUNDATION, THE UNIVERSITY,
UTC AND THE UT FOUNDATION

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

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

3. The Foundation shall employ, directly or by lease, a UTC Vice Chancellor for Development and Alumni Affairs (or other Vice Chancellor title selected by the Chancellor of UTC), who shall also serve as Executive Director of the Foundation (or other title selected by the Foundation) (hereinafter "Vice Chancellor/Foundation Executive Director") and who shall report to the Chancellor of UTC, the University's Vice President for Development and Alumni Affairs and Programs and the Chair of the Foundation's Board of Trustees ("Foundation Chair") or his or her designee. Development and Alumni-related goal setting for the Vice Chancellor/Foundation Executive Director shall be established annually by the Chancellor of UTC, the University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee. Performance reviews of the Vice Chancellor/Foundation Executive Director shall be initiated by the Chancellor of UTC, and carried out jointly with the University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair. Due to the recognized need to coordinate development and alumni activities throughout the University of Tennessee system, the Foundation and the Vice Chancellor/Foundation Executive Director will coordinate activities with the University's Vice President for Development and Alumni Affairs and Programs; provided, it is understood that the primary function of the Foundation is to support and enhance the development and alumni affairs functions of UTC. Appendix A further outlines the management responsibility and lines of reporting for the Vice Chancellor/Foundation Executive Director.

4. The Vice Chancellor/Foundation Executive Director, in consultation with the Chancellor of UTC, the University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair, or his or her designee, will prepare an annual plan and budget for the UTC development and alumni affairs programs (hereinafter "Programs") that shall include, but not be limited to, initiatives and staffing growth and changes. The annual plan and budget will be presented to the Foundation Board of Trustees for approval. Upon approval, changes in staffing levels will be coordinated with the University. Funds to cover all salary, benefits, and operating expenses of new development and alumni affairs staff (hereinafter "Staff") of the Foundation to implement the Programs for the benefit of UTC, and any increased costs for current Staff, shall be included in this budget. The Foundation will handle payroll (through the University for leased employees), travel reimbursement, and other operating expenses for current and new Staff. Therefore, these budgeted funds will be placed in an account from which the Foundation can authorize funding and expense reimbursement. The parties agree that the purpose of this Agreement is to increase private gift support for the benefit of UTC's students and faculty/staff. The Foundation will provide funds to support programs up to and including the amount approved annually by the Foundation Board. These funds will come from normal fees associated with the investment of gifts and gift income, endowment administration fees, investment earning fees from the Foundation's daily cash management program, accruing and using interest earnings on cash gifts to the Foundation prior to transfer to UTC, marketing programs, assessing fees for services, gift administrative fees and other unrestricted revenue of the Foundation in excess of that required to honor Foundation commitments to fund certain UTC programs. The Foundation shall disclose any assessment of fees to donors.
5. The parties agree that accountability and public trust are paramount to the success of the Foundation and its mission to support UTC.
6. The Foundation reserves all rights and powers granted to it under its charter and bylaws, under Tennessee law applicable to non-profit entities and under the federal law of tax- exempt entities that are not specifically limited or abridged by this Agreement. Nothing in this Agreement shall constitute an amendment of the Foundation's charter.

7. The parties acknowledge that each is an independent entity and agree that neither will be liable, nor held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, staff or activity participants. The foregoing notwithstanding, the parties recognize that the Vice Chancellor for Development and Alumni Affairs for UTC will be designated as the Foundation Executive Director, and the other Staff may have business cards and other material which indicate an affiliation with the Foundation. The parties also acknowledge that the Foundation accepts the obligation to fund budgeted expenses incurred by the Staff. Nothing in this Agreement, however, shall be construed to give the Staff any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the Foundation beyond matters contained in the operating budget approved by the Foundation or as otherwise specifically approved by the Foundation.

8. The parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the parties or to impose any such obligation or liability upon any party. The foregoing notwithstanding, the parties recognize that the Vice Chancellor for Development and Alumni Affairs for UTC, while an employee of the University or the Foundation, will be designated as the Foundation Executive Director, and the other Staff, while also employees of the University or Foundation, may have business cards and other material which indicate an affiliation with the Foundation. The parties also acknowledge that the Foundation accepts the obligation to fund budgeted expenses incurred by the Staff up to and including the amount approved annually by the Foundation Board. Nothing in this Agreement, however, shall be construed to give the Staff any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the Foundation beyond matters contained in the operating budget approved by the Foundation or as otherwise specifically approved by the Foundation. Nothing in this Agreement shall be construed to give the Foundation any right, power or authority to enter into any agreement, or act as an agent or representative of, or otherwise bind, the University, UTC or the UT Foundation; provided, it is understood that actions taken by the Staff, other than at the specific direction of the Foundation, which bind the University, UTC or the UT Foundation are not actions of the Foundation.

9. Debts, liabilities, and other financial obligations of the Foundation shall not constitute debts, liabilities or obligations of the State of Tennessee, the UT Foundation, the University or UTC and shall be payable only from unrestricted assets of the Foundation. Neither the State of Tennessee, the UT Foundation, the University nor UTC shall have any legal or other obligation to finance the deficits of the Foundation. Neither the State of Tennessee, the UT Foundation, the University nor UTC shall have any legal, financial or other responsibility or liability for the operations of the Foundation except as expressly agreed to in this Agreement or in other written agreements executed by the respective parties.

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

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

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

ARTICLE II
FOUNDATION COMMITMENT TO SUPPORT UTC

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

I. Organizational Structure

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

- b. Because of the close relationship between the Foundation and UTC, the Vice Chancellor/Foundation Executive Director will coordinate activities and work closely with the Chancellor of UTC and the other Vice Chancellors of UTC.

- c. In accordance with the Foundation's Bylaws, the Foundation's Board of Trustees shall include the following members:
 - i. At least two (2) of the appointed members of the University of Tennessee Board of Trustees who are from the greater Chattanooga area or who are alumni of UTC and who accept the opportunity to serve on the Foundation's Board of Trustees;
 - ii. the General Alumni Association of The University of Tennessee at Chattanooga may be represented by three (3) Alumni Associate Trustees who shall have full rights and privileges and terms of three (3) years, one such Trustee being elected at each annual meeting;
 - iii. the President of the University, the Chancellor of UTC and the Chairman of the Chancellor's Roundtable at The University of Tennessee at Chattanooga shall be *ex officio*, non-voting members of the Foundation Board.

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

- a. The University acknowledges that the Foundation's constituency includes both alumni and supporters of the University of Chattanooga and alumni and supporters of UTC, and the colors, images, mascots and branding that are particular to UTC have significance to both alumni groups. The Foundation, therefore, shall have discretion in the promotion of UTC within its constituency, including by the utilizing of school colors, branding, images and the like that may be particular to UTC and that may differ from the school colors, branding, images and the like utilized by the University. The foregoing notwithstanding, the Foundation always will present UTC as part of the University of Tennessee system, and in any circumstances in which the UTC reference is in conjunction with the University identity, it will comply with established University graphic standards.
- b. The Foundation shall receive and manage all private gifts for the benefit of UTC unless the donor has specifically directed otherwise in writing. If a donor expressly requests in writing, by a gift agreement or otherwise, that a private gift be received and held by the

University rather than the Foundation, the Foundation will remit the funds to the University for deposit to the University bank account, and the appropriate University account in the accounting system will be credited with the gift.

- c. The Foundation shall transfer gift funds to UTC once each year on June 30 in accordance with the Foundation's current policies.
- d. The Foundation shall provide additional fundraising options for UTC by receiving private gifts for the benefit of UTC, including those that because of unacceptable risks or other business reasons the University could not accept (for example, encumbered real property, a going business, leveraged endowments, partnerships, and gift annuities). While under no obligation to accept such gifts or to undertake such ventures, the Foundation, prior to accepting such gifts, will discuss any such opportunities with the Chancellor of UTC, who shall, in turn, consult the University's President, Chief Financial Officer, and General Counsel. The Foundation shall not accept gifts that create a direct or indirect financial liability for the University or UTC (for example, accepting a gift that requires the assuming of another's debt) without the prior written approval of the President of the University and Chancellor of UTC, which shall be given only after consultation with the University's Chief Financial Officer and the University's General Counsel and only after receiving the written concurrence of the Vice Chair of the Board of Trustees of the University.
- e. The Foundation shall engage, as may be specifically approved in advance by the Foundation Board of Trustees, in real estate development, entrepreneurial ventures, and other revenue-producing activities for the benefit of UTC that are more appropriately conducted by the Foundation, subject to the veto power of the President of the University provided in Article IV, Section 6, and further subject to providing prior written notice of any real estate development to the State Building Commission and compliance with the terms of Article II, Section 3.f. of this Agreement if applicable.
- f. The Vice Chancellor/Foundation Executive Director or Staff shall advise donors that restrictive terms and conditions imposed on UTC's use of gifts must be approved by

the Chancellor of UTC or his or her designee prior to the Foundation's acceptance of such gifts. The Vice Chancellor/Foundation Executive Director shall provide a copy of all gift agreements through the prospect management database system.

- g. The Vice Chancellor/Foundation Executive Director, or designees, shall notify all designated UTC beneficiaries of gifts and contributions to the Foundation for their benefit, including the terms of any restrictions on such gifts, and make available regular reports of fund balances and expenditures.
- h. The Vice Chancellor/Foundation Executive Director, or designees, shall provide all necessary receipts and acknowledgements, as required by the Internal Revenue Code, for all private gifts received by the Foundation for the benefit of UTC. Gifts that are expressly designated to the University rather than the Foundation will be receipted and acknowledged by the Vice President for Development and Alumni Affairs.
- i. Within budgetary constraints, the Foundation shall coordinate with UTC-related volunteer groups as specifically requested by the Chancellor of UTC.
- j. The Foundation shall work where appropriate with the designated offices of UTC to arrange press conferences, releases, and radio and television communications to acknowledge significant gifts and coordinate such activities with the Chancellor of UTC and UTC deans, department heads and other staff or faculty as required.
- k. The Vice Chancellor/Foundation Executive Director shall be responsible for maintaining records concerning gifts and contributions to the Foundation.
- l. The Foundation shall coordinate with the UTC Scholarship and Financial Aid Office and/or other UTC units as determined by the Vice Chancellor/Foundation Executive Director in the management and recognition of awards and other established scholarship programs funded by the Foundation.
- m. The Foundation shall coordinate with UTC any recognition of major donors to UTC and donors to UTC through deferred gifts.

- n. The Foundation shall develop policies for the payment of Foundation expenses, including check writing or payment authority of the Vice Chancellor/Foundation Executive Director, levels at which dual signature or signatures of Foundation officers are required and required approvals by the Foundation or Foundation committees. The Vice Chancellor/Foundation Executive Director shall maintain books and records of Foundation income and expenses and shall make regular financial reports to the Foundation Executive Committee or to such other committee as may be designated by the Foundation. All such financial records shall be included in the Foundation's annual audit.
- o. The Foundation shall develop and manage any required operating policies and procedures.

3. Foundation Asset Management and Fiduciary Responsibilities

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

- a. The Foundation shall establish or cause to be established asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act and the Uniform Prudent Management of Institutional Funds Act.
- b. The Foundation shall fund its operating budget by using any or all of the following revenue sources, subject to the written concurrence of the Chancellor of UTC and the President of the University as to the sources of revenue: normal fees associated with the investment of gifts and gift income, endowment administration fees, investment earning fees from Foundation daily cash management program, accruing and using interest earnings on cash gifts to the Foundation prior to transfer to UTC, marketing programs, assessing fees for services, gift administrative fees and other unrestricted revenue of the Foundation in excess of that required to honor Foundation commitments

to fund certain UTC programs. The Foundation shall disclose any assessment of fees to donors.

- c. The Foundation is responsible for the performance and oversight of all aspects of its operations in accordance with its bylaws and a comprehensive set of policies that clearly address the fiduciary responsibilities of the Foundation's Board of Trustees. Article VI, Section 1 of the Bylaws of the Foundation, which establishes an Endowment Committee as a standing committee of the Board of Trustees and Article VI, Section 3, which provides for the duties and responsibilities of the Endowment Committee, are incorporated herein specifically by reference. The Foundation, further, shall establish record retention, operating and finance policies and shall maintain copies of plans, budgets, and other records developed in connection with the performance of its obligations according to those policies.
- d. The Foundation shall maintain an office that will serve as the legal address of the Foundation and the place where Foundation records will be held. Except to the extent such costs are included as in-kind support of UTC in Article III, the Foundation shall be responsible for all costs associated with this office, including but not limited to the cost of Staff or personnel, office space, parking, computers and other office equipment, information technology services, and telephone services. As of the date of this Agreement, the Foundation office space, located UTC's Office of Development at 615 McCallie Avenue, Chattanooga, Tennessee, is provided by UTC. The Foundation is not obligated to lease space from UTC.
- e. The Foundation may have its own legal counsel and accountant and shall be responsible for all costs for Foundation legal and accounting services. The parties understand that legal counsel for the University and the UT Foundation cannot provide legal advice to the Foundation, nor can legal counsel to the Foundation provide legal advice to the University or the UT Foundation.
- f. The Foundation shall establish procurement policies which shall be reasonably consistent with procurement policies and procedures of the University and UTC and shall submit such policies to the Chancellor of UTC and the President of the University for written approval. The procurement policies shall include the prohibition against

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

- g. The Foundation will abide by the statutory provisions over real property provided in Tennessee Code Annotated 4-15-102 which include approval by the State Building Commission of any acquisition of or improvements to real property for which the intent exists to transfer ownership to the University. The University shall obtain approval of the State Building Commission for any improvement to University real property using Foundation funds. The University shall report to the State Building Commission prior to acting on any planned acquisitions of or improvements to real property. The University shall obtain approval from the State Building Commission prior to acceptance of any real property gift/conveyance by the Foundation, if the Foundation anticipates UTC will contribute to the property's upkeep, payment of debt, or other financial obligation or use.
- h. The Foundation acknowledges that under Tennessee Code Annotated 49-7-140, personally identifiable records and information concerning gifts to the University for the benefit of UTC are protected against disclosure. While not directly subject to such law, the Foundation, as recipient of gifts for the benefit of UTC, agrees to establish and enforce policies to protect the confidentiality of donors and alumni and their records consistent with such law.
- i. The Foundation shall establish, adhere to, and periodically assess its gift management and acceptance policies.

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

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

4. Support of the University and UT Foundation

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

ARTICLE III

UNIVERSITY AND UTC COMMITMENT TO THE FOUNDATION

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

1. University and UTC Commitment

- a. The University and UTC recognize the need to increase UTC's private gift fundraising and alumni outreach and encourage the growth of development and alumni staff and operations by using all revenue sources available including those outlined in Article I, Section 4.
- b. The Chancellor of UTC, as well as the academic deans, and other key UTC personnel shall commit to supporting private gift fundraising and alumni outreach including, but not limited to:
 - i. communicating UTC priorities and long-range plans to the Foundation;
 - ii. participating in solicitations of major gift prospects;
 - iii. communicating development and alumni goal activities;
 - iv. participating in search committees for new development and alumni professionals;
 - v. participating in performance reviews of development and alumni professionals; and
 - vi. participating in key alumni programs/events.
- c. The University and UTC will maintain policies and controls for the use of gift funds transferred from the Foundation to the University in accordance with donor restrictions.

- d. To the extent allowed by applicable law, regulations, and policies, UTC will provide Staff who are leased by the Foundation from the University and assigned to provide services for the benefit of UTC with access to the following UTC privileges or benefits at the same cost as they are available to UTC employees: parking, athletic ticket discounts, bookstore discount, interest-free computer purchases through the bookstore by payroll deduction, use of libraries, use of recreation and fitness programs and facilities and discount on any membership fee, and UT training programs.
- e. Confidential Records. The University and UTC acknowledge that under Tennessee Code Annotated 49-7-140, personally identifiable records and information concerning gifts received by the University for the benefit of UTC are protected against disclosure.

ARTICLE IV

ENSURING UNIVERSITY COORDINATION AND TRANSPARENCY

1. The Foundation will operate in a transparent manner to ensure there is public trust.
 - a. As required by Tennessee Code Annotated § 49-9-113(e)(1), all full board meetings of the Foundation Board of Trustees shall be open to the public except for executive sessions that include, but are not limited to, any of the following matters: litigation; audits or investigations; human resource issues; gift acceptance deliberations; board training; governance; donor strategy sessions; and security measures.
 - b. Minutes of open Foundation Board meetings will be available at its offices and on its website.
 - c. The Foundation will create an annual report (electronic or written).
 - d. The Foundation annually will present a report to the University Board of Trustees.
 - e. The Foundation will file an IRS 990 report and meet all applicable requirements thereof.
2. The Board of Trustees of the Foundation shall maintain an audit committee as a standing committee of the Board.
3. The Foundation shall engage an independent certified public accounting firm annually to conduct an audit of the Foundation's financial and operational records and shall provide the University and the State Comptroller of the Treasury with a copy of the annual audited

financial statements (including management letters). The Foundation shall coordinate its annual audit to allow for the results to be included in the University's annual financial report. In addition, the Foundation shall provide such other reports, schedules, and records as may be reasonably requested by the University. All annual reports and all books of accounts and financial records (including revenues and expenditures) of the Foundation shall be subject to audit by the State Comptroller of the Treasury or his designee.

4. The Foundation Board will cause regular, documented assessments of the Foundation's risk of fraud, waste, and abuse to be performed. The Foundation Board will establish and implement a system of internal controls that adequately mitigates those risks and ensures compliance with all applicable laws and regulations. The risk assessment and the documented mitigating controls will be submitted to the audit committee of the Foundation for review and approval.
5. The Foundation has adopted policies that require full disclosure of all conflicts and potential conflicts of interest (the definition of which shall include those enumerated in Tennessee Code Annotated § 12-4-101) that any member of the Foundation Board of Trustees may have in his or her role as a member of the Foundation Board of Trustees. The policies shall also include provisions prohibiting any director, officer, or staff member of the Foundation from accepting or giving any gift or gratuity that is offered, or reasonably appears to be offered, because of the individual's position with the Foundation. Notwithstanding any other provision of law to the contrary, the Foundation Board of Trustees may remove any appointed member for a material violation of its policies.
6. Upon finding that a real estate development, entrepreneurial venture, or other revenue producing activity the Foundation proposes to undertake is not in the best interest of UTC or the University, the President of the University shall have power to veto the proposed activity.
7. The Foundation shall not pay any compensation, directly or indirectly, to the President of the University, Chancellor of UTC, or any other University employee, except insofar as the Foundation is responsible for some or all of the payroll and related costs for the Vice Chancellor/Foundation Executive Director and Staff that the Foundation leases from the University. This provision shall not be construed to prohibit the transfer of funds from the

Foundation to the University for professorships, chairs, and similar programmatic support of UTC.

8. All Foundation allocations and expense disbursements to or on behalf of UTC will be reasonable business expenses that support UTC, will be made in accordance with the terms of the Amended and Restated Charter of the Foundation, will be consistent with donor intent, and will not conflict with applicable law, regulations and policies. Foundation allocations and expense disbursements shall be subject to review and audit by the State Comptroller of the Treasury or internal auditor of the University.
9. Nothing in this Agreement shall be construed to permit the purchase of goods and services on behalf of UTC with the expectation of reimbursement by UTC. Goods and services may be purchased by the Foundation as a gift for UTC subject to the normal review and approval for gift acceptance; however, neither UTC nor the Foundation shall use the Foundation as a means to procure goods and services in circumvention of UTC or University purchasing policies and procedures.

ARTICLE V

FOUNDATION'S USE OF UTC'S NAME, SEAL AND LOGO

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

The University of Tennessee at Chattanooga
615 McCallie Avenue, Dept. 5605
Chattanooga, Tennessee 37403

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

As to the Foundation: University of Chattanooga Foundation, Inc.
615 McCallie Avenue, Dept. 6806
Chattanooga, Tennessee 37403
Attn: Board Chair

With a copy to: Chambliss, Bahner & Stophel, P.C.)
Liberty Tower
605 Chestnut Street, Suite 1700
Chattanooga, Tennessee 37450

As to UT Foundation: President and CEO
The University of Tennessee Foundation, Inc.
1525 University Avenue
Knoxville, Tennessee 37921-4848

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

2. Assignment. Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.
3. Applicable Law. This Agreement shall be construed, interpreted, and the rights and duties of the parties determined in accordance with the laws of the State of Tennessee.

ARTICLE VII
TERM, TERMINATION, AND AMENDMENT
OF THE AGREEMENT

1. The term of this Agreement shall begin on the date hereof and continue thereafter until terminated according to the provisions of this Agreement. As required by state law, the University, on behalf of UTC, may terminate this Agreement at the end of any fiscal year if sufficient funds are not available to carry out their obligations under the Agreement. Any party may terminate this Agreement at any time for any reason upon one hundred eighty (180) days' prior written notice to the other party. In addition, either party may terminate this Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within sixty (60) days after receiving written notice of the default.
2. In the event of termination of this Agreement, the parties anticipate, but recognize that there is no obligation, that the University or the Foundation will absorb the Staff.
3. It is anticipated that periodic amendments will have to be made to this Agreement, and both parties agree to the process outlined below:
 - a. The Board of Trustees of the Foundation and the Chancellor of UTC, with the concurrence of the President of the University, may in writing request an amendment of the Agreement. The parties will negotiate the requested amendment and develop appropriate language. The parties recognize that amendment of this Agreement will be necessary upon the Transition Date contemplated by the Employee Services Agreement between the University of Tennessee, signing on behalf of the University of Tennessee at Chattanooga, and the University of Chattanooga Foundation, Inc., and they agree to negotiate and execute such necessary amendments.
 - b. In a joint letter to the State Comptroller of the Treasury, the parties will articulate the reason for the proposed amendment and seek approval from the State Comptroller of the Treasury. Once the Comptroller has approved the amendment, it will be submitted to the Foundation Board of Trustees, the University Board of Trustees, and the UT Foundation

Board of Directors for approval. After approval, the amendment will be executed by duly authorized representatives of the parties.

ARTICLE VIII
DISSOLUTION OF FOUNDATION

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

ARTICLE IX
EFFECT OF AGREEMENT

1. This Agreement shall not be effective until approved by the State Comptroller of the Treasury, Foundation Board of Trustees, the Board of Trustees of the University, and the UT Foundation Board of Directors and thereafter executed by the respective authorized officers of the parties.
2. This Agreement shall supersede all previous agreements among the parties dealing specifically with the subject matter discussed herein; provided, however, this Agreement shall not be construed to supersede the 1969 Agreement and Plan of Transition between the University and the University of Chattanooga.
3. A waiver by any party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

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

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

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the Signing Date.



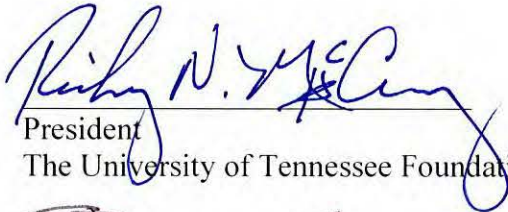
Chancellor
The University of Tennessee at
Chattanooga



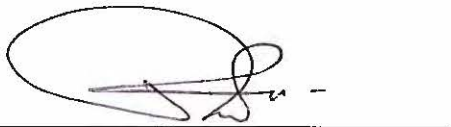
Chair, Board of Trustees
University of Chattanooga Foundation, Inc.



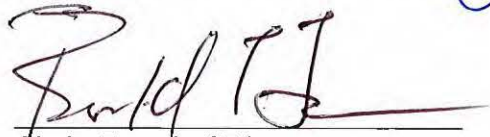
President
The University of Tennessee



President
The University of Tennessee Foundation, Inc.



Vice Chair, Board of Trustees
The University of Tennessee



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

Appendix A

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

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

Responsibilities of Vice Chancellor/Foundation Executive Director

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

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

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

1. The Chancellor of UTC, University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair will establish performance metrics (visits, solicitations, dollars raised, etc.) that are expected for the UTC Vice Chancellors/Foundation Executive Director.
2. The Chancellor of UTC, University's Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair or his or her designee will agree upon campaign goals and annual goals in non-campaign years.
3. The Chancellor of UTC, the University's Vice President for Development and Alumni Affairs

and Programs, and the Foundation Chair may agree to other goals such as critical success factors.

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

Director:

1. The Chancellor of UTC, University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair will review the Vice Chancellor/Foundation Executive Director's development and alumni related performance and foundation management for the past year in relation to the annual performance letter.
2. The Chancellor of UTC, University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair will then draft a performance review letter.
3. This letter will be signed by the Chancellor of UTC, the University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair or his or her designee and delivered to the Vice Chancellor/Foundation Executive Director in advance of a meeting of the Chancellor of UTC, the University's Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair.

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

1. Upon completion of the annual performance review process, the Chancellor of UTC will submit any proposed increase in the Vice Chancellor/Foundation Executive Director's compensation to the University's Vice President for Development and Alumni Affairs and Programs and the Foundation Chair.
2. The Chancellor of UTC, University's Vice President for Development and Alumni Affairs and Programs, and the Foundation Chair or his or her designee will meet with the Vice Chancellor/Foundation Executive Director to discuss the Vice Chancellor/Foundation Executive Director's compensation for the following year.

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

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

1. The Chancellor of UTC, University's Vice President for Development and Alumni Affairs and

Programs, and the Foundation Chair or his or her designee shall agree upon a final candidate pool to interview.

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

Procedure for Terminating the Vice Chancellor/Foundation Executive Director:

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

Appendix B

Foundation's Duty to Maintain Insurance

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

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

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

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

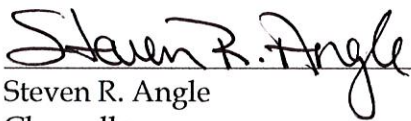
WITNESSETH


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

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


1. Article II, Section 1.c.i. is amended and restated as follows:
 - i. At least one (1) of the appointed members of the University of Tennessee Board of Trustees who is from the greater Chattanooga area or who is an alumnus/alumna of UTC and who accepts the opportunity to serve on the Foundation's Board of Trustees.
2. Except as revised by this First Amendment, the Agreement remains in full force and effect.

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

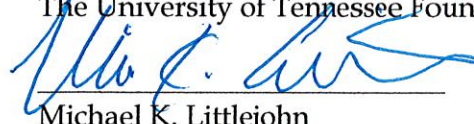

Steven R. Angle
Chancellor
The University of Tennessee at
Chattanooga


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

Randy Boyd
Interim President
The University of Tennessee


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

John Compton
Chair, Board of Trustees
The University of Tennessee


Michael K. Littlejohn
Chair, Board of Directors
The University of Tennessee Foundation, Inc.