

**AGREEMENT BETWEEN**  
**EAST TENNESSEE STATE UNIVERSITY**  
**AND**  
**EAST TENNESSEE STATE UNIVERSITY FOUNDATION, INC**

THIS AGREEMENT, made the 1<sup>st</sup> day of December, 2009, by and between East Tennessee State University (hereinafter referred to as the "Institution" and East Tennessee State University Foundation, Inc., (hereinafter referred to as the "Foundation").

The Foundation is a private non-profit public benefit corporation existing by virtue of Tenn. Code Ann. 49-7-107 and Tenn. Code Ann 48-51-101 *et.seq.* (Tennessee Nonprofit Corporation Act), is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, and is organized to work in concert with the Institution. The Foundation is established by Charter and Bylaws dated November 4, 1970 and its purpose as stated therein. As set forth by its charter, the Foundation's objectives are (1) to promote the cause of higher education and particularly the mission of the Institution; (2) to expand educational opportunities; and (3) to acquire, manage and administer Foundation funds to achieve those objectives. The Foundation is organized exclusively for charitable, educational purposes and is empowered to encourage, solicit, receive, manage, administer, control, invest, and disburse contributions, gifts, grants, bequests, and transfers of funds or property of any nature, and carry out the wishes of donors and see that property so received is applied to the uses specified by the donors.

The Institution is a public institution of higher education created by Tenn. Code Ann. 49-8-101 and governed by the Tennessee Board of Regents. The Institution is authorized to do all things it deems to be in the best interest of the Institution within the parameters of guidelines and policies established by the Tennessee Board of Regents and state and federal law and in accordance with its agreement with the Foundation.

**The parties hereby agree as follows:**

**I Foundation Powers, Duties, and Responsibilities**

1. The Foundation is run by an independent Board of Directors and is independent of the institution and the state. The board consists of not less than 15 and no more than 30 elected from and by the membership. In addition to the Directors elected from the membership, the President of East Tennessee State University, the President of the East Tennessee State University Alumni Association, the Chairman of the State Board of Regents or his designee, and two Past Chairman of the Boards of the Foundation, one being the immediate Past Chairman of the Board and the other appointed by the current Chairman of the Board of the Foundation, shall serve as full voting members of the Board of Directors. The persons holding the following positions shall also be full voting members of the Board of Directors: The President of the Foundation and the Chief Financial Officer of the University, if different persons.

2. In addition to the Board of Directors, an Executive Committee has been established to make interim decisions on behalf of the Board regarding daily operations. The Executive Committee of the Board of Directors shall consist of not less than seven members and be composed of the officers of the Foundation, the immediate Past Chairman of the Board of the Foundation, a Past Chairman of the Board appointed by the current Chairman of the Board of the Foundation, the President of the University, the Chairman of the Investment Committee (if not otherwise an officer of the Foundation), the Chairman of the Planned Giving Committee (if not otherwise an officer of the Foundation), and the designated representative of the Board of Regents. In addition, the Executive Director of the Foundation, the Chief Financial Officer of the University (if a different person than the Executive Director), and the Assistant Treasurer (if a different person other than the Chief Financial Officer) shall serve as non-voting ex-officio members.
3. The Foundation's responsibilities shall include raising funds for the Institution. The Institution and the Foundation may share employees and services, including a database of information on donors. As used herein, the Foundation's "database of information" includes but is not limited to a compilation of contributors, prospects, alumni, friends, and supporters of the institution. These records, as well as all other data, materials, and information of the foundation pertaining to past, current, and prospective donors is proprietary to the foundation and constitutes its confidential information and trade secrets.
4. The Foundation may disclose confidential information from time to time to authorized institution personnel for purposes of cooperative planning and implementation as authorized by the Foundation.
5. The Foundation's responsibilities shall also include administration and management of the following:
  - a. **Trusts.** Legal devices used to set aside money or property belonging to one person or entity for the benefit of one or more persons or parties. Trust agreements transfer legal title but not ownership of the corpus to the trustees.
  - b. **Unrestricted gifts.** Assets or income unrestricted in terms of use, eligible recipients, or distribution procedures. A grant of unrestricted funds does not specifically stipulate how the money is to be spent by the grantee.
  - c. **Restricted gifts.** Assets or income restricted in terms of use, eligible recipients, or distribution procedures.
  - d. **Endowments.** Bequests or gifts intended to be kept permanently and invested to create income. All endowments shall be established with each donor by a Memorandum of Understanding or trust agreement. This ensures that the donor's intent is fully understood by the Foundation and the Institution.
  - e. **In-Kind contributions.** Donations of goods or services rather than cash.
  - f. **Foundation accounts.** Accounts containing Foundation funds, including scholarship accounts, endowments, investment accounts, and operating fund accounts.

6. The Foundation board shall be designated as the entity responsible for promoting and generating private sector support for the institution.
7. The Foundation shall assist the institution and its colleges and departments in their fund raising activities, capital campaigns, and development programs with individuals, corporations, foundations, and other organizations.
8. As mutually agreed by the parties, the Foundation will perform other acts as may be deemed appropriate, consistent with the Foundation's mission and resources.
9. **Income Tax Filing:** The Foundation shall be responsible to file an annual form 990 listing organizational assets, receipts, expenditures and compensation of officers. IRS Form 990 is the annual "Return of Organization Exempt from Income Tax".
10. **Employment Taxes:** The Foundation shall be responsible for the timely submission of Form 941 if required. The parties acknowledge that no employment tax filing is required for any quarter in which the Foundation has no payroll or no employees.
11. **Miscellaneous Awards and Fees:** The Foundation shall file form 1099-MISC reporting awards, fees, and similar payments that must be reported to the IRS by the Foundation. This must be sent to the award recipient no later than January 31<sup>st</sup>, and to the IRS, with a Form 1096 transmittal, no later than February 28<sup>th</sup> of each year.
12. **Investment and Management of Foundation Funds:** The Foundation Board is vested with sole authority to invest and/or manage the Foundation's funds, including but not limited to, cash, securities, and real estate taking the form of trusts, endowments, restricted gifts, unrestricted gifts or otherwise.
13. **Collection of Donations:** The Foundation is responsible for the collection of donations for the Institution's charitable, scientific, and educational purposes.
14. **Additional Foundation Authority:** The parties agree that the Foundation Board is empowered to:
  - a. Solicit gifts or assist the Institution in soliciting gifts from third persons in the name of the Institution and for the benefit of the Institution or any of the Institution's programs;
  - b. Solicit grants and contracts or accept grants;
  - c. Enter into contracts for services to be performed using the Institution's facilities and Foundation account funds;
  - d. Enter into contracts for goods or supplies using Foundation account funds;
  - e. Authorize payment of bills or professional fees in the name of or in behalf of the Foundation.
15. No institutional/state funds will be used by the Foundation for the Foundation's operation and no state funds will be transferred either directly or indirectly to the Foundation.

16. The Foundation shall implement a written, mandatory, document retention and periodic document destruction policy that complies with *Sarbanes-Oxley* prohibiting document purging if an official investigation is underway or suspected. The policy shall include guidelines for handling electronic files, voice mail, and paper documents.
17. The Foundation shall adopt an ethics policy complying with P.L. 879-2853 (2004), Tenn. Code Ann. 49-7-107, *as amended*, requiring that state college and university foundations adopt a code of ethics.
18. **Use of Institution Name/marks.** The Foundation may, in connection with its lawful business and activities, use the name of the Institution as well as the Institution's logo, seal, and other symbols and marks.
19. The Foundation shall not delegate the authority to use the Institution's name or marks without written approval of the Institution's president and shall not permit the Institution's name or marks to be used in connection with advertising of non-institution or non-foundation products or services unless such use is consistent with policies of the institution.
20. The Foundation agrees to cease using the Institution's name and marks in the event:
  - a. Foundation dissolves;
  - b. The Foundation ceases to be a non-profit corporation or ceases to be recognized by the IRS as described in Section 501(c)(3) of the Internal Revenue Code; or
  - c. The Foundation or the Institution terminates this agreement.
21. The Foundation will be responsible for its own legal counsel.
22. With the assistance of Institution's administrative personnel, the Foundation will create the Foundation's budget.
23. The Foundation agrees to comply with all executive orders, federal, state, and local rules, regulations, and laws applicable to similar non-profit corporations.

## **II. Institution Powers, Duties, and Responsibilities.**

1. The Institution agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the Institution and the Foundation.
2. Institution employees may:
  - a. Provide professional services within the scope of their employment with the Institution;
  - b. Serve as *ex officio* members of the Foundation's board of directors or other governing structure;

- c. Review the financial records of the Foundation to determine that the Foundation is adequately capitalized for any activities undertaken in the name of, for the benefit of, or in conjunction with the Institution.
  - d. Request or require evidence satisfactory to the president or the president's designee of insurance or self-insurance adequate in form and amounts to cover foreseeable liability arising from activities undertaken in the name of, for the benefit of, or in conjunction with Institution.
  - e. Request periodic review of any written general agreement or memorandum of understanding between the Institution and the Foundation to ensure that it describes each party's responsibilities in a manner that makes it clear to third parties dealing with the cooperative organization that the organization is acting as a legal entity separate from the Institution; and
  - f. Take any action necessary to ensure that actions of the Institution's officials, faculty, staff, or employees pursuant to the relationship are consistent with policies established by the Board of Regents and the System institution regarding conflicts of interest, outside activities, and other matters.
3. In consideration of the services provided to the Institution by the Foundation and as set forth herein, the institution shall assist the Foundation board in the following:
- a. Provision of office space, telephones, computers, supplies, *et. cetera*. These will be considered in-kind services from the Institution. These in-kind services from the Institution shall be appropriately recognized in the Foundation's audit.
  - b. Provision of clerical and administrative support services through the Institution's Development Office.
  - c. Provision of designated financial services including financial record keeping.

### **III. Mutual Acknowledgements and Obligations.**

- 1. Foundation funds shall be utilized in a manner consistent with the wishes of donors and the objectives of the Foundation.
- 2. The parties agree that investment and maintenance of Foundation funds will occur in accordance with the following principles:
  - a. Unless otherwise specified by the donor, the endowment principal account will be managed in accordance with UPMIFA (Uniform Prudent Management of Institutional Funds Act) as approved by the State of Tennessee in Tenn. Code Ann 35-10-201 *et.seq.* Unexpended interest and/or investment income may be returned to the endowment to grow the corpus or allowed to accumulate for future distribution or expenditure consistent with the donor's intent.
  - b. Each endowment will be accompanied by a Memorandum of Understanding or other document setting forth the donor's wishes and intent with respect to the funds. This Memorandum of Understanding is the legally binding document used

to ensure that the money is properly stewarded and that the donor's wishes are met in the distribution of funds. Each memorandum will be created by agreement of the donor and the Foundation. The Institution shall receive a copy of the memorandum. All criteria for the distribution of the endowment distributable earnings shall be delineated in the document and must reflect the donor's wishes.

c. Restricted funds, whether related to an endowment or not, will be spent only for the purposes intended by the donor both now and in the future.

3. **Termination.** Either party may terminate this agreement upon sixty days' notice.
4. **Term.** The term of this Agreement shall commence on the date first written below and expire on June 30, 2010. If neither party gives notice of termination prior to the June 30 expiration of the agreement, it will continue on a year-to-year basis. The fiscal year for the purposes of this agreement is July 1 to June 30. If terminated by either party, all funds, assets, data and information in the possession of the Foundation will be promptly transferred to the Institution.
5. **Effect of Agreement/Modification.** This agreement contains all the terms between the parties. It may be amended only in writing signed by legally authorized representatives of all parties.

APPROVED:

East Tennessee State University Foundation, Inc.

By: Leslie Parks Pope 12/1/09  
Leslie Parks Pope, Board Chair Date

East Tennessee State University

By: Paul E. Stanton, Jr. 12/9/09  
Paul E. Stanton, Jr., President Date

ACKNOWLEDGED AND APPROVED:

Tennessee Board of Regents

By: Charles Manning 1/12/10  
Chancellor Charles Manning Date