Operating Agreement

East Carolina University
and
The Medical Foundation of East Carolina University, Inc.

This Operating Agreement ("Agreement") is made by and among East Carolina University ("ECU") and The Medical Foundation of East Carolina University, Inc. ("Foundation").

RECITALS

A. ECU is an institution of higher education; and

B. Foundation is a North Carolina nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code and exists for the purposes of aiding and promoting educational and charitable purposes and lawful activities of the Health Sciences Division of ECU ("ECUHSD").

C. ECU has officially recognized Foundation as satisfying the standards and eligibility requirements as a supporting associated entity set forth in University of North Carolina and ECU rules and regulations, including but not limited to 600.2.5.2[R] of the UNC Policy Manual; and,

D. The parties desire to formalize the relationship between ECU and Foundation by setting forth the manner in which ECU will provide support for Foundation and in which Foundation is to provide support for the Health Sciences Division of ECU.

TERMS

In consideration of the mutual covenants, promises and conditions herein contained, and for good and valuable consideration the adequacy of which is hereby acknowledged, ECU and Foundation agree as follows:

1.0 Foundation Support of ECU Health Sciences Division.

1.1 Foundation’s sole purpose is to provide support to the Health Sciences Division of ECU. In accordance with Foundation’s governing documents, that support includes, but is not limited to:

1.1.1 Raising, receiving, investing, and administering funds for the charitable, scientific, and educational purposes of ECUHSD.

2.0 Use of ECU Name.

2.1 Foundation may, in connection with its lawful business and activities, use the name of ECU, ECUHSD and its constituent entities as well as ECU HSD’s logo, informal seal, and other symbols and marks provided that Foundation clearly
communicates that it is conducting business in its own name for the benefit of ECUHSD. Foundation shall not delegate the authority to use ECU’s name or symbols.

2.2 Foundation agrees to cease using ECU’s and/or HSD’s name and symbols in the event:
   2.2.1 Foundation dissolves;
   2.2.2 This Agreement is terminated as provided below (unless the parties agree otherwise);
   2.2.3 Foundation ceases to be a nonprofit corporation or ceases to be recognized by the Internal Revenue Service as described in Section 501(c)(3) of the Internal Revenue Code.

2.4 Notwithstanding the provisions of section 2.1, Foundation agrees that it will not offer academic courses using ECU’s name, and any Foundation sponsored seminars or workshops will clearly indicate sponsorship by the Foundation.

3.0 Relationship between Foundation and ECU.

3.1 ECU agrees to encourage and maintain the independence of Foundation and, at the same time, foster the cooperative and collaborative relationship between ECU and Foundation and agrees that this Agreement shall not interfere with the independence of the Foundation.

3.2 The Chancellor shall be an ex officio non voting member of Foundation’s governing board.

3.3 The Vice Chancellor for Administration and Finance shall be an ex officio voting member of the Foundation’s governing board.

3.4 The Vice Chancellor for University Advancement shall be an ex officio non voting member of Foundation’s governing board.

3.5 Other ECU employees may serve as ex-officio members of Foundation’s governing board, with or without vote, as specified by Foundation’s bylaws.

3.6 Foundation agrees to cooperate with the Chancellor to allow ECU and HSD to monitor the relationship between ECU, HSD, and Foundation.

3.7 The Board of Directors of the Foundation shall be responsible for control and management of all assets of Foundation, including prudent management of all gifts to Foundation consistent with donor intent.

3.8 The Foundation will maintain an audit committee consisting of neither ECU nor Foundation employees in accordance with the Charter of the Audit Committee and the related independence determinations adopted by the Board of Directors as it may be amended from time to time. The audit committee will engage an
independent certified public accountant to be the independent auditor for the Foundation. This committee will have the authority to expend funds of the Foundation to carry out the audit and the committee’s functions.

4.0 Foundation’s Obligation to ECU.

4.1 Foundation agrees, before accepting gifts of real estate, or gifts with any restrictive terms and/or conditions that impose an obligation on ECU or the State of North Carolina to expend resources in addition to the gift, to obtain written approval from the Vice Chancellor for Administration and Finance and the Vice Chancellor for University Advancement unless such gift otherwise complies with ECU’s gift acceptance policy which may then be in force and effect. In addition, Foundation agrees that it will not accept a gift that has any restriction that is unlawful. In soliciting and accepting gifts in the name of the ECU, Foundation agrees to coordinate with ECU’s Division of University Advancement.

4.2 Foundation agrees to advise prospective donors of restricted gifts that acceptance of such gifts is conditioned upon ECU’s approval if the gift requires ECU approval under section 4.1.

4.3 Foundation agrees to coordinate with the Division of University Advancement regarding funding goals, programs, and campaigns.

4.4 Foundation shall obtain, operate, and maintain its accounting, development activities, alumni records, and other information on ECU-compatible data processing equipment, peripheral hardware and software and shall make its data reasonably available to ECU in accordance with existing ECU guidelines and UNC regulations and as otherwise required by applicable law. ECU agrees to provide as contributed services all necessary and reasonable services for accounting capacity and services, development activities, services, alumni records and other related information on ECU’s data processing equipment, peripheral hardware and software and shall keep such information current and provide the reports necessary for the Foundation on a timely basis. Notwithstanding the foregoing, Foundation shall maintain ownership of and control access to any prospect and donor information it collects and these records shall constitute a trade secret under N.C. Gen. Stat. § 132-1.2. The Chair of the Foundation shall be the custodian of these records and employees of ECU will have access to them only for the purpose of providing services to the Foundation. Foundation agrees that it will establish and maintain a policy governing the retention and destruction of documents, including electronic files, and which prohibits destruction of documents if an investigation into wrongdoing or litigation is anticipated or underway.

4.5 Foundation shall administer its funds and make distributions to ECUHSD in accordance with policies and procedures established by the Foundation from
time to time, with guidance from ECU and HSD. Foundation agrees that all transfers of funds from Foundation to ECU must be documented in writing or electronically in a form that has a retrievable transaction trail.

5.0 Limitations on the Foundation.

5.1 Foundation agrees to operate using sound fiscal and business principles, to ensure that sound internal control structures are in place, and to follow generally accepted accounting procedures.

5.2 Foundation will create an annual operations budget.

5.3 Foundation agrees not to make any direct payments to an ECU employee, except for approved expense reimbursements, without prior written approval from the Chancellor of ECU, or the Chancellor's designee. All salary and non-salary compensation of employees of Foundations will be approved in advance by the Board of Directors of the Foundation.

5.4 Foundation officers and employees who have check signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Foundation board.

5.5 Foundation must obtain general liability and directors/officers insurance in an amount determined to be reasonable by the Foundation board.

5.6 Foundation must not engage in substantial lobbying activities and may not engage in any political activities.

5.7 Foundation may not acquire debt in excess of Five Hundred Thousand and No/100 Dollars ($500,000.00) that is not to be publicly traded before consulting with the Chancellor and Vice Chancellor for Administration and Finance, who shall consult with the Vice President of Finance of the University of North Carolina.

6.0 ECU Support of and Obligations to Foundation.

6.1 ECU shall provide Foundation with office space under such terms and at such locations as are mutually acceptable, including utilities, janitorial service, facilities maintenance, furniture and fixtures, and use of campus mail service, and telephone and other reasonable communication services.

6.2 ECU shall provide an Employees Dishonesty bond in an amount determined from time to time by the parties for any ECU employee providing substantial services to Foundation. Foundation shall be listed as a beneficiary of such bond.
6.3 ECU shall provide business systems to Foundation in a manner and form mutually acceptable to both parties. Business systems include all systems for: a) finance and accounting; b) the alumni database; c) gift records; and d) other business systems as deemed necessary between the parties to support Foundation. In providing business systems, ECU will provide all underlying supplies and services for provided systems, including but not limited to computer equipment (computer hardware/software/servers), IT services (programming/technical support/networking/internet access), and communication services (e-mail and telephone system).

6.4 All services provided to Foundation by ECU will be classified as either Reimbursed Services or Contributed Services. In consultation with ECU, Foundation will prepare an annual operating budget that identifies all services to be provided to Foundation by ECU, the respective value of those services, and, as mutually agreed upon between the parties, the classification of each service as either reimbursed or contributed.

6.5 ECU shall provide reasonable support to Foundation including personnel services consistent with the support outlined above and based upon an annual budget plan agreed to by the parties. As agreed upon between the parties, ECU shall provide support to Foundation to allow Foundation to carry out its mission and to meet the terms and conditions of this Agreement.

6.6 All assigned employees shall be employees of ECU. As such, ECU employees assigned to Foundation shall be subject to all applicable ECU, University of North Carolina and state policies.

6.7 When ECUHSD receives funds from Foundation for a specified purpose, ECUHSD agrees to use such funds received for the specific purpose.

6.8 In the event there arises a conflict between ECU and the Foundation when an ECU employee provides services to the Foundation, the employee shall timely notify appropriate Foundation personnel of the conflict and Foundation personnel shall try and remedy the conflict in collaboration with appropriate ECU personnel. If ECU and Foundation are unable to remedy the conflict, then the ECU employee must comply with the policies, regulations, and directives of ECU.

7.0 Foundation Audits, Legal Representation, and Reporting.

7.1 The Audit Committee of the Foundation Board of Directors shall be charged with selection of a certified public accounting firm, to serve as Foundation's independent auditor and to complete a full and complete annual audit of its
finances and operations. The Audit Committee shall be established and operated pursuant to Paragraph 3.8 and applicable Foundation Policy and in compliance with 600.2.5[R] of the UNC Policy Manual as it now exists or may be later amended. Foundation agrees to notify ECU within thirty (30) days if it selects a different auditing firm.

7.2 Foundation agrees to provide to the Chancellor and ECU’s Internal Auditor the following items at the times indicated:

7.2.1 Upon completion, the annual audit report, management letters and responses to management letters, and the Foundation’s IRS Form 990;

7.2.2 The list of Foundation governing board, officers, and employees immediately upon a change in membership, officers, or employment status;

7.2.3 The names of the officers and governing board members of all Foundation associated or affiliated entities immediately upon a change in officers or in board membership of the associated or affiliated entity;

7.2.4 An annual report of operations that shows actual versus budgeted revenues and expenditures annually concurrent with the provision of the annual audit report referenced in subsection 7.2.1 of this section.

7.3 Foundation agrees to allow the Chancellor, the chair of the East Carolina University Board of Trustees, or the chair’s or the Chancellor’s designee, to inspect and audit all foundation books and records [that are relevant to an articulated legitimate reason] at reasonable times.

8.0 Conflicts of Interest

Foundation will establish and maintain conflicts of interest policies pertaining to its relationship with ECU, members of the governing board and persons doing business with Foundation. Such policies shall provide that (a) all transactions (other than expense reimbursements set forth in 5.3), between Foundation and an officer, director, or employee of Foundation, must be approved by the Foundation Board; (b) no Foundation officer, director, or employee having a private business interest in a Foundation business transaction may be involved in the decision with respect to whether the Foundation should enter into such transaction; (c) no Foundation scholarship or fellowship award may be made to an officer, director, or employee of the Foundation or to a family member of such person unless the recipient of the award is determined by an independent awards committee.

9.0 Compliance with UNC and ECU and HSD Policies and Regulations and Foundation’s Charter and Bylaws.

ECU and Foundation agree to comply with the policies and regulations of the University of North Carolina Board of Governors, the East Carolina University Board of Trustees, the President of the University of North Carolina and the Chancellor pertaining to the relationship between ECU and Foundation, including amendments
thereto, and, to the extent practicable are being applied equally and consistently to all associated entities. ECU shall provide Foundation with all such currently outstanding and in effect policies and regulations together with citations and descriptions, if readily known, of any applications of said rules to other supporting and associated entities. ECU shall provide Foundation with proposed amendments to such policies and regulations as soon as possible but in no event less than fifteen days prior to their effective date. Foundation agrees to provide ECU with a copy of its Bylaws and shall provide any proposed amendments as soon as possible but in no event less than fifteen days prior to the meeting of the Foundation at which they are to be considered for adoption.

10. **Effect of Agreement; Modification.**

This Agreement (and its attachments, if any) contains all the terms between the parties and may be amended only in writing approved and signed by a representative of both parties.

11. **Confidentiality.**

Neither Foundation nor ECU shall disclose or use any private, confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this Agreement or as required by law. Foundation recognizes the obligation of ECU to comply with North Carolina Public Records laws.

12. **Indemnification.**

Foundation shall indemnify and hold harmless ECU, its governing board, officers, employees, agents, and students in their official and personal capacities, from and against any and all claim, damage, liability, injury, expense, demands, and judgments, including court costs and attorney’s fees, arising out of Foundation’s performance of this Agreement to the extent any such claim, damage, liability, injury, expense, demand or judgment is caused by the Foundation or any ECU employee acting at the direction of the Foundation Board or the Chair of the Foundation Board. This provision shall continue beyond termination or expiration of this Agreement.

To the extent permitted by law, ECU shall indemnify and hold harmless Foundation, its governing board, officers, employees and agents in their official and personal capacities, from and against any and all claim, damage, liability, injury, expense, demands, and judgments, including court costs and attorney’s fees, arising out of ECU’s/HSD’s performance of this Agreement to the extent any such claim, damage, liability, injury, expense, demand or judgment is caused by the ECU/HSD employee acting at the direction of the ECU/HSD. This provision shall continue beyond termination or expiration of this Agreement.
13. **Term and Termination.**

The initial term of this Agreement shall be 5 years and shall be automatically renewed for successive 5 year terms, unless and until either party gives notice in writing to the other party of its intent not to renew the Agreement at least ninety (90) days prior to the beginning of a new term. Either party shall have the continuing right to terminate this Agreement at any time without cause upon ninety [90] days written notice to the other party.

14. **Dissolution.**

It is the intent of the Foundation that it have perpetual existence. In the event of dissolution of the Foundation, either voluntary or involuntary, all assets and property which remain after the discharge of the Foundation's liabilities and unless otherwise designated by the donor of an asset or by the dissolution provisions of the Charter of the Foundation shall be paid over or distributed by the Board of Directors to ECU or to any other nonprofit corporation or corporations organized to support ECU or any of its Colleges, Schools, Departments, or affiliated organizations as determined by the Board of Directors in its sole discretion, and shall be used or distributed for no other object or purpose whatsoever; provided, however, that any such organization must be exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, as amended and be an associated entity approved by ECU pursuant to regulations of the University of North Carolina.

15. **Compliance with Applicable Law and Non-Discrimination.**

15.1 Foundation agrees to comply with all executive orders, federal, state and local rules, regulations, and laws, applicable to Foundation as currently in effect and as may be amended from time to time. Foundation further agrees not to discriminate in any manner on the basis of sex, race, creed, age, color, national origin, religious belief, disability, status as a disabled veteran, or veteran of the Vietnam era, sexual orientation, and to comply with all non-discriminatory laws and policies that ECU promulgates and to which Foundation is subject.

15.2 Foundation will maintain a confidential and anonymous mechanism to encourage employees to report any inappropriateness within the entity's financial management and will not punish or retaliate against any employee for reporting problems.

16. **Notice.**

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by U.S. Postal Services first class, certified, or express mail, or other overnight mail service, or hand delivered, when addressed as follows:
To ECU:
    East Carolina University
    Attn: Vice Chancellor for University Advancement
    2200 South Charles Boulevard
    Greenville, NC 27858

To Foundation:
    The Medical Foundation of East Carolina University, Inc.
    Attn:    David J. Whichard II, Chair
             Carole Novick, President
    525 Moye Boulevard
    Greenville, NC 27858

Or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

IN WITNESS WHEREOF, East Carolina University and the Medical Foundation of East Carolina University, Inc., have caused this Agreement to be executed by their authorized representatives as of the 15th day of March, 2007.

East Carolina University
    By: [Signature]
    Steve Ballard, Chancellor

Medical Foundation of East Carolina University, Inc.
    By: [Signature]
    David J. Whichard II, Chair

By: [Signature]
    Kevin Seitz, Vice Chancellor
    For Administration and Finance

By: [Signature]
    Phyllis Horns, Interim Vice Chancellor
    for Health Sciences and Dean,
    Brody School of Medicine

ATTEST:
    BY: [Signature]
    TITLE: Administrative Support Associate

ATTEST:
    BY: [Signature]
    TITLE: Administrative Support Associate