

Operating Agreement

East Carolina University and East Carolina University Alumni Association, Inc.

This Operating Agreement (Agreement) is made between East Carolina University (ECU) and East Carolina Alumni Association, Inc. (Association)

RECITALS

- A. ECU is an institution of higher education; and is one of the constituent institutions of the University of North Carolina and has the authority to approve private organizations, known for purposes of this Agreement as Associated Entities, to support the constituent institution, consistent with G.S. 116-30.20; and,
- B. Association is a private, independent North Carolina nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code and exists for the purposes of supporting and promoting the educational and charitable purposes and the lawful activities of ECU; and
- C. ECU, within its authority, has officially recognized Association as meeting the standards and eligibility requirements as a supporting associated entity as set forth in the University of North Carolina and ECU rules and regulations and with execution of this document, ECU reaffirms and ratifies that recognition; and,
- D. ECU and Association (collectively, the “parties”) previously executed an operating agreement on June 15, 2006 formalizing the relationship between ECU and Association by setting forth the manner in which ECU and Association are to provide support for each other.
- E. Both parties to the June 15, 2006 agreement and this Agreement are satisfied that Association and ECU have complied with the June 15, 2006 agreement.
- F. Both parties desire to amend and extend under the terms provided in this Agreement in order to comply with UNC Policy 600.2.5.2[R].

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 Association agree as follows:

1.0 Association Support of ECU.

- 1.1 Association's sole purpose is to provide support to ECU, including its associated entities. In accordance with Association's governing documents, that support includes, but is not limited to:
- 1.1.1 Raising, receiving, investing, and administering funds for ECU to use for its charitable, scientific, and educational purposes;
 - 1.1.2 While retaining its independence, coordinating with the Division of University Advancement in its fundraising, marketing, public relations and alumni outreach activities and development programs with individuals, corporations, associations, and other organizations;
 - 1.1.3 Soliciting funds for student scholarships, faculty support, facilities, programs, and supporting other educational, research, cultural, scientific, public service, charitable activities and lawful purposes of ECU;
 - 1.1.4 Promoting the welfare and future development of ECU;
 - 1.1.5 Other designated activities that are in furtherance of the mission of ECU, as mutually agreed by the parties.

2.0 Use of ECU Name.

- 2.1 Association may, in connection with its lawful business and activities, use the name of ECU as well as ECU's logo, informal seal, and other symbols and marks of ECU, provided that Association clearly communicates that it is conducting business in its own name for the benefit of ECU. All correspondence, marketing material, and other communications by Association must clearly indicate that the communication is by Association and not from ECU. Association shall use the name of ECU as well as ECU's logo, informal seal, and other symbols and marks of ECU only in connection with the services rendered for the benefit of ECU and in accordance with the guidance and directions furnished to Association by ECU, or its representatives or agents, from time to time, and only if the nature and quality of the services in connection with which the aforesaid logo, seal, and other symbols and marks are used shall be satisfactory to ECU or as specified by it in a written memorandum to Association. ECU shall exercise control over and be the sole judge of whether or not Association has met or is meeting the standards of quality so established, subject to Subsection 2.3.4 herein below.
- 2.2 Association shall not license or similarly delegate the authority to use ECU's name or symbols to any person or entity without the written approval of the Chancellor of East Carolina University ("Chancellor") or his/her designee, or the Vice Chancellor for University Advancement.
- 2.3 Association agrees to cease using ECU's name and symbols in the event:
- 2.3.1 Association dissolves;
 - 2.3.2 This Agreement is terminated as provided below (unless the parties agree otherwise); or

- 2.3.3 Association 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; or
 - 2.3.4 The Chancellor revokes such authority for failure to conform to the requirements of section 2.1, above or otherwise removes approval of Association to operate as an associated entity of ECU pursuant to UNC policy. Such revocation shall not occur until after Association is provided notice of its failure to conform and a reasonable opportunity to correct the failure and notice is provided pursuant to Section 13 of this Agreement.
- 2.4 Notwithstanding the provisions of section 2.1, Association agrees that it will not offer any course or seminar using ECU's name without first obtaining written permission from the Chancellor.

3.0 Relationship between Association and ECU.

- 3.1 ECU agrees to encourage and maintain the independence of Association, continuing to recognize that Association is independent and private as described in Recital B above and, at the same time, foster the cooperative relationship between ECU and Association.
- 3.2 The Chancellor, or the chancellor's designee, shall be an ex officio non-voting member of Association's governing board.
- 3.3 The Vice Chancellor for Administration and Finance, or the Vice Chancellor's designee, shall be an ex-officio non-voting member of Association's Governing Board, and shall serve as Executive Treasurer of the Association.
- 3.4 The Vice Chancellor for University Advancement, or the Vice Chancellor's designee, shall be an ex-officio non-voting member of Association's governing board.
- 3.5 Other ECU employees may serve as ex-officio members of Association's governing board, with or without vote, as specified by Association's bylaws.
- 3.6 Association agrees to cooperate with the Chancellor and/or the Chancellor's designee to allow ECU to monitor the relationship between ECU and Association.
- 3.7 The Board of Directors of Association shall be responsible for control and management of all assets of Association, including prudent management of all gifts to Association consistent with donor intent.
- 3.8 Association will maintain an audit committee which does not have any employees of ECU or Association as a member. This committee will receive

and review the annual audit of Association and relevant annual tax forms to be submitted by Association. If practical, Association will ensure a financial expert is a member of the audit committee.

3.9 Association is not an Athletically Related Associated Entity.

4.0 Association's Obligation to ECU.

- 4.1 Association 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, Association agrees that it will not accept a gift that has any restriction that is unlawful. In soliciting and accepting gifts in the name of ECU, Association agrees to coordinate with University's Division of University Advancement.
- 4.2 Association 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 Association agrees to coordinate with the Division of University Advancement regarding funding goals, programs, and campaigns.
- 4.4 Association 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. Notwithstanding the foregoing, Association 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 President of the Association 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 Association. Association agrees that it has and will maintain a policy governing the retention and destruction of documents, including electronic files, and which prohibits destruction of documents if an audit conducted in other than the ordinary course of business and/or investigation into wrongdoing or litigation is anticipated or underway. Notwithstanding anything in this Agreement that may be interpreted to the contrary, ECU may access and review any electronic mail, including related data and attached materials and information, stored on or transmitted through ECU IT infrastructure, systems or equipment for purposes of investigating whether an ECU policy has been violated.

- 4.5 Association agrees to comply with all standards and requirements adopted by ECU for security of information technology (“IT”) systems, infrastructure, and equipment attached thereto, as well as data and information stored on or transmitted through the same. Additional terms regarding this commitment are set out in a Payment Card Industry Data Security Compliance Agreement between the parties.
- 4.6 Association shall administer its funds and make distributions to ECU and its associated entities in accordance with policies and procedures established by Association from time to time, with advice and counsel from ECU. Association agrees not to provide funds from unrestricted sources to ECU programs except as approved by the Chancellor or the Vice Chancellor of Administration and Finance. Association agrees that all transfers of funds from Association to ECU must be documented in writing or electronically in a form that has a retrievable transaction trail.
- 4.7 To the extent coverage is commercially available at a cost acceptable to ECU, Association 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 Association with the cost of the bond to be reimbursed to Association by ECU.

5.0 Limitations on the Association.

- 5.1 Association 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 Association will create an annual operations and capital budget (Association’s “budget”). If requested by the Chancellor, Association shall meet with the Chancellor or his/her designee to review the Association’s proposed budget and any subsequent proposed material changes. Association, in setting its budget, shall consider in good faith all suggestions offered by the Chancellor (or her/his designee) regarding the proposed budget and how the budget can be better aligned with the mission, goals, and objectives of ECU.
- 5.3 Association agrees not to make any payments to an ECU employee, except for approved expense reimbursements, without prior written approval from the Chancellor of the University, or the Chancellor’s designee. All salary and non-salary compensation of employees of Association will be approved in advance by the Board of Directors of Association.
- 5.4 Association 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 Association board.

- 5.5 Association must obtain general liability and directors/officers insurance in an amount determined to be reasonable by Association board.
- 5.6 Association, as an entity, shall never engage in adverse propaganda, attempt to influence legislation, nor shall any part of its property or any part of its income therefrom be devoted to such purposes, without the permission of the Chancellor or the Chancellor's designee. Association shall not participate in any political campaign on behalf of any candidate for public office. As an Associated Entity, Association will comply with all provisions of the Internal Revenue Code and all State laws regarding lobbying and political activity.
- 5.7 Association may not acquire debt in excess of five hundred thousand dollars (\$500,000.00), unless it is to be publicly traded, before consulting with the Chancellor and Vice Chancellor for Administration and Finance, who will consult with the Vice President of Finance of the University of North Carolina.

6.0 ECU Support of and Obligations to Association.

- 6.1 ECU shall provide Association 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.
- 6.2 ECU shall provide business systems to Association in a manner and form mutually acceptable. Business systems shall include all systems for: a) finance and accounting; b) the alumni database; c) gift records; and d) other business systems as deemed necessary by the parties to support Association. In providing business systems, ECU will provide all underlying supplies and services for all systems provided, 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). Association acknowledges that ECU may access any and all such systems and information thereon or generated thereby for repair, maintenance, upgrades, and other technological changes and for investigatory purposes when and to the extent consistent with University policy.
- 6.3 ECU employees assigned to positions designated to serve Association pursuant to N.C. Gen. Stats. Sec. 116-30.20 shall be subject to policies of East Carolina University, the University of North Carolina, and the State of North Carolina (collectively referred to as "Applicable Policies"). The University shall ensure that the scope of the duties for each employee in a position so designated to serve Association and the manner in which those duties are performed meet or exceed the stated needs and performance standards established by Association Board in consultation with the Chancellor (or her/his designee). Whenever there is a conflict between Association and ECU, said employees must comply with the Applicable Policies and directives of ECU.

- 6.4 All services provided to Association by ECU will be classified as either Reimbursed Services or Contributed Services. Reimbursed services are those to be reimbursed to ECU by Association and contributed services are those being contributed to Association by ECU. In consultation with ECU, Association will prepare an annual operating budget that identifies all services to be provided to Association 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 Association including personnel services consistent with the support outlined above and based upon an annual budget plan agreed to by the parties. To the extent agreed upon between the parties in the annual budget plan, ECU shall provide support to Association to allow Association to carry out its mission and to meet the terms and conditions of this Agreement; provided, however, ECU's obligation to provide support for the Association is subject to the availability of funds to ECU that it may use for that purpose.
- 6.6 ECU agrees any use of designated funds received from Association shall be for the specific purpose so designated.
- 6.7 Association agrees that when ECU personnel provide services for Association and there arises a conflict between ECU and Association, the ECU employee must comply with the policies, regulations, and directives of ECU; provided that said employee shall notify the Association in ample time to remedy the conflict or approve the intended action when feasible. If prior notification is not feasible, the Association shall be promptly notified in writing of the conflict and action taken.

7.0 Association Audits, Legal Representation, and Reporting.

- 7.1 Association agrees the Audit Committee will select a certified public accounting firm, to serve as Association's independent auditor and to complete a full and complete annual audit of its finances and operations. The firm must be in good standing with the North Carolina Board of CPA Examiners and have substantial experience in performing audits for organizations of scope and complexity similar to Association. Association agrees to notify ECU within thirty (30) days if it changes its auditor.
- 7.2 Association agrees to provide to the Chancellor and the University's Internal Auditor, and they may share with the ECU Board of Trustees, the UNC President and the Board of Governors, the following:
 - 7.2.1 Upon completion, the annual audit report, management letters and responses to management letters, and the publicly disclosed portion of Association's IRS Form 990, and an annual report of operations that shows actual versus budgeted revenues and expenditures;

- 7.2.2 The list of Association governing board, officers, and employees, and all changes thereto;
 - 7.2.3 The names of the officers and governing board members of all Association associated or affiliated entities immediately upon a change in officers or in board membership.
- 7.3 Association agrees to allow the Chancellor, the chair of the East Carolina University Board of Trustees, or the chair's or the Chancellor's designee, including the internal auditor of ECU, to inspect and audit all Association books and records at reasonable times, and to provide timely such other reports of and information on its financial status and operations as required by the Chancellor. Each of the above persons to whom information is disclosed pursuant to this provision or any other provisions of this Operating Agreement shall recognize in writing that the information is confidential and the individual shall agree not to disclose any of the information of Association except to the extent required by applicable law or to and in consultation with University of North Carolina Board of Governors, President, or her/his staff and to ECU employees as needed to perform duties to ECU, and to report violations of policy or law when such reports are protected by applicable Whistle Blower Protection laws.
- 7.4 Within 90 days of the issuance of an audit report with audit findings, Association must demonstrate to the Chancellor and the Vice President for Finance for the University of North Carolina that satisfactory progress has been made to implement a corrective action plan. Failure of the Association to receive an unqualified audit opinion, to comply with the reporting requirements of the UNC Policy, or to satisfactorily implement a corrective action plan in response to an audit finding may result in the Association losing its approved status.

8.0 Conflicts of Interest/Code of Ethics

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

9.0 Compliance with UNC and ECU policies and regulations and Association Bylaws.

Both ECU and Association 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, including amendments thereto. Association, being a private independent North Carolina non-profit corporation, shall ensure its activities align with the mission, goals and standards of ECU, including accreditation standards applicable to non-athletically related entities. ECU shall provide Association with proposed amendments to such policies and regulations as soon as possible but in no event less than fifteen (15) days prior to their effective date. Association 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 (15) days prior to the meeting of Association at which they are to be considered for adoption.

10.0 Effect of Agreement; Modification.

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

11.0 Confidentiality.

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

12.0 Indemnification.

12.1 Association 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 Association's performance of this Agreement to the extent any such claim, damage, liability, injury, expense, demand or judgment is caused by the Association or any ECU employee acting at the direction of Association Board or the Chair of Association Board. This provision shall continue beyond termination or expiration of this Agreement.

12.2 ECU will be responsible for the conduct of its officers and employees arising out of the performance of this Agreement to the extent permitted and limited by the laws of North Carolina, including the North Carolina Tort Claims Act, the Defense of State Employees Act, and the Excess Liability Policy administered through the North Carolina Department of Insurance, subject to the availability of appropriations and in proportion to and to the extent that such liability for

damages is caused by or results from the acts of ECU, its officers or employees. This provision shall continue beyond termination or expiration of this Agreement.

13.0 Term and Termination.

13.1 The 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 one hundred eighty (180) days prior to the beginning of a new term.

13.1.1 ECU may remove approved status of Association and may terminate this Agreement (except for Section 12 “Indemnification,” Section 13.2 “Mediation” and Section 14 of the Agreement, “Dissolution”) at any time if Association fails to abide by this Agreement or the policies or regulations of ECU or of the University of North Carolina; provided, however, ECU shall provide Association written notice and a reasonable opportunity to cure its failure to abide by the Agreement and/or said policies and regulations, not to exceed sixty (60) days, if and to the extent Association’s failure is not intentional and willful and does not threaten the integrity of the University or its ability to comply with obligations under law, regulations, policy, accreditation requirements, or similar applicable constraints. In connection with delivery of written notice to Association of a breach of the agreement or failure to abide by applicable policies or regulations, ECU agrees to make a good faith effort to negotiate with Association a mutually agreeable extension of the period for a cure beyond sixty (60) days if ECU determines additional time is reasonable and allowed as a matter of applicable law and policy. Upon ECU’s compliance with the requirements of Section 13.2, ECU shall be deemed to have met its obligations to provide notice and a reasonable opportunity to cure the failure to comply with the Agreement and said policies and regulations to the extent required by this Section 13.1.

13.1.2 Association may terminate this Agreement (except for Section 12, “Indemnification,” Section 13.2 “Mediation” and Section 14 of the Agreement, “Dissolution’) if the University fails to abide by this Agreement; provided, however, Association shall provide ECU written notice and a reasonable opportunity to cure its failure to abide by the Agreement at least one hundred twenty (120) days in advance of beginning any termination process. Upon Association’s compliance with the requirements of Section 13.2 Association shall be deemed to have met its obligation to provide notice and a reasonable opportunity to cure the failure to comply with the Agreement to the extent required by this Section 13.1, except that written notice of termination must be provided

to ECU at least one hundred twenty (120) days in advance of the proposed termination date.

- 13.2 The parties agree to make a good faith effort to enter mediation regarding any matter that is the basis of a desire to terminate the Agreement, with each party bearing its respective costs and using a mediator mutually agreeable to the parties. Any party wishing to terminate this Agreement, including but not limited to a desire not to renew at the natural expiration of a term of the contract, must provide the other with written notice containing: (a) a description of the specific action(s) or failure(s) by the other party that violated the Agreement and the basis for termination, including a reasonable estimate of the dates said action and/or failure occurred; (b) notice of intent to terminate this Agreement, including the date the termination is to be effective; and (c) an offer to engage in mediation of all matters that are the basis for the termination demand. Said written notice must be sent to Association at least sixty (60) days prior to the proposed termination date and to ECU at least one hundred twenty (120) days prior to the proposed termination date. If a party makes a good faith effort to schedule and participate in such a mediation, failure to schedule, mediate, or otherwise resolve such matter shall not prevent termination of the Agreement.
- 13.3 Association's obligations under Section 14.0, "Dissolution" shall survive termination of this Agreement.

14.0 Dissolution.

It is the intent of Association that it have perpetual existence as an associated entity of East Carolina University. Association agrees to voluntarily dissolve and wind down its business within twenty-four (24) months of receipt of notice from the Chancellor of ECU that Association is no longer approved to operate as an associated entity of ECU by mutual agreement or after steps as stated in Section 13. In the event of dissolution of Association, either voluntary or involuntary, all assets and property which remain after the discharge of Association's liabilities and unless otherwise designated by the donor of an asset 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, excluding ECU, 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. Association agrees that it will identify in its governing documents the organization(s) which will receive Association's assets in the event of dissolution. The respective obligations of the Association and ECU under this Part 14.0 of the Agreement shall survive and continue to be binding beyond termination or expiration of this Agreement.

15.0 Compliance with Applicable Law and Non-Discrimination.

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

15.2 Association has and 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 any such incidents.

16.0 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 the U.S. Postal Service 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

East Carolina University
Attn: Vice Chancellor for Administration and Finance
Spilman Building
Greenville, NC 27858

To Association:

East Carolina University Alumni Association, Inc.
Attn: Association Board Chair
901 East Fifth Street
East Carolina University
Greenville, NC 27858


East Carolina University Alumni Association, Inc.
Attn: Heath Bowman, President
901 East Fifth Street
East Carolina University
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.

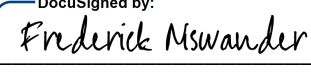
IN WITNESS WHEREOF, ECU and the authorized representative(s) of East Carolina University Alumni Association, Inc., have executed this Agreement on this 14th day of March, 2017.

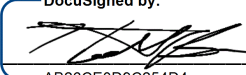
East Carolina University

East Carolina University Alumni Association, Inc.

By  DocuSigned by:
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Cecil P. Staton, Chancellor

By  DocuSigned by:
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Glenda Palmer-Moultrie, Chair

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Frederick D. Niswander, Vice Chancellor
for Administration and Finance

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Heath A. Bowman, President