

SECOND PROGRAM FINANCING AGREEMENT

This Second Program Financing Agreement is entered into between the Tennessee State School Bond Authority and The Board of Trustees of The University of Tennessee and dated as of November 1, 1997, as amended and restated as of May 9, 2013.

Recitals

The purpose of the Agreement is to establish the terms and conditions for loans by the Authority to the Board to finance and refinance Projects.

Article 1 Definitions and General Provisions

1.01. Definitions. The following terms used in the Agreement, including the recitals hereto, shall have the following respective meanings:

(a) Act: Chapter 256, Public Acts of Tennessee of 1965, currently codified as T.C.A. Sections 49-3-1201 *et seq.*, as heretofore or hereafter amended.

(b) Administrative Fees: Amounts payable by the Board to the Authority as fees determined in accordance with Section 4.01(c) hereof.

(c) Agreement: This Second Program Financing Agreement, as hereafter amended pursuant to the provisions thereof.

(d) Annual Financing Charges: Amounts payable by the Board to the Authority under the Agreement for (i) the payment of principal of and premium, if any, and interest on Debt for all Projects, (ii) any payments to fund or replenish reserves therefor as may be required by the Resolution, regardless of Project, and (iii) any other payments required to be made by or on behalf of the Authority under or pursuant to the Resolution with respect to any Project, the Institution or the Board.

(e) Authority: The Tennessee State School Bond Authority, a corporate governmental agency and instrumentality of the State created by the Act, and any successors and assigns.

(f) Board: The Board of Trustees of The University of Tennessee, and any successors.

(g) Debt: Any bonds, notes or other evidences of indebtedness issued by the Authority pursuant to the Act and the Resolution for the purpose of financing or refinancing Project Costs. Without limiting the generality of the foregoing, Debt may include "long-term Debt" (i.e., with a term of more than one year unless issued in anticipation of the issuance of Debt with a longer term) or "short-term Debt" (i.e., with a term of one year or less or issued in anticipation of the issuance of Debt with a term of more than one year), and may take the form of commercial paper.

(h) Fees and Charges: All revenues, fees, rentals and other charges and moneys received by or on behalf of the Board for the Institution, or received by or on behalf of the Institution, which may be available for the purpose of paying Annual Financing Charges.

(i) First Program Financing Agreement: The Amended and Restated Financing Agreement dated as of September 17, 1996, between the Authority and the Board, references to which herein shall be of no effect after all First Program Bonds (hereinafter defined) are no longer outstanding. The following terms, when identified as related to the First Program, shall have the respective meanings given to them in the First Program Financing Agreement: administrative fees, Annual Financing Charges, Bonds, Fees and Charges, General Bond Resolution, Legislative Appropriations and Projects.

(j) Fiscal Year: The fiscal year of the Authority, currently the twelve month period commencing on July 1 and ending on June 30 of the following year. In the event of any change in Fiscal Year resulting in an initial Fiscal Year or interim period of more or less than twelve months, Fiscal Year for purposes of the Agreement shall mean the last twelve month Fiscal Year.

(k) Institution: The University of Tennessee, including all of its branches and divisions wherever located, and the services, programs and activities provided therein, and the board of trustees of the University of Tennessee, in the aggregate.

(l) Legislative Appropriations: Amounts payable to the Authority from appropriations of the General Assembly of the State of Tennessee to the Institution for its operation and maintenance, under and pursuant to Section 4.05 hereof.

(m) Project: Buildings, structures, improvements and equipment of every kind, nature and description which may be required by or convenient for the purposes of the Institution or other things which the Board is authorized by law (at the relevant time) to undertake or use, in each case if and to the extent (i) capitalizable by the Board, including but not limited to a capital lease, and (ii) approved by the Authority upon application therefor made by the Board in such form, substance and manner as may be prescribed by the Authority.

(n) Project Costs: All direct capital costs and indirect capital costs of Projects, including but not limited to costs of construction and acquisition, costs of issuance of Debt, funded interest on Debt, and amounts to fund or replenish reserves as may be required by the Resolution, if and to the extent approved by the Authority upon application therefor made by the Board in such form, substance and manner as may be prescribed by the Authority.

(o) Resolution: Collectively or individually as the context may require, the resolutions of the Authority authorizing the issuance of Debt including, without limiting the generality of the foregoing, the Higher Educational Facilities Second Program General Bond Resolution (a draft of which has been presented to the Board) if, as and when adopted by the Authority, and however styled, and any resolutions authorizing the

issuance of notes or other obligations (including but not limited to commercial paper), in each case as amended and supplemented pursuant to the provisions thereof.

(p) State: The State of Tennessee.

1.02. Accounting Terms. The terms “capital cost”, “capitalizable” and other accounting terms as used in the Agreement shall be interpreted in accordance with accounting principles applicable to and used in auditing the books and records of the Authority.

1.03. Effectiveness; Term. (a) The Agreement shall be effective upon execution hereof by each party hereto.

(b) The term of the Agreement shall continue until the Board shall have paid in full all Annual Financing Charges and Administrative Fees due and payable, and until all Debt shall have been paid or otherwise caused to be no longer outstanding under the related Resolution.

Article 2

Approval of Projects and Project Costs; Project Funding

2.01. Approval of Projects and Project Costs. (a) Each Project and Project Costs shall be subject to approval by the Authority upon application therefor made by the Board in such form, substance and manner as may be prescribed by the Authority.

(b) A Project for the Institution shall be approved by the Authority only if the aggregate of the Fees and Charges collected by the Institution in the preceding Fiscal Year is no less than two times the amount required for the payment of the aggregate (without duplication) of (i) the maximum amount of the Annual Financing Charges payable and projected to be payable with respect to all Projects (including the Project to be approved) for the Institution in any succeeding Fiscal Year, plus (ii) the maximum amount payable by the Board as First Project Annual Financing Charges with respect to all First Program Projects for the Institution in any succeeding Fiscal Year, plus (iii) the aggregate of all prior charges, pledges, liens and claims on or payable from said Fees and Charges with respect to the Institution in any succeeding Fiscal Year, including but not limited to all prior charges, pledges, liens and claims on or payable from the First Program Fees and Charges with respect to the Institution.

(c) Without limiting the generality of the foregoing, unless sufficient information is presented by the Board to the Authority to permit the Authority to determine the eligibility of a Project for tax-exempt financing, Projects must demonstrate feasibility at a taxable rate of financing.

(d) The Authority shall confirm in writing to the Board the approval of each Project and the related Project Costs, and the qualification thereof as a “Project”, under this Agreement.

(e) The eligibility of any particular costs as Project Costs is subject to the approval of the Secretary of the Authority, or his or her designee, in accordance with

Authority policy. Indirect costs shall be allocated to particular Projects in accordance with Authority policy.

2.02. Project Funding. (a) The Authority will use its best efforts to finance and refinance Project Costs by the issuance of Debt or from other available funds of the Authority, in a manner and under terms deemed by the Authority in its sole discretion to be in the best interests of the Institution.

(b) The Authority may in its sole discretion take, or not take, any actions as may be permitted or required under or pursuant to the Resolution, including but not limited to investments and the nature and funding level of reserves, as the Authority deems to be in the best interests of the Authority and/or the Institution.

2.03. Project Construction Accounts. The Authority will establish a separate account (a "Project Construction Account") for each Project prior to or simultaneously with the issuance of the first Debt to finance related Project Costs. All Bond proceeds determined by the Authority to be available for the payment of Project Costs, and allocated to Project Costs as provided by Section 5.01 hereof, shall be deposited (or accounted for as having been deposited) in the respective Project Construction Accounts unless and to the extent otherwise provided by the Resolution.

2.04. Reallocation of Project Construction Account Balances. The Authority may reallocate funds in any Project Construction Account derived from the sale of short-term Debt to other Project Construction Accounts as deemed necessary or advisable by the Authority. If long-term Debt has been sold to finance or refinance a Project, and funds in the related Project Construction Account are determined by the Authority in its sole discretion to be in excess of the amount needed for completion of the Project, the Authority shall apply such excess funds to the payment of the next scheduled debt service on Debt for such Project, to the redemption or defeasance of such Debt, or otherwise as permitted by law to the extent permitted by the Resolution.

2.05. Payment of Project Costs. Disbursement of funds on deposit (or accounted for, or to be accounted for, as having been deposited) in Project Construction Accounts will be made upon the submission of proper documentation from the Board approved by the Authority. Submission by the Board of a request for disbursement constitutes a representation by the Board that the expenses presented for payment constitute proper and valid charges related to the Project and constitute Project Costs, and that all covenants and representations made to the Authority with respect to the Project, whether in the Agreement or otherwise, continue to be true, complete and accurate.

2.06. Covenants and Representations. The Board covenants and represents with respect to each Project that:

(a) the Board has full power and authority to undertake or use the Project and to comply with all requirements of the Agreement;

(b) all necessary approvals or authorizations by the State (or any agency, subdivision or subentity) with respect to the Project have been or will be obtained;

(c) construction, acquisition, renovation or improvement by the Board (directly or indirectly) with respect to the Project shall be conducted pursuant to State law;

(d) the Board will proceed with due diligence towards completion of the Project, and will complete the Project with other funds available to the Board if Authority funds are not sufficient to complete the Project; and

(e) the Board will complete the Project free and clear of all liens and encumbrances except as permitted by Section 3.01(a) hereof.

Article 3 **Occupancy and Maintenance of Projects**

3.01. *Covenants and Representations of the Board.* The Board covenants and represents with respect to each Project that:

(a) the Board will neither (i) permit any encumbrance which materially affects the Board's ability to honor its commitments under the Agreement nor (ii) assign the Agreement or the Board's rights, title or interest in or to any Project;

(b) the Board will operate, maintain and keep, or cause the operation, maintenance and functioning of, the Project in good repair and condition, including the provision of and payment for necessary utilities and insurance coverage in accordance with State policy;

(c) the Board will comply with all laws, rules and regulations governing the Institution and the Project;

(d) the Board will permit the Authority or its representatives to enter Projects during regular business hours for purpose of inspection; and

(e) the Board will take no action, nor will it fail to take any action, which would cause the Authority to violate any tax covenant with respect to any Project; all representations made by the Board to the Authority, whether or not contained in the Agreement, as to the use of the Projects shall at all times be true, complete and correct; and the Board will inform the Authority in advance of any actual or potential change in use or ownership of any Project at the time such change is first known to or considered by the Board.

3.02. *Alterations.* The Authority agrees that the Board may make any alteration or change to any Project deemed by the Board to be necessary or desirable, provided that the costs thereof are promptly paid by the Board from moneys available to the Board for this purpose and all covenants and representation made to the Authority with respect to the Project, whether

in the Agreement or otherwise, apply to such alteration or change or to the Project as altered or changed.

Article 4

Annual Financing Charges; Administrative Fees; Legislative Appropriations

4.01. Establishment. (a) The Authority shall establish and revise from time to time, and the Board shall pay, Annual Financing Charges and Administrative Fees with respect to the Projects, Debt, and the Authority as provided in the Agreement.

(b) As long as any Debt remains outstanding for any Project, Annual Financing Charges shall be established and revised by the Authority from time to time in such amounts, payable at such times, as shall at all times be sufficient to enable the Authority (i) to pay the principal of and premium, if any, and interest on such Debt as and when the same become due and payable, (ii) to pay or replenish reserves therefor as and when required by the Resolution, and (iii) to make any other payments required to be made by or on behalf of the Authority under or pursuant to the Resolution.

(c) In addition to Annual Financing Charges, the Authority may establish and revise from time to time, and the Board shall pay, fees (Administration Fees) to compensate the Authority for costs relating to (i) the issuance and payment of Debt and (ii) the administration of the Agreement and the Resolution. Without limiting the generality of the foregoing, such fees may include overhead and general costs of the Authority allocable to the foregoing in accordance with Authority policy.

4.02. Fees and Charges Coverage. The Board covenants and agrees to establish and collect Fees and Charges at the Institution at a level sufficient to produce in each Fiscal Year no less than two times the amount required for the payment of the aggregate (without duplication) of (i) all Annual Financing Charges in such Fiscal Year payable with respect to all Projects for the Institution, plus (ii) all First Program Annual Financing Charges in such Fiscal Year payable with respect to all First Program Projects for the Institution, plus (iii) the aggregate of all prior charges, pledges, liens and claims on or payable from said Fees and Charges in such Fiscal Year with respect to the Institution, including but not limited to all prior charges, pledges, liens and claims on or payable from the First Program Fees and Charges in such Fiscal Year with respect to the Institution.

4.03. Payment. The Board shall pay to the Authority all Annual Financing Charges and Administrative Fees in such amounts, at such times, in such manner and at such places as shall be specified in writing from time to time by the Authority. The obligation of the Board to pay Annual Financing Charges and Administrative Fees is absolute and unconditional. Annual Financing Charges and Administrative Fees shall be paid in full without set-off or counterclaim. Any amount not paid when due shall be subject to a delinquency rate of interest, which shall be established from time to time by the Authority, but in no event higher than the maximum rate permitted by State law.

4.04. Source of Payment; Encumbrances. (a) Annual Financing Charges and Administrative Fees payable with respect to a Project shall be required to be paid by the Board, as the same become due and payable, only from Fees and Charges.

(b) The Board reserves the right to pledge, assign or otherwise use or encumber any Fees and Charges so long as the Board can meet with respect thereto the historical coverage test set forth in Section 2.01(b) hereof.

4.05. Pledge of Legislative Appropriations. If any Annual Financing Charges or Administrative Fees shall not be paid when due and payable with respect to a Project, or if the Board shall notify the Authority of any inability to make such payment from Fees and Charges, then the Board shall forthwith deduct from the amounts appropriated by the General Assembly of the State of Tennessee for the operation and maintenance of the Institution and pay to the Authority such amount or amounts as may be required to make the Board current with respect to the unpaid Annual Financing Charges and Administrative Fees. Further, the Board agrees that the Commissioner of Finance and Administration, or his successor, after notice from the Authority that the Board has failed to pay Annual Financing Charges or Administrative Fees due and payable with respect to a Project, shall, to the extent permitted by law, deduct from the amounts appropriated by the General Assembly of the State of Tennessee for the operation and maintenance of the Institution the amount or amounts as may be required to make the Board current with respect to the unpaid Annual Financing Charges and Administrative Fees.

4.06. Subordination; No Additional Senior Lien Debt. (a) The obligation of the Board to pay Annual Financing Charges and Administrative Fees, and the pledge of Annual Financing Charges and Legislative Appropriations, under the Agreement, and the payment thereof under and pursuant to the Agreement, shall be subordinate in all respects to the obligation of the Board to pay First Program Annual Financing Charges and First Program administrative fees, and the pledge of First Program Annual Financing Charges and First Program Legislative Appropriations, and the payment thereof under and pursuant to the First Program Financing Agreement.

(b) Upon and after the issuance of the first Debt under the Resolution, no additional First Program Bonds shall be issued or secured by or payable from payments made by the Board to the Authority under or pursuant to the First Program Financing Agreement.

4.07. Security for Commercial Paper. (a) Notwithstanding anything in the First Program Financing Agreement to the contrary, prior to the issuance of the first Debt under the Resolution and upon the issuance of First Program Bonds as provided in clause (ii) below:

- (i) each Project hereunder shall be deemed also to be a “Project” under and for all purposes of the First Program Financing Agreement, notwithstanding the absence of a “Supplemental Agreement”, as such terms “Project” and “Supplemental Agreement” are defined in the First Program Financing Agreement; and

(ii) First Program Bonds may be issued, payable and secured as contemplated by the First Program General Bond Resolution to pay the principal of and interest on any Commercial Paper issued for any Project pursuant to the Commercial Paper Resolution adopted by the members of the Authority on November 13, 1997 so long as the Authority shall cause the entire amount of Commercial Paper allocable to such Project to be no longer outstanding under the Commercial Paper Resolution upon the issuance of such First Program Bonds.

(b) To the extent the provisions of this Section conflict with the First Program Financing Agreement, the provisions of this Section shall control and the First Program Financing Agreement hereby is amended. This Agreement, however, upon the issuance of First Program Bonds, shall be deemed to be a “Supplemental Agreement” under the First Program Financing Agreement for the purpose of specifying First Program Annual Financing Charges with respect to any Project identified and financed as referred to in subsection (a)(ii) above.

Article 5 **Accounting; Investments**

5.01. *Accounting for Receipts and Project Costs.* All receipts of and disbursements by the Authority under the Agreement and, to the extent applicable to Projects under the Agreement, the Resolution, including but not limited to Project Costs, shall be accounted for on a Project-by-Project basis; provided, however, that the Authority may hold moneys for its own account, and unallocated to any Project, pending allocation to a Project Construction Account or payment or reimbursement of Project Costs.

5.02. *Investment of Project Construction Accounts and Other Moneys.* Unexpended Bond proceeds and all Annual Financing Charges, Administrative Fees, and Legislative Appropriations, and investment earnings allocable thereto, whether held in Project Construction Accounts or in other funds or accounts under the Resolution, may be invested as part of a common fund with other moneys of the Authority or the State, or otherwise, with earnings allocated and credited to the Project Construction Accounts or otherwise for the account or benefit of the Board or the Authority in accordance with the Resolution and/or Authority policy.

Article 6 **Miscellaneous**

6.01. *Parties in Interest.* (a) The Agreement is and is intended to be for the sole and exclusive benefit of the Authority, the Board, each fiduciary appointed under or pursuant to the Resolution, and the holders of Debt, and no right, remedy, or claim (legal or equitable) is granted or implied to any other person or entity.

(b) The Authority acknowledges that no right, title or interest in or to any Project is granted to it by the existence of the Agreement except as provided in the Agreement.

6.02. Interest of Debtholders. The Authority and the Board acknowledge that the existence and terms and provisions of the Agreement serve as an inducement to Debtholders to purchase, and serve to secure, Debt. Accordingly, all covenants and agreements of the Authority and the Board under the Agreement are hereby declared to be for the benefit of such holders. Notwithstanding the foregoing, such holders shall have no right under the Agreement to directly enforce the Agreement, but may do so only to the extent permitted and as provided by the related Resolution.

6.03. Assignments. The Board authorizes the Authority to pledge, assign, and transfer its right to receive and collect Annual Financing Charges, Administrative Fees, and Legislative Appropriations, together with its rights to enforce the Agreement.

6.04. Amendment. Any provision of the Agreement may be amended by agreement of the Authority and the Board; provided, however, that no such amendment shall adversely affect or impair in any way (i) the obligation of the Board to pay Annual Financing Charges or Administrative Fees, or (ii) the deduction from appropriations, and payment to the Authority, of Legislative Appropriations required to pay Annual Financing Charges, in the case of each of clauses (i) and (ii) at the times, in the manner and in the amounts provided in the Agreement, or (iii) any provision of the Agreement made or provided for the purpose of assuring payment of such Annual Financing Charges or Administrative Fees.

6.05. Notices. All notices under the Agreement shall be made in writing and delivered or sent to the main office of the appropriate party.

6.06. Further Assurances. The Board shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, assurances, and other instruments as may be necessary or desirable for better assuring, granting, assigning and confirming the rights, interests and agreements granted or intended to be granted by the Agreement. The Board also agrees to furnish to the Authority such additional information concerning the financial condition of the Board and the Institution as the Authority may from time to time reasonably request including, without limiting the generality of the foregoing, as and to the extent that the Authority shall determine that disclosure of such information is necessary in order to comply with any undertakings made by the Authority pursuant to Rule 15c2-12 of the Securities and Exchange Commission or with any other applicable legal requirements.

6.07. Severability. If any one or more of the provisions of the Agreement is held to be illegal or invalid, such holding of invalidity or illegality shall not affect any other provision of the Agreement, and the Agreement shall be construed and enforced without such illegal or invalid provision.

6.08. Headings. The headings used in the Agreement are for reference and are not intended to define or limit the scope of any provision of the Agreement.

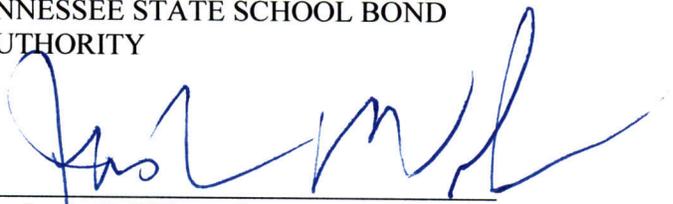
6.09. Entire Agreement. This Second Program Financing Agreement shall constitute the entire understanding of the parties hereto, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein.

6.10. Counterparts. This Second Program Financing Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.11. Prior Amendments. This Second Program Financing Agreement has been amended by a First Amendment dated June 24, 1999, a Second Amendment dated December 17, 1999, and a Third Amendment dated as of October 13, 2005, waiving the application of certain sections of this Second Program Financing Agreement to the specific transactions and projects referred to in said amendments.

The parties have caused this Second Program Financing Agreement to be executed by their respective authorized officers as of the date referenced above.

TENNESSEE STATE SCHOOL BOND
AUTHORITY

By: 
Justin P. Wilson, Secretary

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF TENNESSEE

By: 
Name:
Title