

American Thoracic Society – Thoracic Society Chapter Charter Agreement

This Agreement, dated _____, 2010, is between the American Thoracic Society (ATS) and the _____ Thoracic Society Chapter (TSC). ATS and TSC are each known individually as a “Party” and collectively are known as the “Parties.”

The Parties expect and desire that each shall support, assist and/or participate with the other with respect to all matters of common interest which further the fundamental and primary purposes of each.

ATS hereby grants TSC a non-exclusive charter to be a chapter of ATS. In accordance therewith, TSC is authorized to use the “Thoracic Society” name and the logo of the ATS, as well as other ATS Intellectual Property in connection with the TSC activities subject to the terms and conditions of this Agreement.

ATS is agreeing to provide services that TSC selects as denoted on the attached Schedule A. TSC may modify the list of contracted services at any time upon thirty (30) days written notice. Such modification will not relieve either party’s liability with respect to services already rendered or costs already incurred prior to the date of the modification.

The Parties agree as follows:

1. Intellectual Property

- a. **Ownership.** ATS solely and exclusively retains all rights and interests in its marks and other intellectual property, including, but not limited to, its legal name, the acronym “ATS”, its logo incorporating the American Thoracic Society name and founding date of 1905, as well as the tagline “We Help the World Breathe”, the three pillars (Pulmonary, Critical Care, Sleep), and all related or derived intellectual property owned by ATS including without limitation, copyrights, trademarks, event attendance lists, event registration lists, hotel guest lists, mailing lists, marketing lists, membership lists, educational materials, and all rights and interests in the use of it. In this Agreement, this shall be collectively referred to as “Intellectual Property”. Any intellectual property owned by the TSC will remain property of the TSC.
- b. **Permitted Uses.** TSC is hereby authorized to use the Intellectual Property of ATS and to indicate that TSC is a chartered chapter of ATS, to provide member services, and similar activities in connection with the promotion of the Parties’ common interests. TSC shall have no right or authority to license or otherwise permit the use by third parties of any of the intellectual property in such a way as to endorse or appear to endorse any product or service provided by third parties, except insofar as specifically permitted in writing by ATS. Such permission shall not be unreasonably withheld by ATS. In the event of a violation or the termination of this Agreement, TSC shall have no rights with respect to, or authority to use, any and all ATS intellectual property and shall cease all use immediately.
- c. **Protection.** TSC will immediately notify ATS in writing of any matters that may adversely affect the ATS Intellectual Property, name, reputation, goodwill, and/or membership. ATS reserves the right to take any action it deems necessary, in its sole judgment, to protect ATS Intellectual Property, name, reputation, goodwill and/or its ability to serve its members.
- d. **Limited License.** TSC is granted use of the ATS intellectual property during the term of this Agreement only for official TSC-related purposes with the limited authority to use the intellectual property solely in connection with the activities authorized under this Agreement, subject to the terms and conditions of this Agreement.

- e. **Violations.** Any failure by TSC to comply with the terms and conditions contained herein, whether willful or otherwise, may result in the immediate suspension or revocation of this license by ATS. Any such failure may also result in the suspension or revocation of the charter of TSC by ATS.
- f. **Logo.** The ATS logo may not be revised or altered in any way and must be displayed in the same form as produced by ATS. The logo may not be used in conjunction with any other trademark, service mark, or other mark without the express prior written approval of ATS. TSC may use no other logo, including “state-specific” or “TSC-specific” logos.
- g. **Inspection.** ATS retains the right to inspect TSC records for compliance with this Agreement. TSC shall cooperate with any and all inspection requests.

2. **Governing Documents**

- a. **Incorporation.** ATS, at its own expense, shall incorporate TSC as a nonprofit corporation in the District of Columbia. TSC will provide information, executed forms, and other requirements at the request of ATS for the purpose of maintaining that incorporation.
- b. **Bylaws.** TSC agrees to adopt and adhere to a set of bylaws not in conflict with ATS bylaws and subject to ATS approval of the initial bylaws and all amendments.

3. **Tax Exempt Status.** TSC agrees to be a member of the ATS “group” for purposes of securing federal tax-exempt status for TSC, and to supply any and all information required to maintain that tax-exempt status. TSC agrees to take any and all action required to maintain the ATS exemption from federal income tax under the provisions of the Internal Revenue Code section 501 c 6.

4. **Reporting Requirements**

- a. **Activity Plan.** Before the beginning of each year of this Agreement, TSC shall provide to ATS a twelve (12) month plan of activities annually in advance of the fiscal year and shall make whatever modifications to the plan as are reasonably requested by ATS. Live, in person CME events require a minimum of six (6) months notice.

5. **Legal Compliance.** TSC shall comply with all applicable federal, state and local laws governing it.

6. **Term.** The term of this Agreement shall be one year from the date on which both Parties have signed the Agreement.

7. **Termination.** Either Party may terminate this Agreement at any time by written notice to the other party. Such notice shall be effective on the date set forth in the notice, but in no event less than ninety (90) days after the date of the notice. If this Agreement is terminated by ATS, TSC shall immediately return or destroy, at ATS’ option, any and all materials containing or related to ATS intellectual property upon delivery of the notice from ATS. TSC agrees to make no use of such material, intellectual property, and lists after the delivery of the notice of termination from ATS and before return of such material to ATS. If this Agreement is terminated by the TSC, TSC shall return such material with its notice to ATS.

8. **Assignment.** Neither Party may assign to any other party, its rights or obligations or any aspect of them, under this Agreement.

9. **Governing Law.** The parties acknowledge that this agreement shall be governed by and construed under the laws of the District of Columbia.

10. **Activities.** TSC shall organize and conduct any and all TSC activities and programs at the highest quality with respect to content, materials, logistical preparation, and otherwise. For certified Continuing Medical Education (CME) activities, TSC must attain designation through ATS Educational services to support such programs and activities. For non-designated activities, TSC may contract with third parties, subject to ATS quality review at Supplemental Work rates on the attached Schedule A.
11. **Recordkeeping.** TSC shall maintain all records related to its activities and shall forward copies to ATS. ATS will retain the right to review and correct or amend such records upon request in writing by ATS. Such records include, but are not limited to, grant requests, exhibitor agreements, hotel agreements, as well as all invoices issued and received as well as their related agreements. TSC shall assist in any such review process.
12. **Government Affairs.** TSC will coordinate with ATS in conducting government affairs efforts within the territory (as defined in Section 31) consistent with the purposes and objectives of ATS and its national agenda.
13. **Confidential Information.** ATS and TSC and their respective directors, officers, volunteers, members and employees, will hold all confidential information or documents of the other Party, as well as the contents of this Agreement, in strict confidence, unless compelled to disclose by judicial or governmental administrative process, any information pertaining to this agreement.
14. **Relationship.** The relationship between ATS and TSC is that of independent contractors. Nothing herein shall create any joint venture or partnership of any kind between the parties. Unless expressly agreed to in writing, TSC is not authorized to incur any liability, obligation or expense on behalf of ATS, to use ATS' monetary credit in conducting any activities under this Agreement, or to represent to any third party that TSC is an agent of ATS.
15. **Indemnification.** ATS and TSC shall indemnify and hold each other harmless as well as their respective related entities, agents, officers, directors, volunteers, employees, members, successors and assigns, and each of them, from and against any and all claims, actions, suits, demands, losses, damages, settlements, costs and expenses (including reasonable attorneys' fees and expenses), and liabilities of every kind ("Claim"), which may arise by reason of any act or omission, or any inaccuracy or breach of any of the covenants, representations and warranties made in this agreement. ATS and TSC shall promptly notify each other upon receipt of any claim and TSC shall grant to ATS the sole and exclusive right to conduct the defense to any and all claims. Such defense will be charged at the applicable rate as set forth in the attached Schedule A. The provisions in this section shall survive any revocation, surrender, or other termination of this Agreement.
16. **Arbitration.** Any and all disputes arising under this Agreement shall be subject to mandatory and binding arbitration. Said arbitration shall take place in the District of Columbia.
17. **Heirs, Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each Party, and its respective subsidiaries, affiliates, related entities, partners, agents, officers, directors, employees, heirs, successors and assigns, without regard to whether it is expressly acknowledged in any instrument of succession or assignment.
18. **Force Majeure.** Neither Party shall be liable for failure to perform its obligations under this Agreement due to events beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation or order (whether valid or invalid) of any governmental body.

19. **Notice.** All notices and demands of any nature that either Party may be required or may desire to serve upon the other in connection with this Agreement shall be in writing and may be served personally, by certified mail, or courier with constructive receipt deemed to have occurred on the date that receipt has been confirmed via an independent third party. All such notices shall be sent to:

For ATS: American Thoracic Society
61 Broadway, Suite 400
New York, NY 10006-2755
Attn.: Legal Department

For TSC: _____

Attn.: _____

20. **Representations and Warranties.** Each Party represents that the undersigned has the unencumbered right, power and authority to execute this Agreement and perform its obligations hereunder and to grant the rights set forth herein.
21. **Non-waiver.** No term or provision hereof shall be deemed waived or any breach excused, unless such waiver or consent shall be in writing and signed by both Parties. Any consent by the Parties, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
22. **Severability.** All provisions of the Agreement are severable. If any provision or portion hereof is determined to be unenforceable in arbitration, then the remaining portion of the Agreement shall remain in full force and effect.
23. **Headings.** The headings of the various paragraphs hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.
24. **Entire Agreement.** This Agreement: (i) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof; (ii) supersedes and replaces all prior agreements, oral and written, between the Parties relating to the subject matter hereof; and (iii) may be amended only by a written instrument clearly setting forth the amendment(s) and executed by both Parties.
25. **Amendments.** This Agreement may be amended by the ATS Board of Directors or its designated body at any time, with no less than 90 days written notice of the proposed change provided to TSC.
26. **TSC Standards**
- a. **Bylaws Review.** TSC shall conduct a thorough review of its bylaws not less than bi-annually. Current and subsequent revised bylaws should be provided to ATS upon request from ATS.
 - b. **Election Process.** TSC shall create (if necessary) and adhere to a formal written election process. The current process should be provided to ATS upon request from ATS.
 - c. **Financial Operations.** Any and all financial activities, including dues collection, must be conducted by ATS. This section, 26c, is not applicable to non-ATS managed TSCs.
 - d. **Educational Events.** Any and all ATS designated Continuing Medical Education (CME) events must be conducted through ATS. Non-designated events may be contracted through third parties, subject to ATS review at Supplemental Work rates on the attached Schedule A. Any and all grantwriting must be done by ATS at Supplemental Work rates on the attached Schedule A.

- e. **Medical/Scientific Statements, Guidelines and Other Publications.** Any and all position statements/publications must be approved by ATS peer review before distribution to any and all third parties with no regard to the form of distribution, including electronically.
 - f. **Advocacy Efforts.** Statements regarding federal legislation must be approved in writing by the ATS Government Relations Office. Statements regarding state and/or local legislation must be reviewed for conflicts by the ATS Government Relations Office. State and local reviews will be completed within two (2) full business days.
 - g. **Fiscal Year Match.** TSC will adopt a fiscal year that coincides with the fiscal year used by ATS. This section, 26g, is not applicable to non-ATS managed TSCs.
 - h. **Other Entities.** TSC is prohibited from creating any entity for any purpose.
27. **Change of Charter Status.** Any actions, including but not limited to those listed below, may cause a change in the TSC status, which may include revocation of the ATS charter.
- a. **Breach of Agreement.** TSC breaches this Agreement, willfully or otherwise.
 - b. **Violation of Law.** TSC violates any law, willfully or otherwise.
 - c. **Undermining of ATS.** TSC willfully or otherwise, undermines the objectives, reputation and/or goodwill of ATS and/or its officers, directors, members and/or employees.
 - d. **Consecutive Absences from the CCR Meeting.** TSC fails, willfully or otherwise, to send a TSC delegate to two (2) consecutive CCR meetings.
28. **Procedure for Change of Charter Status**
- a. **Inquiry.** The ATS Board of Directors or its designated body, in its sole and exclusive judgment, may initiate an inquiry by a duly appointed investigative party for the purposes of determining whether the charter of any TSC should be placed on probation, suspension, or revocation upon receipt of a written, signed request or upon its own initiative.
 - b. **Investigation.** The investigating body shall review any investigative requests. If such investigative request contains an allegation of a violation of ATS standards or a violation of this agreement, the investigative body shall make inquiries of any individual or entity that may have knowledge of pertinent facts and circumstances. Upon completion of any investigation, the investigating body shall issue a written report of its findings to the ATS Board of Directors or its designated body.
 - c. **Notification.** The determination of the investigative body will be communicated in writing from the ATS Board of Directors or its designated body to the TSC President or the TSC administrator/representative and the original requestor of the investigation. This written notice shall specify the date that the ATS Board of Directors or its designated body will meet to discuss the report of the investigative body.
 - d. **Hearing.** On the date that the ATS Board of Directors or its designated body meets to discuss the report of the investigative body, TSC shall have the right to defend itself by being heard, asking questions, presenting evidence, and/or presenting witnesses.

- e. **Decision.** The ATS Board of Directors or its designated body shall be the sole determining body. There will be no right of appeal to any other body. The decision shall be determined by a majority vote when a quorum is present. The decision will be communicated in writing to the TSC President and/or administrator/representative.
 - i. **Probation, Suspension and/or Revocation of Charter.** The affiliated status granted to TSC by ATS and all of the rights and obligations created in this Agreement shall remain in full force and effect through the expiration of the Agreement unless the TSC status is placed on probation, suspension or revocation in accordance with the procedure set forth above. ATS solely reserves the authority to change the affiliated status of TSC if the ATS Board of Directors or its designated body determines the conduct of TSC to be in violation of this Agreement.
- f. **Reapplication.** Revoked TSCs may reapply for affiliated status.

29. **Dissolution**

- a. **Process.**
 - i. TSC Leadership shall propose a resolution to disband.
 - ii. The resolution must be approved by two-thirds (2/3) of the TSC Leadership.
 - iii. The TSC resolution must be put to a vote of members and approved by two-thirds (2/3) of the TSC members.
 - iv. Approved TSC resolutions must be forwarded within five (5) business days to ATS for validation. ATS will have thirty (30) days to validate the resolution(s).
 - v. TSC funds will be distributed to TSC in accordance with its request. Any outstanding funds owed to ATS will be deducted prior to distribution to TSC. If TSC funds are insufficient to satisfy liabilities owed to ATS, TSC must pay any amount still outstanding within ten (10) business days.

30. **Chapter Representative.** TSC will select a member in good standing to serve as a representative on the Council of Chapter Representatives (CCR) or its successor.

31. **Territory.** Chartered TSC shall represent ATS as such in the region/state/city (“Territory”) of _____ pursuant to and in accordance with the ATS mission.

32. **Survival.** The provisions in Sections 1, 11, 13, 15, 16, and 19 shall survive the termination of this Agreement for five (5) years.

Choose One: (Being managed by ATS will entitle you to services at reduced pricing as described in the attached Schedule A.)

TSC chooses to be managed by ATS.

TSC chooses not to be managed by ATS.

TSC Representative

ATS Representative

Signature: _____

Name: _____

Title: _____

Date: _____

SCHEDULE A

Menu of Services

The services and respective costs listed below are available to assist TSCs. ATS will aid TSCs in generating revenue that covers these costs or minimizes them. Revenues that exceed expenses remain the property of the TSC. ATS views this as a partnership that will help both the TSC and the ATS achieve their goals. TSCs will have a team of ATS contacts for the services that the TSC selects.

Revenue Sharing means that the revenue for an event will be shared with ATS. Profit Sharing means that the profit from an event will be shared with ATS. If there is no profit from the event, ATS shares in the loss regardless of the amount of revenue earned by the event.

<u>Service</u>	<u>Frequency</u>	<u>ATS Mgd.</u> <u>Cost</u>	<u>Non-ATS Mgd.</u> <u>Cost</u>
License Fee	Annual	Waived	\$125
Set Up Fees	One-Time	\$150	N/A
Bank Account Opening		Included	
Accounting System		Included	
Bank Reconciliation	Monthly	\$50	\$75/hr.
Deposits	Monthly	Included	Included
Disbursements	Monthly	Included	Included
Dues Invoicing	Annually	\$7/member	\$10/mem.
Email Reminder	Annually	Included	Included
Mailing Costs	Annually	Included	Included
Bank Fees	Annually	3% of CC pay.	3% of CC pay.
Membership Cards	Annually	Included	Included
Card Mailing	Annually	Included	Included
Concierge Support	Continuous	Included	Included
New Member Application	As Needed	Included	Included
Other Invoicing	Monthly	\$5/invoice	\$5/inv.
Email Reminder	Monthly	Included	Included
Mailing Costs	Monthly	Included	Included
Bank Fees	Monthly	Cost	Cost
Legal Fees	Monthly	Cost	N/A
Financial Reporting	Quarterly	\$75	N/A
Balance Sheet	Quarterly	Included	
Income Statement	Quarterly	Included	
A/R Aging	Quarterly	Included	
A/P Report	Quarterly	Included	
Tax Return Preparation	Annually (if needed)	\$150	\$300

Schedule A: Menu of Services (cont'd.)

<u>Service</u>	<u>Frequency</u>	<u>ATS Mgd. Cost</u>	<u>Non- ATS Mgd. Cost</u>
Purchasing (Items >\$1,000) Price Comparison	As Needed	\$25 Included	\$50/hr. Included
Website Maintenance	As Needed	Included	\$25/hr.
Website Statistics/Reports	Quarterly	Included	\$25
Logon and Authentication	One Time	\$200	\$200
Online Roster Set Up and Maint.	One Time	\$50	\$50
Other IT Services	As Needed	Cost	Cost
Other Printing	As Needed	Cost	Cost
Shipping	As Needed	Cost	Cost
Advocacy Network			
Core Support	As Needed	Included	Cost
Local Support	As Needed	Up to Cost	Up to Cost
Human Resources	As Needed	Included	N/A
Insurance	Annually	\$75	\$150
Legal Services	As Needed	Cost	\$525/hr.
Governance Guidance	As Needed	Included	Included
List Management	As Needed	Cost (Net of Rev.)	Cost
CCR Winter Mtg. Travel Grant	Annually	Included	Included
Advocacy Alerts	Periodic	Included	N/A
ATS News	Monthly	Included	N/A
HCNN Alerts	Periodic	Included	N/A
The Washington Letter	Weekly	Included	N/A
Pulmonary Function Lab Manual	Periodic	\$375	\$375

Schedule A: Menu of Services (cont'd.)

<u>Service</u>	<u>Frequency</u>	<u>ATS Mgd.</u> <u>Cost</u>	<u>Non-ATS Mgd.</u> <u>Cost</u>
Education			
CME Courses (ATS Content)	As Needed	Profit Sharing	Rev. Sharing
Education – Live Events			
(Read and Review)	As Needed	\$750	\$1,000
Planning Calls		Included	Included
Needs Analysis Guidance		Included	Included
COI Policy/Guidance		Included	Included
Financial/Budget Guidance		Included	Included
Grant Writing		Included	Included
Course Evaluation Guidance		Included	Included
Content Design Review		Included	Included
Onsite Planning Review		Included	Included
Measurement Plan Review		Included	Included
Accreditation		Included	Included
CME Certificates		Included	Included
Budget Reconciliation Review		Included	Included
Post Activity Report Review		Included	Included
(Full Service)		\$2,000	\$3,000
All Read and Review Services		Included	Included
Form Collection/Compilation		Included	Included
Registration		Included	Included
Exhibit Management		Included	Included
Promotion		Included	Included
Printing – Course Materials		Cost	Cost
Meeting Material Development		Included	Included
CME Certificates		Included	Included
AV, Facilities, External Vendors		Cost	Cost
Session Derivatives		Profit Sharing	Rev. Sharing

Schedule A: Menu of Services (cont'd.)

<u>Service</u>	<u>Frequency</u>	<u>ATS Mgd. Cost</u>	<u>Non- ATS Mgd. Cost</u>
(Education – Continued)			
Education – Standalone Enduring Materials			
Webcast Archive		\$1,000	\$1,250
Webinar		\$1,000	\$1,250
Monograph		\$1,000	\$1,250
Podcast		\$750	\$750
Planning Calls		Included	Included
Needs Analysis Guidance		Included	Included
COI Policy/Guidance		Included	Included
Financial/Budget Guidance		Included	Included
Course Evaluation Guidance		Included	Included
Content Design Review		Included	Included
Measurement Plan Review		Included	Included
Accreditation		Included	Included
Budget Reconciliation Review		Included	Included
Post Activity Report Review		Included	Included
Form Collection/Compilation		Included	Included
Registration		Included	Included
Promotion		Included	Included
Printing – Course Materials		Cost	Cost
CME Certificates		Included	Included
Facilities, External Vendors		Cost	Cost
Supplemental Services			
Event Registration Web Setup	As Needed	\$250	\$250
Web Posting: Podcast/Webcast	As Needed	Included	Included
Mass Email	As Needed	\$50	\$50
TSC Members Only	As Needed	Included	Included
Onsite Support	As Needed	\$500/day	\$500/day
Grant Writing	As Needed	Included	Included
Travel Expenses	As Needed	Cost	Cost
Lodging Expenses	As Needed	Cost	Cost
Meeting Planning	As Needed	\$60/hr.	\$60/hr.
Event Promo Development	As Needed	\$60/hr.	\$60/hr.
Event Promo (non-ATS Space)	As Needed	Cost	Cost
(ATS Space)	As Needed	Included	Included
ATS-TSC Cross-Marketing	As Needed	Included	Included
Inclusion in ATS News (TSC Area)	Monthly	Included	Included
Additional Supplemental Work	As Needed	\$60/hr.	\$60/hr.