

American Thoracic Society – Thoracic Society Chapter Charter Agreement

This Agreement, dated September 6, 2013, is between the American Thoracic Society (ATS) and the Arizona Thoracic Society Chapter (TSC). ATS and TSC are each known individually as a “Party” and collectively are known as the “Parties.” This is an evergreen (automatically renewing) agreement. See items six and seven for termination policy.

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 in addition to the words “A Chapter 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 provides services to chapters as listed on the attached Schedule A. TSC can choose from these services which the ATS may update from time to time.

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(s) 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 opt to use a chapter logo. If doing so, the chapter must display the ATS logo and the words "A chapter of the ATS" adjacent to the chapter logo in all cases, whether in print, email or online.
- 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.** TSC shall provide to ATS annually a twelve (12) month plan of activities for the upcoming year by September 30 of the prior year, and shall make whatever modifications to the plan as are reasonably requested by ATS. ATS requires 120 days notice to initiate the CME designate process if TSC is seeking grants for an educational meeting, and 90 days notice if grants are not sought for a TSC's educational meeting.

5. **Legal Compliance.** TSC shall comply with all applicable federal, state and local laws governing it.
6. **Term.** This Agreement shall be valid from the date on which both Parties have signed the Agreement and shall remain valid until either party terminates Agreement. See 'Termination' below.
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 may attain designation through the ATS Education Department - a service that will be provided by ATS at no cost, or, it may attain CME designation from third parties. If a third party is engaged, TSC is solely obligated for any costs incurred.
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, chapter bylaws, proposed and reconciled budgets for chapter educational meetings, brochures for chapter educational meetings, and attendee lists for TSC educational meetings. .
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
 25 Broadway, 18th floor
 New York, NY 10004-1012
 Attn.: Legal Department

For TSC: Arizona Thoracic Society
102 West McDowell Rd
Phoenix, AZ 85003-1213

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 assure its current practices are consistent with its bylaws and, if this is not the case, shall revise the bylaws to comply with TSC's current practices. A copy of TSC's bylaws and subsequent revised bylaws should be provided to 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. **Educational Events.** ATS will provide Continuing Medical Education (CME) designation for chapter educational meetings provided that ATS timelines for CME application and related steps as defined below are met. There will be no cost to TSC for this service.

TSC may opt to engage a third party organization to provide CME designation for its meeting, in which case TSC is solely liable for any related expenses incurred.

Deadlines:

- If grant support is *not* sought by TSC for its meeting, the completed CME application must be received by ATS no less than **90 days** before the meeting date.
- If TSC *is* seeking grant support for its meeting, the completed CME application must be received by ATS no less than **120 days** before the meeting date.

- d. **Medical/Scientific Statements, Guidelines and Other Publications.** Any and all position statements/publications should be approved by ATS peer review before distribution to any and all third parties with no regard to the form of distribution, including electronically. All statements/publications must include the following wording: "*The views expressed here are not necessarily the views of the ATS.*"
 - e. **Advocacy Efforts.** Statements regarding federal legislation should 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. If ATS approval is not sought, TSC *must* include on document "*The views expressed here are not necessarily the views of the ATS.*"
 - f. **Fiscal Year Match.** TSC will adopt a fiscal year that coincides with the fiscal year used by ATS; the ATS fiscal year is 12/31. This does not apply to non-ATS managed TSCs.
 - g. **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 an ATS 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 Arizona 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.

TSC Representative

ATS Representative

Signature:	<u>George Parks</u>	_____
Name:	<u>George Parks</u>	_____
Title:	<u>CCR Representative</u>	_____
Date:	<u>9/6/13</u>	_____

SCHEDULE A Services

Services and respective costs listed below are available to all TSCs.

<u>Service</u>	<u>Frequency</u>	<u>Cost</u>
<u>Continuing Medical Education</u>		
<i>Chapters have the option of seeking CME designation for their educational meetings from third parties at their own expense.</i>		
CME Designation		No charge
CME Certificates, post meeting, if ATS provided CME designation		No charge
<u>Promotion of Chapters/Chapter Educational Meetings & Activities</u>		
In ATS News and/or ATS Stat		No charge
On TSC page of ATS web site		No charge
In ATS Event Calendar		No charge
Provide list of ATS members in chapter's area		No charge
ATS International Conference	Annual	No charge
Host/maintain chapter web pages at www.thoracic.org	Continuous	No charge
<u>Chapter Support and Representation</u>		
Host Chapter leadership teleconference calls		No charge
Host a listserv for a chapter that wishes to offer one to its members		No charge
Travel Grant for CCR Meeting at Hill Day		Discretionary
Hold a CCR meeting at the International Conference		Catering provided
Include CCR Representatives on ATS Board of Directors		--
<u>Chapter Tax Return Preparation</u>		
<i>Required of all chapters regardless of annual revenue.</i>		
<i>Chapters that file their own taxes must submit proof of filing to ATS.</i>		
Tax Return	Annual	Covered if ATS CPA's handle filing (\$200)
<u>Chapter License/Incorporation Filing Fee</u>		
	Annual	Covered by ATS (\$179)
	Bi-annual filing	Covered by ATS (\$126.50)

Governance

Filing for chapter incorporation	New chapters	Covered by ATS
Filing for chapter tax EIN number	New chapters	Covered by ATS
Filing for chapter tax exemption		Covered by ATS

Chapter Insurance

<i>Ask ATS about specific coverage</i>	Annual	Covered by ATS
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Chapter Dues Invoicing

Chapter dues invoicing is combined with ATS national dues invoicing using the member's ATS membership renewal date. The dues invoicing service will include:

ATS managed chapters	Annual	\$5/member*
Non-ATS managed chapters	Annual	\$8/member*
Bank fees	Annual	3% of credit card charges*
<i>*Fees will be deducted from chapter dues collected.</i>		
Email dues reminders	Annual	included
Invoicing mailing costs	Annual	included
Member Concierge Support	Continuous	included
New Member Application	Provided	included
Maintain chapter member list	Annual	included