

# UHCCR 2

Office of the President  
June 9, 2009

Members, Board of Trustees:

APPROVAL OF ANNUAL AGREEMENT BETWEEN UNIVERSITY OF KENTUCKY AND  
KENTUCKY MEDICAL SERVICES FOUNDATION, INC. FOR FY 2010

Recommendation: that the Board of Trustees approve the annual agreement between the University and Kentucky Medical Services Foundation, Inc. (KMSF), a change highlighted copy of which is attached hereto as Exhibit A.

Background: The university has an annual agreement with KMSF under which KMSF bills, collects, and performs certain management functions for the faculty of the College of Medicine. This agreement was approved on an annual basis by the Board of Trustees until 2006, when the approval was delegated to university management unless a material change was proposed. In the agreement for fiscal year 2010, material changes are proposed to accommodate KMSF's increasing role as a landlord for certain university operations.

The material changes are in Section 5, allowing the university to reimburse KMSF for property operations costs paid by KMSF and in Section 20 authorizing waiver of subrogation in certain circumstances. The provision concerning payment of operations costs is necessary because the costs to operate certain property owned by KMSF but occupied by the university exceed the amounts the university has been paying to KMSF in rent. The subrogation waiver is necessary to coordinate insurance coverage between the university and KMSF.

KMSF recently purchased property consisting of an office park in Lexington. Much of that office park is occupied by university health care and other programs. The cost to operate the property has exceeded available university rent. Moreover, the KMSF and university property and casualty insurance programs are not coordinated. These changes to the annual agreement are necessary to address these issues. The university and KMSF consolidate financial statements under applicable Governmental Accounting Standards; thus, the proposed modifications do not present an adverse financial impact to the university.

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Action taken:     Approved     Disapproved     Other \_\_\_\_\_

THIS AGREEMENT made and entered into as of July 1, ~~2008~~2009 by and between the BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY, a statutory body corporate existing pursuant to Section 164.100 et seq. of the Kentucky Revised Statutes (hereinafter referred to as the University) and KENTUCKY MEDICAL SERVICES FOUNDATION, INC., a non-stock, non-profit corporation formed pursuant to Chapter 273 of the Kentucky Revised Statutes (hereinafter referred to as Foundation).

WITNESSETH:

Section 1. RECITALS

A. Foundation is organized for the purposes stated in its Articles of Incorporation as a nonstock, nonprofit corporation and will use and apply the whole or any part of its income and principal exclusively for charitable, scientific, or educational purposes at or for the benefit of, the University of Kentucky Medical Center.

B. University faculty in the clinical departments or units of the College of Medicine have heretofore executed agreements with Foundation and University, known as "Practice Agreements and Assignments" whereby said faculty have assigned to Foundation their professionally generated clinical income.

C. The recruitment and retention of the members of the medical faculty of the University will be improved by permitting the said members to supplement, by income from the practice of medicine, the salaries provided by the University.

D. The University recognizes that the medical practice activities of its faculty members can be conducted in a more efficient and economical manner if those faculty members

who produce income are permitted, through the medium of Foundation, to exercise a larger voice in the expenditure of the funds so produced.

E. The University has heretofore established, a "geographic full-time medical service plan", the said geographic full-time plan having been adopted on June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995; said action is hereby incorporated by reference as if set out in full herein.

F. The aforementioned action of University's Board of Trustees authorized the University's President to negotiate and execute a contract, subject to the approval of said Board, with an appropriately qualified entity for carrying out necessary functions and assuming the responsibilities involved in the administration of income for professional services under the plan.

NOW THEREFORE, the parties hereto agree as follows:

## Section 2. DEFINITIONS

A. "The Plan" means the geographic full-time medical service plan for the University of Kentucky College of Medicine established by action of the Board of Trustees of said University dated June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995.

B. "Clinical Income" means the following income attributable to members of the Plan: (1) all compensation, income and payments (direct or in kind and whether characterized as fees, retainers, or otherwise) for professional services rendered or to be rendered, including, but not limited to those relating to the diagnosis, treatment or evaluation of patients or others and consultation; (2) all payments whether direct or in kind (excluding actual travel costs) for providing advice, consultation, serving on boards or committees, overseeing, supervising or other participation with any person or entity involved with (a) health or medical care, (b)

evaluation or care of patients, (c) drugs, (d) therapy of any kind, (e) accident or disease prevention, (f) health or medical care facilities, (g) programs involving health or medical care or (h) health or medical care of any other type; (3) witness fees and payments relating to depositions, testimony or other evaluations in the capacity of a witness; and (4) all other income which relates to or would not exist but for the professional education, experience, or training of members of the Plan. The Dean has the authority to approve exceptions to clinical income and is required to document the nature of the exception and the reason. Provided, however, that nothing contained herein shall be deemed to include in the term "clinical income" any item excluded therefrom by paragraph II, B of the plan.

C. "Practice Agreements" means those documents, denominated Practice Agreements and Assignments heretofore executed by certain members of University's faculty, the University, and Foundation.

D. "University" as used herein, whenever approvals or consents are necessary, shall mean the approval or consent of the President, unless the President determines that approval by the Board of Trustees is necessary.

### Section 3. NATURE OF THE AGREEMENT

Pursuant to Paragraph III, A. of the aforementioned action of University's Board of Trustees dated June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995, University hereby recognizes Foundation as an "appropriately qualified organizational entity" as described therein for carrying out necessary functions and assuming the responsibilities involved in the administration of income for professional services under University's "geographic full-time medical services plan".

#### Section 4. BILLING AND COLLECTION

Foundation agrees that it will accept, pursuant to practice agreements, the assignment of all clinical income by participants in the plan and, in accordance with such assignment, agrees to bill for professional services to parties determined to be responsible for payment for such services.

#### Section 5. PAYMENTS TO UNIVERSITY

A. In accord with paragraph II, D. 2 of the plan, the parties recognize that Foundation must reimburse University for actual expenses incurred by it which are attendant to the production of clinical income.

B. Foundation agrees to pay to University, as reimbursement for the expenses attendant to the production of clinical income, University's actual annual costs, as determined by clinical department or unit expenditures as reimbursement of direct clinic personnel expenses and other current operating expenses, in direct support of the operation of the Kentucky Clinics. Payment normally will be processed within thirty days of receipt of billing statements.

C. In addition to the above, Foundation agrees that it will make an unrestricted grant to the University of an amount which is not less than the plan component of income for each member as described in paragraph II, C., 2 of the plan. Said grant will be paid in installments in a manner reasonably acceptable to University, generally monthly unless otherwise agreed.

D. Foundation agrees that it will make an unrestricted grant to the University for non clinic expenses as reasonably submitted by the clinical departments such as other department personnel and current department operating expenses as indicated on such submissions. Payments normally will be processed within thirty days of receipt of request.

E. The University has made and continues to make available to Foundation the SAP accounting system. It is understood that the University is a service provider in relation to the provision of the SAP system, and the Foundation's participation in the SAP accounting system will not be construed to cause any Foundation funds to become University or Commonwealth of Kentucky funds. Foundation's use of the SAP accounting system shall not alter or limit Foundation's control of the expenditure of its funds, or grant University any additional rights with respect thereto. Any consumables (paper supplies, etc) requested and utilized by Foundation will be paid for or reimbursed by Foundation.

F. Upon request, University shall, as a service provider, make its network domain available to Foundation. The University shall provide Foundation access to technological support for said network domain, as requested by Foundation.

#### Section 6. REIMBURSEMENT OF FOUNDATION

A. The parties recognize that University receives certain services from Foundation, for which it is due reimbursement as specified herein below.

B. University agrees to pay to Foundation on behalf of members of the Department of Diagnostic Radiology for the provision of x-ray interpretation services to the University Health Service during the period July 1, ~~2008~~2009 - June 30, 2009, a fee of \$10 per examination will be paid to Diagnostic Radiology. ~~This reconciliation of "excess" examinations, if any, will occur within 30 days after the end of the fiscal year.~~

C. University agrees to pay to Foundation on behalf of the applicable department of the College of Medicine, for provision of specified physical examinations to certain University employees, a fee for each examination.

D. University agrees to pay Foundation on behalf of clinical faculty members of the Department of Pathology and Laboratory Medicine, for provision of pathology services to the University Health Service, a fee of \$~~121~~4.00 per patient for Pap test reviewed by a pathologist, whether normal or abnormal. All other pathology professional services are to be reimbursed at 50% of the usual and customary charge for each service rendered.

E. University will make payment to Foundation quarterly, on the last calendar day of each quarter for services as described in paragraph B hereinabove. University will make payment to Foundation monthly, within 30 days of invoice date each month for services described in paragraphs C and D.

F. University agrees to share in the costs of the salary and benefits and other related expenses for a Compliance position or positions, jointly defined by Foundation and University and to be an employee or employees of Foundation, such sharing to be established by agreement between the University and Foundation.

G. In order to equitably apportion expenses, University agrees to negotiate with Foundation an amount to offset the property management costs for all real property for which the legal title is owned by the Foundation or which is leased by the Foundation, but which is occupied by the University. The remittance shall be made at the time as more particularly set forth in subparagraph H, below.

H. For the remittance referenced in Paragraph G, above, University and Foundation shall negotiate and determine the property management costs for the fiscal year by July 15. For the fiscal year commencing July 2009, property management costs as agreed by the parties shall be remitted from University to Foundation on a monthly basis, upon presentation of documentation of costs satisfactory to University.

## Section 7. COST SETTLEMENTS

A. The parties recognize that the provision of medical services in the current competitive environment may at times require a joint effort on the part of the University and University Hospital and Foundation in the formation of new delivery systems. These efforts may

at times require the sharing of cost between the parties. Formulas for the sharing will be developed and mutually agreed to by the parties, which may result in payment by the University to the Foundation, or by the Foundation to the University. Examples of such joint efforts include but are not limited to:

1. The operation of the UK Health Care Plans, including the UK-HMO.
2. The operation of certain marketing efforts.
3. Payment to the Fund for Advancement of Education and Research for the Medical Center for services rendered to clinical departments or units of the College of Medicine by members of practice plans of the Colleges of Health Sciences, Dentistry, Nursing, or Pharmacy.

C. Foundation may acquire by purchase, lease, or other means real and/or personal property to be utilized in the production of clinical income resulting from teaching, research and service functions performed by the members of the clinical departments. Acquisition of said real and/or personal property must be authorized by the Board of Directors of Foundation.

#### Section 8. ACADEMIC ENRICHMENT FUND

A. Consonant with Section II, D. 3 of the plan adopted by University's Board of Trustees on June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995, Foundation agrees that it will pay to The Fund for Advancement of Education and Research in the University of Kentucky Medical Center (hereinafter Fund), an amount equal to two (2%) percent of the actual clinical income collected by said Foundation. The Fund will deposit said payments in an account maintained for the purpose of providing an academic enrichment fund to be used by the Dean of the College of Medicine in support of the programs of said College and for related purposes at his sole discretion. Amounts due hereunder will be



computed by Foundation on a monthly basis as income is received and remitted to the Fund within twenty-five (25) days after the close of each monthly accounting period.

B. Foundation further agrees that it will deposit, in an account maintained by Foundation, on the same basis as provided in subsection A. herein above, an additional amount equal to eight percent (8%) of the actual clinical income collected by said Foundation, said funds to be used by the Dean of the College of Medicine for the enrichment of the programs of the College and for related purposes at his sole discretion.

#### Section 9. PARTICULAR COVENANTS OF THE FOUNDATION

A. Foundation's Articles of Incorporation, as filed with the Secretary of State of the Commonwealth of Kentucky on June 19, 1978, and as amended on April 4, 2007, have been inspected by the University as a condition precedent to University's entry into this agreement. Foundation covenants that it will not, absent the written agreement of the University, amend or otherwise alter said Articles or adopt any by-law or other operating practice which would effectively alter the character of said Foundation.

B. Foundation covenants it will not engage in the practice of medicine, nor will it without the written consent of the University solicit, administer, receive, perform, or accept any gift, grant, devise or bequest with or from any governmental unit, entity, or subdivision or any person, corporation, partnership, association or other entity whatsoever except as specifically permitted herein or as necessary or appropriate for or in connection with normal business operations. Provided, however, that nothing contained herein shall be construed to prohibit the Foundation (subject to the approval of the Dean of the College of Medicine or the Executive Vice President for Health Affairs) from (a) negotiating and executing contracts providing exclusively for professional services by faculty who have executed practice agreements or (b)

negotiating, entering into and performing agreements with respect to collecting and administering payments related to services or items provided by any person or entity in furtherance of a University program.

C. Foundation covenants that it will not without the written consent of the University merge with any other corporation or convey all or substantially all of its assets to any other corporation, partnership, or other entity except as specifically provided herein and that, in the event of its dissolution its Board of Directors shall cause its assets to be applied and distributed as follows: (a) all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provisions shall be made therefore; (b) assets held by the corporation upon a condition which occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements; and (c) all of the remaining assets of the corporation shall be transferred or conveyed to the Board of Trustees of the University of Kentucky, or its successor, to be used for medical education and research, if said University or its successor, shall qualify as a public corporation and an instrumentality of the State of Kentucky or as an exempt organization under Section 501(c) (3) of the Internal Revenue Code of 1954, as amended; and if said University or its successor shall not so qualify, then to some other organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes in the field of medicine as shall at the time qualify as an exempt organization or organizations under Section 501(c) (3) of the Internal Revenue Code of 1954, as amended.

#### Section 10. MEMBERSHIP AND BENEFITS

A. University agrees that it will assist the Foundation to enforce the terms of the Practice Agreements entered into by members of University's clinical departments of its College

of Medicine by requiring adherence to said agreements as a condition of continued employment as a member of University's faculty.

B. University agrees that it will require, as a condition of employment as a member of University's faculty in a clinical department or unit that members of its faculty execute Practice Agreements and Assignments in the form of same which may be modified by mutual agreement of the parties hereto from time to time.

C. Foundation agrees that it will not, absent the consent of the Dean of the College of Medicine or the Executive Vice President for Health Affairs, (a) bill for, collect or administer any item of income for any person or entity not holding membership in the plan, or (b) provide any benefit or other thing of value to any person or entity not a member of the plan or the University except (1) termination benefits to former members as provided by action of Foundation's Board of Directors; (2) incidental benefits indirectly accruing to employees of the Medical Center by virtue of Foundation's activities; (3) students and House Staff of University; (4) payment to nurses incident to their recruitment to the University Medical Center; (5) education and technical training costs of persons involved in patient care activities; (6) education and technical training costs of persons indirectly involved in patient care activities (7) to persons who engage the services of the Foundation pursuant to the provisions of Section 22 - Additional Activities; (8) to persons whose employment is authorized by Section 11.B.; (9) payments in the ordinary course of its business or (10) benefits or other things of value approved or ratified by the Foundation's Board of Directors but which do not violate any express prohibition in any other section of this Agreement.

D. In certain contractual relationships for the provisions of patient care services it may be necessary or advantageous to present a unified billing, incorporating charges from a University patient care organizational entity(ies) and faculty physicians. In such cases, the

Foundation is authorized to bill and collect on behalf of the University patient care organizational entity(ies) provided a proposed unified billing arrangement has been developed and agreed to by the parties and has been reviewed by University legal counsel. Examples of such unified billing include but are not limited to:

1. Charges for hospital and physician services under the terms of agreements with insurance companies or managed care plans for transplantation services, or other services reimbursed on a negotiated global rate basis.

2. University of Kentucky Health Care Plans.

E. Foundation shall assume responsibility for the costs of drugs and supplies to be used in the patient care programs in the clinics and is hereby authorized to bill, collect, and deposit in Foundation accounts revenue from these non ancillary items.

F. Foundation agrees that it will strictly enforce the terms of its Practice Agreements and Assignments, report promptly to University in the event any individual fails or refuses to abide thereby and join with University in any appropriate action, in law or equity, necessary to secure compliance therewith.

#### Section 11. PERSONNEL

The parties recognize that the Foundation must employ various individuals to carry out its functions hereunder; however, the parties also recognize, and hereby declare their intention to adhere to, those provisions of the plan adopted by University's Board of Trustees on June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995, particularly those portions which provide that University must retain responsibility and authority

for the appointment of faculty and house staff, the determination of institutional staffing patterns and the maintenance of balance among programs and their component activities.

Accordingly, with respect to employment of personnel by Foundation, the parties agree as follows:

A. Foundation staff

The Foundation may employ an executive director and such assistants, including secretarial and clerical personnel as may be determined by its Board of Directors to be necessary or appropriate to permit said Foundation to bill and collect professional fee income, to administer its funds in accord with the terms of the geographic full-time plan, and to fulfill any other authorized activities of Foundation.

The Foundation is authorized to house computer equipment as may be required to communicate with its central computer and house sufficient employees in the Kentucky Clinic Buildings and other facilities used by University physicians for the purpose of providing billing and financial information to patients of University physicians who are members of the plan and other activities as mutually agreed. In addition, Foundation is also authorized to utilize designated storage space in the basement of the Kentucky Clinic Building for information necessary to the billing function.

B. Other personnel

During the term of this contract Foundation agrees that, except as otherwise approved by the Executive Vice President for Health Affairs and the Dean of the College of Medicine, it will not have any employees other than the employees authorized in Section 11. A. to perform services in University's patient care or college programs. Provided, however, that this provision shall not be construed to prohibit specific agreements between the parties whereby Foundation will employ personnel for service duties which generate income, provided, however, that such

professionals may be employed only upon the recommendation and approval of the Dean of the College of Medicine and approval of same by the Executive Vice President for Health Affairs, with payment of salary and related costs to be from income produced by such professional activity.

C. Equal opportunity-affirmative action

The Foundation agrees that it will not discriminate against any employee or applicant for employment because of race, color, ethnic origin, national origin, creed, religion, political belief, sex, sexual orientation, marital status, handicap or disability. The Foundation does not discriminate because of uniform service, veteran status, or physical or mental disability when an individual otherwise meets the minimum qualifications for employment. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training. The Foundation agrees that it will, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, ethnic origin, national origin, creed, religion, political belief, sex, sexual orientation, marital status, handicap or disability . The Foundation agrees that it will indemnify and save harmless the University, the Board of Trustees of the University, including the individual members thereof, officers, agents and employees of the University, by reason of any action by law or equity or by reason of any administrative proceeding initiated by any person arising out of any such employment action or practice of the Foundation, including the payment of attorney fees and other costs of such action or proceeding.

Section 12. USE OF UNIVERSITY FACILITIES

The parties recognize that paragraphs III, B. 4, b, d, g and i of the "geographic full-time plan" adopted by University's Board of Trustees on June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995, require that institutional control be maintained with respect to direction and supervision of institutional activities and programs, assignment and use of space in institutional facilities, determination of goals, objectives and priorities and the maintenance of balance among programs and their component activities.

Accordingly, Foundation and University agree that University will provide space within the University Hospital, Kentucky Clinic and other space officially designated for the conduct of the patient care operations.

With respect to any other facilities that University may from time to time provide to Foundation (other than Leader Avenue or Gazette Avenue property), Foundation shall be deemed a licensee without any property right whatsoever in said premises or facilities and shall, upon demand of University, vacate same, except as hereafter otherwise provided. All rights of Foundation with respect to 134, 136, 138, 144, 148, and 150 Leader Avenue and any other property it may have previously leased or used or may now or hereafter lease or use on Leader Avenue or Gazette Avenue shall be governed by the separate agreement dated April 20, 2001 as amended and any other agreement(s) executed in the future by the parties hereto. In the event of any conflict between such separate agreement(s) and this agreement such separate agreement(s) shall govern and control whether relating to Leader Avenue property or Gazette Avenue property, the existing Foundation office building, parking lots or any other matter.

### Section 13. MEDICAL RECORDS

The parties agree that all medical records relating to the care of patients in University facilities or as a part of University programs, are and shall remain the property of University and

that Foundation has no right or property interest therein, provided, however, that nothing herein shall be construed to limit access to said records by members of University's faculty, staff, and students pursuant to existing University procedures. Further, the University agrees to provide or make available to Foundation such information and data from patient records and program data maintained by University as may be necessary for Foundation to perform its billing and collection functions herein provided, including such information and data as may be necessary to meet the requirements of third-party or other payers as the basis for payment for services.

#### Section 14. INSPECTION AND AUDIT

A. Foundation agrees that, in accord with paragraph II, B. 1, of the action of University's Board of Trustees dated June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995, its books and accounts are open at all reasonable times to inspection and audit by appropriately designated University representatives.

B. The parties agree that the University's Internal Auditors may conduct an audit of Foundation's operations and accounts for the period ending June 30, 2009 and such other audits, including audits to determine compliance with this agreement, the terms of the action of University's Board of Trustees on June 20, 1978, as amended on March 3, 1980, September 15, 1981, June 19, 1984 and June 13, 1995, the terms of the departmental agreements referred to in Section 20 hereof, as may be deemed necessary or advisable by the University of Kentucky Treasurer, and that Foundation's agents and employees will cooperate to the fullest extent possible with University's auditors designated to conduct same. Further, the parties agree that a firm of Certified Public Accountants, mutually agreeable to the parties, will be contracted by the Foundation to perform an independent audit of the Foundation's books, records and accounts for the year ended June 30, ~~2008~~2009.



C. The Parties agree that Foundation will be furnished information by University sufficient for Foundation to verify the nature and detail of expenditure of funds paid to University under the provisions of Section 5 B. hereinabove.

Foundation agrees that it will furnish to University the following reports.

Annually

Audited Financial Statements to include:

Opinion of Independent Certified Public Accountants

Balance Sheet

Statement of Changes in Fund Balances

Statement of Current Revenues and Expenditures

Supplementary Schedules

All reports from any outside auditors, all non routine correspondence and summaries of any oral communications relating to any potential regulatory or tax issues from the same including but not limited to SAS 61 reports, management letters, reports on internal accounting controls and/or compliance.

Quarterly

Financial statements as requested in writing by University Treasurer including:

Statement of Operations

Gross Billings

Collections

Financial Allowances

Bad Debts Schedule

Trial Balance of Accounts Receivable

Medical Malpractice Fund Balance Performance Report

Section 15. DEFAULT

A. In the event of any failure of Foundation to pay any sum due to University hereunder within thirty (30) days after written notice of such default shall have been mailed to Foundation, or any failure to perform any other of the terms, conditions or covenants of this agreement to be observed or performed by Foundation for more than thirty (30) days after written notice of such default shall have been mailed to Foundation, or if Foundation shall become bankrupt or insolvent, or file any debtor proceedings, or take or have taken against Foundation in any court pursuant to any statute either of the United States or of any State a

petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Foundation's property, or if Foundation makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement therewith, then University may terminate this agreement. Provided however, that should any default occur which cannot reasonably be corrected within such thirty (30) day period then Foundation shall have such additional time to correct said default as may be reasonably necessary if Foundation promptly initiates, and expeditiously carries out, appropriate action to correct such default.

B. University may at its election terminate this agreement with respect to any department without termination of the entire agreement for the same reasons and in the same manner as provided hereinabove.

#### Section 16. PROFESSIONAL LIABILITY

Nothing contained herein shall be construed to provide that any member of University's clinical faculty, house staff or student body is acting as an agent of Foundation when providing care to patients in University facilities or as a part of an approved University program. University agrees that, when so acting, said faculty, house staff and students shall be considered agents of said University and that payment of claims or judgments may be made on their behalf from the fund provided pursuant to KRS 164.941 or other University funds.

#### Section 17. MANAGEMENT AND INVESTMENT POLICIES

A. The parties recognize and agree that the reimbursement of University costs incurred attendant to the production of clinical income and the provision of a sum equal to ten (10%) percent (which sum is the ten (10%) percent described in Sections 8A. and B.) of Foundation's gross clinical income received for the purpose of providing an academic

enrichment fund for University's College of Medicine constitute the second and third charges, respectively, upon Foundation's gross income, the first charge being Foundation's ordinary and necessary expenses incurred for costs of administration and in billing and collecting said income and providing for the central administration of Foundation. The fourth charge being other expenses which are incurred by the Foundation.

B. Foundation agrees that funds deposited in a separate account pursuant to Section 8B., Academic Enrichment Fund shall be invested consistent with the University Policy for investment of short term funds.

Foundation shall be entitled to the investment income derived from said account, provided however investment income derived from balances attributed to the academic enrichment fund identified in subparagraph A. and Section 8B. hereinabove shall be credited to said account.

C. Foundation agrees that it shall maintain a separate account pursuant to its contributing for self-insurance identified in Section 18B. to be invested consistent with the University's policy for investment of endowed funds with all income to be accumulated in said separate account. The investment plan of Foundation for said separate account is subject to the approval of the University's Treasurer.

D. Notwithstanding anything contained herein to the contrary, the Dean of the College of Medicine may waive or reduce the charges referred to in Section 8 hereinabove (and elsewhere herein by reference to Section 8) relative to such clinical income as he may from time to time determine.

#### Section 18. PROVISION OF PROFESSIONAL LIABILITY INSURANCE

A. Under the professional liability insurance program, Foundation agrees that it will pay the University, as reimbursement, for the physicians' pro rata share of the malpractice contributions as determined by the Medical Malpractice Claims Committee, of the costs of the following: (i) payments required pursuant to KRS 164.941 in one (1) lump sum payment within five (5) working days of receipt of amount due; (ii) ~~costs of claims administration in twelve (12) equal installments, the first said installment being due and payable on July 31, 2008 and monthly thereafter until June 30, 2009~~ cost of claims administration within five (5) working days of receipt of quarterly amounts due; and (iii) the physicians' pro rata share of the costs of excess commercial insurance within five (5) working days of receipt of amount due.

B. In addition, Foundation has agreed that between July 1, ~~2008-2009~~ and June 30, ~~2009~~2010, if required by the Medical Malpractice Claims Committee, it will cause to be deposited in a separate account within the Foundation the physicians' pro rata share of the malpractice contributions as determined by the Medical Malpractice Claims Committee of the additional contributions for self insurance, said account together with interest accruing thereto to be held solely for the purpose of payment of legal fees, settlements, judgments arising for liabilities defined in KRS 164.941(3) and for lump sum payments referenced in previous paragraph 18A. No monies in said account shall be expended for any other purpose than as provided in this Section without the written agreement of University, nor shall such monies be encumbered, pledged or otherwise hypothecated. The monies in said account shall be invested only as provided in Section 17 hereof. Payment to the separate account may be in equal installments, provided that the full pro rata share of the malpractice contributions as determined by the Medical Malpractice Claims Committee shall be deposited by June 30, 2010~~09~~.

C. In sum, Foundation agrees to pay in both assessments and contributions of the pro rata share of the malpractice contributions as determined by the Medical Malpractice Claims

Committee of the total program costs of ~~2008~~2009-2009-2010 as determined by KRS 164.941 and the Medical Malpractice Claims Committee.

#### Section 19. ADMINISTRATION OF DEPARTMENTAL FUNDS

A. Foundation, after making provision for (1) the costs of its administration and costs relating to billing and collection; (2) reimbursement of University expenses pursuant to Section 5 hereof; (3) the College of Medicine Academic Enrichment Fund pursuant to Section 8 hereof; (4) provision of professional liability insurance pursuant to Section 18 hereof; (5) provision of payment of actual expenses incurred by it which are attendant to the production of clinical income; (6) such reserves as are reasonably determined by the Foundation's Board of Directors; and (7) other obligations which are agreed to by the Foundation and are made pursuant to any agreement with, at the written request of, approved, or ratified in writing by the University of Kentucky, agrees that it will maintain its accounts in such a manner that income attributable to the professional clinical activities of each of the following departments or divisions shall be shown separately on books maintained by the Foundation from any other fund or funds held by said Foundation:

- Anesthesiology
- Emergency Medicine
- Family Practice and Community Medicine
- Kentucky Clinic Hazard
- Kentucky Clinic South
- Internal Medicine
- Neurology
- Neurosurgery
- Obstetrics and Gynecology
- Ophthalmology
- Orthopaedic Surgery
- Pathology and Laboratory Medicine
- Pediatrics
- Physical Medicine and Rehabilitation
- Psychiatry

Radiation Medicine  
Radiology  
Surgery  
Such other departments as may be designated by University from time to time

B. Thereafter, Foundation agrees that it will expend the funds maintained by it in the aforementioned accounts only in accord with the departmental or divisional agreement relating to each department or division. Said departmental agreements are recognized as a material portion of this agreement. Therefore the parties agree that University shall retain custody of all funds accruing to the account of departments for which an approved departmental agreement has not been executed. Said departmental or divisional agreements may be amended from time to time, as provided in said agreements, with the approval of the Dean of the College of Medicine and/or the Executive Vice President for Health Affairs. The Dean and the Executive Vice President For Health Affairs have the authority to approve or disapprove all departmental or divisional agreements as deemed necessary.

C. Notwithstanding anything contained in this or any other agreement to the contrary, the Foundation is hereby granted the right and shall be permitted (in addition to the matters contemplated by this Agreement) but not obligated to (a) enter into and perform its obligations under such agreement(s), as the Foundation determines appropriate, with the University's College of Public Health of any physician(s) or other provider(s) now or hereafter assigned to the University's College of Public Health and (b) bill for , collect, administer and distribute funds pursuant o the terms of any existing or future agreement(s) either (i) with the University's College of Public Health or any physician(s) or other provider(s) now or hereafter assigned to the University's College of Public Health or (ii) relating to services provided or supervised by any physician(s) or other provider(s) now or hereafter assigned to the University's College of Public Health.

Section 20. WAIVER OF SUBROGATION AND RIGHT TO ASSERT CERTAIN CLAIMS

Subject to the proviso in this sentence, (a) University and Foundation agree that each shall look first to any insurance in its favor before making any claim against the other party and (b) to the extent that such insurance is in force and collectible and to the extent permitted by law, University and Foundation each hereby releases and waives all right of recovery against the other and against the agents and employees of the other, whether such right of recovery may be asserted by or on behalf of either of them or any person, insurance company or other entity claiming through or under either of them by way of subrogation or otherwise; provided, however, the provisions of this Section 20 shall not be applicable to the extent they would invalidate any insurance coverage or otherwise cause any insurance coverage not to be applicable.

Section 2021. NOTICES

All notices, demands and requests hereunder shall be in writing and shall be given by United States Registered or Certified Mail or by messenger delivery, in the case of University to:

Dean of the College of Medicine  
138 Leader Avenue  
Lexington, Kentucky 40506-9983

In the case of Foundation to:

Executive Director  
Kentucky Medical Services Foundation, Inc.  
2333 Alumni Park Plaza  
Suite 200  
Lexington, Kentucky 40517

Each party may from time to time change its address for purposes of notice by giving to the other party notice of such change of address. Any notice, demand or request given by United

States Registered or Certified Mail, as provided herein, shall be deemed served on the date it is deposited in the United States mails properly addressed and with postage fully prepaid.

Section 2122. RECORDS ACCESS

Pursuant to Public Law 96-499, Section 952, the Foundation agrees to make available upon written request from the Secretary of Health and Human Resources, the Comptroller General, or the Department of Human Services of the State of Kentucky or any of their duly authorized representatives, access to this contract and all other service agreements written or oral entered into or renewed since December 5, 1980, and access to books, documents, and records necessary to verify costs of services provided by such arrangements exceeding \$10,000 in a 12-month period. Access will be permitted until four years have expired after completion of services furnished, and in accordance with the applicable federal regulations.

If the Foundation carries out any of the duties under this contract through a sub-contract with a related organization, with a value or cost of \$10,000 or more over a 12-month period, such sub-contract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to the subcontract, the related organization shall make available, upon written request from the Secretary or Comptroller General, or any of their duly authorized representatives, the sub-contract, books, documents and records of such organization that are necessary to verify the nature and extent of such costs

Section 2223. ADDITIONAL ACTIVITIES

The University recognizes that in the changing health care delivery environment, the future condition of the University of Kentucky Medical Center and the University of Kentucky College of Medicine will depend on adjusting to those changes. The Foundation recognizes that it can assist the University to make these adjustments and that it should do so when such



assistance can be provided without having a material negative impact on the Foundation's primary duty to bill and collect on behalf of faculty members who have executed practice agreements and assignments. Thus, subject only to the limitation that the Foundation not engage in the practice of medicine or duplicate other activities of the University of Kentucky Medical Center, the Foundation with the prior written approval of the Dean of the College of Medicine or the Executive Vice President for Health Affairs shall be entitled and is authorized to engage in and pay for the expenses of business activities of any and/or all types, (directly or indirectly, as an owner, investor or through a wholly or partly owned subsidiary, pursuant to a contract and/or joint venture and/or in any other manner) including but not limited to the provision of administrative services, a Management Services Organization (MSO), and other services to individuals and entities within and/or outside the Plan. It is also authorized with prior written approval of the Dean of the College of Medicine or the Executive Vice President for Health Affairs to incur obligations in connection therewith, as contemplated by or authorized pursuant to this Agreement. The Dean of the College of Medicine or the Executive Vice President for Health Affairs shall determine whether duplication of activities exists and a means for resolution of same.

Section 2324. CORPORATE COMPLIANCE

Foundation affirms that it is not excluded from participation, and is not otherwise ineligible to participate in a “Federal health care program” as defined in 42 U.S.C. section 1320a-7b(f) or in any other state or federal government payment program. In the event that Foundation is excluded from participation, or becomes otherwise ineligible to participate in any such program, during the term of this agreement, Foundation will notify the University of Kentucky Chandler Medical Center, hereinafter “UKCMC”, Office of Compliance, ~~A301-KY~~

~~Clinic, 2333 Alumni Park Plaza, Suite 200~~ Lexington, Kentucky ~~40536-40517~~ in writing, by certified mail within 48 hours after said event, and upon the occurrence of any such event, whether or not appropriate notice is given, the University of Kentucky, shall have the right to terminate this Agreement upon written notice if such matter is not cured within a reasonable timeframe as determined at the sole discretion of the University.

Additionally, Foundation affirms that it is aware that UKCMC operates in accordance with a corporate compliance program, employs a Corporate Compliance Officer and operates a 24 hour, seven day a week compliance Comply-line. Foundation has been informed that a copy of the UKCMC compliance plan is on file in the purchasing office and that it is encouraged to review the plan during normal business hours. It is understood that should Foundation be found to have violated the UKCMC compliance plan, UKCMC can, at its sole discretion, terminate this Agreement upon written notice if such matter is not cured within a reasonable timeframe as determined at the sole discretion of the University. Foundation recognizes that it is under an affirmative obligation to immediately report to UKCMC's Corporate Compliance Officer through the comply-line 1-877-898-6072, in writing, or directly (859) 323-6044 any actions by an agent or employee of UKCMC which Foundation believes, in good faith, violates an ethical, professional or legal standard.

Nothing in this Agreement contemplates or requires that any party act in violation of federal or state law. Nonetheless, should any term or condition set forth in this Agreement later be creditably alleged, suspected or determined to be illegal, the parties agree to immediately cease the questioned activity and negotiate modification to the effected portion of the Agreement for a thirty (30) day period. If at the end of this period, no compromise can be reached, the Agreement will terminate.

Section 2425. NO THIRD-PARTY BENEFICIARIES

This Agreement shall not confer any right, remedy or benefit upon any employee of the University or the Foundation or any other person or entity other than the University and the Foundation.

Section 2526. BUSINESS ASSOCIATE AGREEMENT

In the event Foundation or University in the opinion of either party's counsel are determined to be business associates under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or any of its regulations, the parties agree to timely enter into the appropriate business associate agreements.

Section 2627. TERM

The term of this agreement shall begin on July 1, 2009<sup>8</sup> and end on June 30, 2010<sup>9</sup>.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, pursuant to proper authorization of their respective governing boards, as of the day and year first above written.

BOARD OF TRUSTEES OF  
THE UNIVERSITY OF KENTUCKY

BY: \_\_\_\_\_  
Lee T. Todd, Jr.  
President  
University of Kentucky

KENTUCKY MEDICAL SERVICES  
FOUNDATION, INC.

BY: \_\_\_\_\_  
Jay A. Perman, MD  
President

RECOMMENDED BY:

\_\_\_\_\_  
Michael Karpf, MD  
Executive Vice President for Health Affairs