

**SUBSTANTIALLY FINAL DRAFT—SUBJECT TO REVIEW AND APPROVAL BY
STATE GOVERNMENT**

**UNIVERSITY OF LOUISVILLE
SCHOOL OF MEDICINE TEACHING HOSPITAL
OPERATING ACADEMIC AFFILIATION AGREEMENT**

This UNIVERSITY OF LOUISVILLE SCHOOL OF MEDICINE TEACHING HOSPITAL OPERATING ACADEMIC AFFILIATION AGREEMENT (“**Agreement**”) is entered into as of the 1st day of January, 2012, (“**Effective Date**”) by and among (i) the COMMONWEALTH OF KENTUCKY, acting through its Secretary of the Finance and Administration Cabinet (“**Commonwealth**”), (ii) the UNIVERSITY OF LOUISVILLE, an instrumentality of the Commonwealth acting through its Board of Trustees (“**University**”), (iii) UNIVERSITY MEDICAL CENTER ,Inc., a Kentucky nonprofit corporation (“**UMC**”) and (iv) JH Properties, Inc., a Kentucky not for profit corporation and the sole member of UMC (“**Holdco**,” and collectively with UMC, “**Newco**”).

The Commonwealth, the University and UMC are parties to that certain Academic Affiliation Agreement dated February 6, 1996, as amended (“**Original Affiliation Agreement**”).

The Commonwealth, the University and UMC desire to amend and restate the Original Affiliation Agreement in its entirety with the terms of this Agreement and to add Holdco as a party.

It is in the best interests of the University to enter into this Agreement with Newco and UMC in connection with their operation of the University’s Principal Adult Teaching Hospital.

University is authorized to enter into contracts for financial and management services pursuant to KRS 164A.560 and 740 KAR 1.

In consideration of the mutual covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties set forth above hereby agree that the terms of the Original Affiliation Agreement are hereby amended, restated and replaced in their entirety with the following:

1. SCOPE AND PURPOSES OF AFFILIATION

Among the purposes of this Agreement, are to advance the following purposes:

- (i) To set out the rights and responsibilities of the Parties to this Agreement to establish the Principal Adult Teaching Hospital of the University’s School of Medicine;
- (ii) To sustain and enhance University’s education and research in medicine, dentistry, nursing and public health;
- (iii) To provide a stable mechanism for providing quality patient care to patients in Louisville Metro, regardless of ability to pay;

(iv) To create and maintain an environment in which full time Faculty of the School of Medicine will work collaboratively with community physicians who are not full time Faculty of the School of Medicine to provide quality, affordable healthcare to the public; and

(v) To provide resources and support so that NTH can be sustained and enhanced as a state-of-the-art facility providing high-quality healthcare to patients.

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meaning indicated:

“Academic Department Chair” shall mean the professor with administrative responsibility for an academic Department of the School of Medicine.

“Adult Burn Center” shall mean the facility for the treatment of burns that has been historically operated at Old ULH.

“ACGME” shall mean the Accreditation Council for Graduate Medical Education.

“Anesthesiology” shall mean the clinical activities performed by the University School of Medicine’s Department of Anesthesiology and Perioperative Medicine.

“Best Efforts” means, as to a Party hereto, an undertaking to perform or satisfy an obligation or duty or otherwise act in a manner reasonably calculated to obtain the intended result by action or expenditure not disproportionate or unduly burdensome in the circumstances. Best Efforts does not mean a Party will institute litigation or arbitration to perform or satisfy an obligation.

“Cardiac Services” mean those services offered at NTH that are related to the medical and/or surgical diagnoses and treatment of the human heart, and research related thereto, to the extent it is conducted as part of the Program of NTH.

“Cardiac Surgery” means the discipline related to cardiac surgical diagnosis and treatment.

“Chief of Service” shall have the meaning assigned to it in Section 6.2 of the Agreement.

“Clinical Department Chair” shall mean the University professor with administrative responsibility for one of the academic Clinical Departments at the University School of Medicine.

“Clinical Department” shall mean (a) any one of the following sixteen academic clinical departments operated by the University School of Medicine: Anesthesiology and Perioperative Medicine; Radiology; Emergency Medicine; Family and Geriatric Medicine; Medicine; Neurology; Neurological Surgery; Obstetrics, Gynecology and Women’s Health; Ophthalmology & Visual Sciences; Orthopedic Surgery; Pathology and Laboratory Medicine; Pediatrics; Psychiatry and Behavioral Sciences; Radiation Oncology; Surgery; and Urology; and (b) the academic clinical department associated with the University School of Dentistry.

“Committee” means the standing committee of the Newco board of directors, known as the Academic Medical Center Committee, as described in Section 4 of this Agreement.

“Commonwealth” shall have the meaning set forth in the preamble of this Agreement.

“Continuing Medical Education” shall mean a Program offered at NTH with the intent of retaining or increasing the competence of the individuals practicing at NTH who are licensed to by the Commonwealth to practice medicine.

“Dean” shall mean the chief academic officer of the University’s School of Medicine.

“Department” shall mean a recognized academic department of the School of Medicine within either the Basic Sciences or Clinical Services departments and administered by a chair appointed by the Dean.

“Emergency Medicine and Trauma” refers to those facilities and services at NTH which will respond to needed emergent care by the public.

“Faculty” means all individuals who hold an academic appointment in the School of Medicine, other than Gratis Faculty.

“Graduate Medical Education” shall mean the graduate medical education Programs conducted by the School of Medicine which is accredited by the Accreditation Council on Graduate Medical Education (ACGME), American College of Obstetrics and Gynecology (ACOG), or a similarly recognized national accrediting body.

“Gratis Faculty” means those individuals who hold non-tenured, uncompensated appointments in the School of Medicine.

“Hospital Based Departments” shall mean those departments of NTH that furnish anesthesiology, radiology, pathology, and emergency medicine services.

“Hospital Based Physicians” shall mean the individuals who practice medicine primarily in one of the Hospital Based Departments.

“Hospital Based Services” shall mean the following hospital-based physician specialties: Anesthesiology, Radiology, Pathology, and Emergency Medicine.

“Hospital Trauma Center” shall mean the American College of Surgeons certified Level I Trauma Center in which Emergency Medicine, Trauma, and other related services are delivered.

“Initial Term” shall mean the period of time commencing on the date of this Agreement and continuing through midnight on December 31, 2037.

“Intensive Care Services” shall mean the specialized intensive care services provided to patients in applicable intensive care units of NTH.

“IRB” shall mean the University’s Institutional Review Board

“Jewish” shall mean Jewish Hospital and St. Mary’s Healthcare, Inc., a Kentucky not for profit corporation.

“JHHS” shall mean Jewish Hospital Healthcare Services, Inc., a Kentucky not for profit corporation.

“Kentucky Statewide Network” refers collectively to the entity or entities that resulted from the operational consolidation of all or substantially all of the healthcare services of University Medical Center, Inc., Jewish, JHHS, St. Joseph’s Health System, Inc., and Flaget Health, Inc., on or about the date of this Agreement and their affiliates within the Commonwealth.

“Law(s)” means all federal, state and local statutes, law, ordinances, regulations, rules, resolutions, orders, determinations, writs, injunctions, awards (including awards of an arbitrator), judgments and decrees applicable to the relevant entity and to the businesses and assets thereof.

“Lease(s)” shall mean the real estate leases described on Exhibits A and B, and incorporated herein by reference.

“Louisville Metro” shall mean the unit of local government resulting from the consolidation of the governments of the City of Louisville and Jefferson County, Kentucky.

“Materially Affect” includes, but is not limited to, any actions that would materially (i) affect the size of, or jeopardize the accreditation of, any University teaching, clinical or Research Program, or (ii) prevent or unreasonably restrain the University’s hospital-based clinical and/or research activities at NTH.

“Medical Director” shall mean the individual administratively responsible for the delivery of a health service at NTH, as designated by NTH, in accordance with Section 6.2 of this Agreement.

“Neonatal Services” shall mean the professional care of the newly born infants that require neonatal specialty/intensive care.

“Neurology Hospitalist Services” means inpatient neurology and stroke services.

“Newco” is as defined in the preamble to this Agreement.

“NTH” refers to the new adult teaching hospital(s) formed as a result of the consolidation of the operations of Old Jewish and Old ULH, which serves as the Principal Adult Teaching Hospital of the University of Louisville School of Medicine.

“Old Jewish” refers to the licensed healthcare facilities and operations of Jewish at its medical campus in downtown Louisville prior to the creation of the Kentucky Statewide Network, which include the Jewish Hospital and Frazier Rehab Institute.

“Old ULH” refers to the healthcare facilities and operations of UMC prior to the creation of the Kentucky Statewide Network, which include the University of Louisville Hospital and the James Graham Brown Cancer Center.

“Operating Budget” means the budget for NTH by Newco, including all projected revenues and expenses relating to patient care operations.

“Oncology” shall refer to the medical and surgical treatment of cancer.

“Parties” shall refer to University, UMC, Commonwealth, Holdco, and Newco.

“Pathology” shall mean the clinical activities performed by the University School of Medicine’s Department of Pathology and Laboratory Medicine.

“Physical Medicine and Rehabilitation Services” shall mean the medical specialty of Physiatry in which physicians are trained to manage the rehabilitation and medical comorbidities of illness or injuries that result in loss of function, including diagnosis, electrodiagnosis, medical care, pain management, therapy prescription and the team approach to interdisciplinary health care.

“Principal Adult Teaching Hospital” means the hospital most commonly used by the University School of Medicine for all ACGME approved residency and fellowship programs, other than pediatric programs.

“Program” shall mean a clinically related group of services which are part of the teaching or research program of University.

“Proprietary and Confidential Information” shall mean all information that relates to or is used in connection with the business and affairs of any Party to this Agreement (that does not constitute Proprietary and Confidential Information of another Party to this Agreement) including computer programs, and all operating manuals or similar materials, policies and procedures, administrative, advertising and marketing material and other information used by a Party in the performance of its obligations under this Agreement. No Party shall have any obligation to identify specifically its Proprietary and Confidential Information. Proprietary and Confidential Information shall exclude any information (i) which is already known by the disclosing Party from a source unrelated to this Agreement, (ii) which is a matter of public knowledge, (iii) which has heretofore been or is hereafter published in any publication available for public distribution, or (iv) which was filed as public information with any governmental authority, except to the extent such information was made public as a result of the act or omission of any Party, including any breach of an agreement of confidentiality by such Party.

“Radiation Oncology Services” mean any services offered at NTH which involve the treatment of cancer or other diseases through the use of radiation.

“Radiology” means any services offered at NTH which involve any diagnostic and/or interventional radiologic procedure. For these purposes, Radiology shall not be applied in a manner that excludes other specialties (e.g., cardiology) from exercising privileges that commonly overlap with radiology services.

“Renewal Term” shall have the meaning set forth in Section 19.1(b).

“Research” means the activity of University School of Medicine Faculty and other clinical researchers aligned with Newco and working within the NTH or those who are otherwise supported by Newco.

“School of Medicine” shall refer to University’s School of Medicine.

“Solid Organ Transplant Services” shall mean services involving any human organ, including, but not limited to, heart, liver, lung and kidney transplants.

“Sponsorship Agreement” shall mean that agreement by the same name between University, CHI, JHHS, and Newco of approximate same date herewith.

“Strategic Plan” shall mean the document described in Section 5.4 of this Agreement.

“Term” shall mean the Initial Term and any and all Renewal Terms as described in Section 19 of this Agreement.

“Transplantation Services” mean Solid Organ Transplant Services and any other procedure that includes the transplantation of live human cells, such as bone marrow, peripheral blood stem cell, or cord blood. Transplantation Services shall not include hand transplantation services.

“Trauma Services” mean the Level I trauma services, other than hand-related trauma services, offered at NTH.

“UMC” is as defined in the preamble to this Agreement.

“University” is as defined in the preamble to this Agreement.

“Women’s Services,” as used in Section 6 of this Agreement, refers to all subspecialty services offered by the School of Medicine’s Department of Obstetrics, Gynecology and Women’s Services; however, it does not include general obstetrics and gynecological services.

3. LEASE AND OPERATION OF FACILITIES

Newco, or one of its wholly owned affiliates, will lease the real property constituting the NTH pursuant to the Lease(s). The Parties specifically affirm that the sole purpose of the Lease(s) are to operate NTH in conformity with this Agreement, that the Lease(s) are an integral part of the overall agreement set forth herein and that the continuance of the Lease(s) are expressly conditioned upon the compliance by all Parties with this Agreement.

4. ACADEMIC MEDICAL CENTER COMMITTEE

4.1 Purpose of the Newco Academic Medical Center Committee. NTH is owned and operated by Newco, and shall be operated as part of Newco, which has established the Committee as a standing committee of the Newco Board of Directors. The Committee shall

provide input and recommendations to the Newco board on matters specific to NTH as set forth in Section 4.4 of this Agreement and as otherwise requested by the Newco board.

4.2 Membership of the Newco Academic Medical Center Committee. The Committee will consist of twelve (12) members, a majority of whom at all times shall be individuals affiliated with the University. Membership on the Academic Medical Center Committee shall be designated as follows:

(a) *University Positions.* The University shall hold seven (7) positions on the Newco Academic Medical Center Committee, all of which shall have full voting rights. Those positions shall be designated as follows:

(i) The Executive Vice President-Health Affairs of the University;

(ii) The Dean of the University School of Medicine. (If at any time the office of the Dean of the University School of Medicine is held by the same individual as the Executive Vice President-Health Affairs of the University, the Vice Dean for Clinical Affairs of the University School of Medicine, or an individual holding a comparable position, shall hold the University's second position on the Committee.); and

(iii) Five (5) full-time Faculty members of the University's School of Medicine, no less than two of whom serve on the Medical Executive Committee of the NTH Medical Staff, which are appointed by the Executive Vice President-Health Affairs of the University.

(b) *JHHS Positions.* JHHS shall appoint one (1) physician with active privileges on the NTH Medical Staff who shall have full voting rights.

(c) *Community Physician Positions.* Two (2) community physicians who serve on the Medical Executive Committee of the NTH Medical Staff, both of whom shall have full voting rights. The first two positions are appointed by the legacy JHSMH Medical Staff from their appointees to the Medical Executive Committee of the NTH Medical Staff. Thereafter, the Medical Staff bylaws of NTH Medical Staff will provide for such appointments.

(d) *Newco Positions.* The following two (2) Newco employees shall hold positions on the Academic Medical Center Committee:

(i) The Newco CEO, who shall have full voting rights; and

(ii) The top administrator of the NTH, who shall not possess any voting rights.

4.3 Leadership of the Academic Medical Center Committee. The Executive Vice President-Health Affairs of the University, or his/her designee (and if a designee is appointed, such designee must be a member of the Committee) shall serve as Chair of the Committee.

4.4 Responsibilities of the Academic Medical Center Committee.

(a) The Committee shall provide input and recommendations to the Newco board in each of the following areas, as they relate to NTH:

(i) Any action which (i) could Materially Affect the teaching, clinical or research mission of the School of Medicine, or (ii) would eliminate or significantly reduce existing clinical services, or prevent the development of a new clinical service, deemed necessary by the University for a complete and competitive School of Medicine. The Committee shall identify and use appropriate benchmarking tools to compare the strength of NTH and the School of Medicine against peer institutions.

(ii) The Committee and Newco management will develop proposed capital budgets, operating budgets and strategic plans for NTH, which take into account the needs and priorities identified by the Committee. The jointly developed budgets and strategic plans (required by Section 5.4) will be presented to the Newco board for approval and adoption. To the extent that the budgets and/or strategic plan presented to the Newco board do not fully incorporate the recommendations of the Committee, those additional requests will be presented to the Newco board for consideration, along with the proposals presented by Newco management. Should the Newco board fail to fully incorporate the Committee's recommendations, the Newco CEO shall provide prompt formal feedback to the Committee as to the rationale of the Newco board.

(iii) The involuntary termination of employment, disciplining and job performance evaluation of the individual acting as the top administrator of NTH. Additionally, the Committee shall play an integral role in the selection and hiring of such individual. The Committee will also provide input and recommendations to the Newco CEO and the individual acting as the top administrator of NTH in the hiring, termination of employment, disciplining and job performance evaluation of the top financial administrator for NTH. Notwithstanding the foregoing, the top administrator of NTH shall report to the Newco CEO, who shall have ultimate authority to hire, fire, discipline, and evaluate the job performance of the top administrator.

(iv) The Committee and University will provide a "State of the Academic Medical Center" report to the Newco board on an annual basis. The report will address such topics as the Newco board may request.

(b) The responsibilities of the Committee as set forth in Section 4.4(a) above, shall extend to other University academic Programs and corresponding NTH clinical programs or services which are either relocated from NTH or established at another Newco facility as contemplated in Section 5.2.

5. **ACADEMIC AND OTHER PROGRAMS**

5.1 Roles of Newco and University.

(a) The Parties agree that NTH shall serve as the University's Principal Adult Teaching Hospital, and shall be available for teaching, research and clinical care Programs of the University Schools of Medicine, Dentistry, Nursing, and (in the case of research) Public Health. Newco and University shall cooperate to assure that NTH and each of the undergraduate medical, graduate medical, continuing medical, professional, undergraduate, and all other

educational Programs contemplated herein remain fully licensed and accredited as needed to effectively conduct its business and such Programs.

(b) Newco shall not conduct, initiate, move, redeploy, change, or otherwise interfere with any training Programs or rotations located at NTH or any other Newco controlled facility without the prior written consent of University; provided that Newco can move or relocate programs within NTH. Newco will cooperate with University to increase the participation in NTH's teaching Program by community physicians who are interested in such Programs; provided, however, that no physician shall receive an academic appointment (including a gratis appointment), except in accordance with the rules of University's School of Medicine and the Department(s) in which the individual seeks the academic appointment.

(c) Matters affecting University teaching, training, research, and clinical Programs are reserved solely to the University. All Faculty, residency, fellowship and student related issues shall be solely under the jurisdiction of University's School of Medicine. The University shall be solely responsible for defining the size, work assignment, curriculum, and geographic distribution of all residency Programs, as well as the content, delivery, and geographic location of delivery of the curriculum. Without limiting the foregoing, this provision requires that University will solely be responsible for selection, academic evaluation, and dismissal of all students enrolled in University. Residents shall be employees of the University, and the University will be responsible for payment of resident salaries, benefits, and malpractice insurance, as well as resident disciplinary matters. Furthermore, the University shall exclusively set the criteria for awarding all academic appointments (including gratis appointments) for any individual associated with the University, and the University shall have the exclusive right to determine promotion, tenure, salary, and work assignments of all University Faculty members, interns, residents, and fellows. In exercising its authority, University shall require its Faculty, residents, fellows and students shall abide by all NTH policies and procedures while conducting activities on NTH premises or otherwise within its programs.

5.2 Location of Programs.

(a) Without the prior written consent of the other Party, University will not eliminate or relocate any existing academic training Program, and Newco will not eliminate or relocate any existing clinical service lines located at NTH, to the extent that such academic training Programs and clinical programs are linked together; provided, however, that Newco's right to control day-to-day operations of NTH and University's right to control matters related to teaching, training, research, and clinical Programs shall not be infringed; and provided further that Newco can move or relocate clinical service lines within NTH. The Parties will work together to locate programs at the most appropriate facility to meet the ACGME Residency Review Committee volume requirements.

(b) Should the Parties agree to relocate an existing academic training Program and clinical service line located at NTH to another facility within the Kentucky Statewide Network, then the applicable provisions of this Agreement shall apply as identified below:

(i) If a single academic Program and corresponding clinical service line is relocated to form a single specialty hospital, then Section 6.2 of this Agreement shall extend to the single specialty hospital;

(ii) If a single academic Program and corresponding clinical service line is relocated from NTH to a new or existing general acute care hospital, then Section 6.2 of this Agreement shall extend to the academic Program and clinical service line at the general acute care hospital; and

(iii) If one or more academic Programs and corresponding clinical service lines are relocated from NTH to a new or existing general acute care hospital and 60% or more of the inpatient clinical volume at such facility is generated by University Faculty, then Sections 6.2, 6.3 and 6.4 (as applicable) of this Agreement shall extend to the entire hospital.

5.3 Integration with Kentucky Statewide Network. Each Party will use its Best Efforts to expand the University's teaching, research and clinical involvement with each of the health care facilities in the Kentucky Statewide Network. Newco will also evaluate where it might expand the direct presence of University teaching Programs in the Louisville Metro and other geographic areas served by Newco facilities. The details of such relationships may be determined in separate agreements between Newco and University.

5.4 Strategic Plan. Newco will develop a strategic plan to include, but not be limited to, physician workforce planning, program development, and other strategic initiatives specific to NTH which is designed to achieve, among other things, timely implementation of the programs and achievement of the objectives described in this Agreement. Newco will promptly appoint the necessary groups, which shall include the active involvement of a representative group of the Academic Medical Center Committee, to develop the NTH strategic plan and its various components. It is not the intent of this Agreement to define all of the components or the boundaries of a strategic plan. The strategic planning process and the implementation of plans developed in that process will continue throughout the term of this Agreement.

5.5 Enhancement and Strengthening of Programs.

(a) Newco and University will work to strengthen and enhance distinctive programs offered at NTH which shall include, but not be limited to, neurosciences, Trauma Services, Transplantation Services, Cardiac Services, Oncology Services, Women's Services, Neonatal Services, and the Adult Burn Center, and market them through public awareness, outreach, and participation in the Kentucky Statewide Network.

(b) The achievement of the following National Cancer Institute designations are strategic priorities of the Parties: (i) Comprehensive Cancer Center designation for the University, and (ii) Community Cancer Centers Program designation for NTH and/or other Newco hospitals. Notwithstanding anything in the foregoing to the contrary, the failure to obtain such designation or status alone shall not be a Breach of this Agreement.

(c) The Parties acknowledge and agree that the attainment of the "magnet status" designation for NTH from the American Nurses' Credentialing Center is a strategic

priority the Parties. Notwithstanding anything in the foregoing to the contrary, the failure to obtain such designation or status alone shall not be a Breach of this Agreement.

(d) Newco will either accept the assignment of, or enter into new, professional service and academic support agreements which, at a minimum, are substantially similar to those currently in existence between Old ULH and Old Jewish and the University. A listing of each of those contracts is attached hereto as Exhibit C. Each professional service and academic support agreement entered into pursuant to this Section 5.5(d) (or other agreements between Newco and individual physicians or groups of physicians) shall include provisions to include, as applicable, but not be limited to, (1) performance standards, including, but not limited to, quality, patient satisfaction, and reasonable access; (2) reasonable remedies, including termination for material breaches which termination shall not be deemed a breach of this Agreement; and (3) standard and customary non-compete provisions and restrictive covenants. Consistent with the vision of Newco, all contracts with physicians will include requirements that the physicians use Best Efforts to assure continuity of care and patient access to services, and to manage or eliminate any negative financial impact on patients. Any disagreements will be subject to the cure and dispute resolution process set out in Section 20.

(e) If the University moves any additional Programs to NTH from any other health care institution, Newco will, as a condition of such transfer, agree to academic program support agreements and graduate medical education funding which is consistent with the amount paid to University by the health care institution at which such Program was formerly located. These additional academic program support and graduate medical education funding commitments shall be consistent with the general requirements of Section 8.2 of this Agreement and the amount set forth in Section 8.2(b) and 8.2(c) of this Agreement shall be adjusted to include such increased funding requirements.

5.6 New Programs. Newco and University will each use their collective Best Efforts to develop and implement new academic, clinical and research Programs at NTH and pursuant to the strategic plan described in Section 5.4 of this Agreement. The development of new Programs will include provisions for appropriate academic program support by Newco. Faculty participation in this strategic planning process will include both Clinical Department Chairs and other Faculty, with appropriate consultative processes for Faculty and community physicians active at NTH. Newco shall integrate such Programs into the Kentucky Statewide Network to the maximum extent feasible, consistent with the mission of the Kentucky Statewide Network.

5.7 Underfunded Programs. In addition to any other remedies the University may have available under this Agreement, if Newco fails to provide material financial support for, or otherwise ceases to support a material clinical service or Program that is either necessary for the University School of Medicine to maintain accreditation or support a complete and competitive School of Medicine, University shall have the right to locate or relocate such Programs as set forth in Section 6.3(A) of the Sponsorship Agreement.

6. **MEDICAL AND DENTAL STAFF**

6.1 Generally. A single medical and dental staff, encompassing all dentists, physicians and other licensed health care professionals with privileges to provide professional

services within NTH (“Medical Staff” or “NTH Medical Staff”), shall be established effective July 1, 2012. Appointments to NTH’s Medical Staff shall be open to (a) physicians who are members of the University School of Medicine Faculty, and other physicians who do or would meet the requirements for a particular category of Medical Staff privileges at Old Jewish, and (b) other licensed health professionals who lawfully can be and are granted such privileges, consistent with NTH’s Medical Staff bylaws. University will use its best efforts to recruit qualified physicians to become members of its Faculty and will cooperate with Newco to process applications for Faculty status based upon submission of documentation by the Medical Staff of Hospital to the appropriate University department. Non full time Faculty will be encouraged, but not required, to seek Gratis Faculty appointments. In granting Gratis Faculty appointments, University shall follow the rules of University’s School of Medicine and of the Department in which the appointment is sought.

6.2 Chief of Staff, Chiefs of Services, and Other Medical Staff Matters.

(a) *Clinical Departments.* The Medical Staff at NTH will be organized into the following Clinical Departments: Anesthesiology and Perioperative Medicine; Radiology; Emergency Medicine; Family and Geriatric Medicine; Medicine; Neurology; Neurological Surgery, Obstetrics, Gynecology and Women’s Health; Ophthalmology & Visual Sciences; Orthopedic Surgery; Pathology and Laboratory Medicine; Pediatrics; Psychiatry and Behavioral Sciences; Radiation Oncology; Surgery; Urology; and Oral and Maxillofacial Surgery. The Clinical Departments will be organized for the purpose of implementing processes (i) to monitor and evaluate the quality and appropriateness of the care of patients served by the Departments, and (ii) to monitor the practice of all those with clinical privileges in a given Department. A Chief of Service will oversee the Clinical Departments.

(b) *Chief of Staff.* The Dean of the University’s School of Medicine (or his/her designee, which may be from the voluntary Medical Staff of NTH) shall serve as the Chief of the NTH’s Medical Staff. The responsibilities of the Chief of Staff shall include the appointment of Chiefs of Service, as well as the oversight of the work performed within each Clinical Department. The Dean of the University’s School of Medicine (or his/her designee, as applicable) must be a member in good standing of the NTH Medical Staff and hold appropriate clinical privileges. In the event that the Dean of the University’s School of Medicine does not satisfy the applicable criteria, he/she must appoint a qualified designee to serve as Chief of Staff.

(c) *Chiefs of Service.* The Clinical Department Chairs of the School of Medicine (or their respective designees, which may be from the voluntary Medical Staff of NTH), who shall be appointed annually by the Dean, shall serve as the Chiefs of Service at NTH. Each Clinical Department Chair (or his/her designee, as applicable) who serves as a Chief of Service, must be a member in good standing of the NTH Medical Staff and hold appropriate clinical privileges. In the event that a Clinical Department Chair does not satisfy the applicable criteria, he/she must appoint a qualified designee to serve as a Chief of Service in her/his place. Each Chief of Service shall fulfill the following roles:

(i) Ensure that the academic, administrative, and clinical functions of each respective section meet all applicable requirements for undergraduate and graduate medical education;

(ii) Ensure that all research activity applicable to his/her section meets applicable Newco research requirements;

(iii) Ensure, in collaboration with other full-time Faculty and non-full-time Faculty physicians within the same discipline, the development and implementation of all applicable Medical Staff requirements for licensure, accreditation, and exemplary patient care to include, but not be limited to:

(1) Establishing credentialing and privileging criteria for all applicable services within each respective clinical department;

(2) Establishing peer review criteria and functions for the applicable services within each respective clinical department; and

(3) Establishing quality, efficiency, and patient safety objectives and metrics for the applicable services within each respective clinical department.

(iv) Ensure, in collaboration with other full-time Faculty and non-full-time Faculty physicians within the same discipline, that all credentialed and privileged practitioners within each respective clinical department have the opportunity for input into decisions regarding applicable areas of oversight;

(v) Ensure, in collaboration with other full-time Faculty and non-full-time Faculty physicians within the same discipline, that all pertinent operational and clinical issues relating to each respective clinical department are effectively addressed; and

(vi) Report regularly to the NTH Medical Staff Medical Executive Committee ("MEC") and any other committee of the NTH Medical Staff as deemed necessary.

(d) *Medical Staff Governance.* The NTH Medical Staff shall, at a minimum, include the following three standing committees, for the purposes for meeting applicable regulatory and accreditation requirements, as well as ensuring the provision of exemplary patient care: (1) Medical Executive Committee, (2) Credentials Committee, and (3) Quality and Patient Safety Committee. The NTH Medical Staff Bylaws shall be composed in a manner consistent with the following:

(i) Medical Executive Committee. The MEC shall have the duties prescribed by The Joint Commission, state licensure laws and other applicable regulatory and accrediting bodies and shall not conflict with the roles and responsibilities of the AMC Committee as specified in Section 4.4.

(1) Composition of MEC. The initial MEC shall be composed in a manner consistent with the following: (a) ten non-Faculty physicians (or such lesser number to the extent any of the MEC Officers are non-Faculty physicians); (b) ten Faculty physicians consisting of the Chief of Staff, plus nine Chiefs of Service selected by the Chief of Staff (or such lesser number to the extent any of the MEC Officers, other than the Chief of Staff, are Faculty physicians); and (c) the remaining seven Chiefs of Service. The MEC members identified in (a) and (b) in the preceding sentence shall have full voting rights, while those MEC

members identified in (c) shall sit as non-voting ex-officio members. Any future changes in the composition of the MEC must be approved two-thirds (2/3) of the members of the NTH Medical Staff. In no event shall the number of Faculty physicians on the MEC ever fall below the number of non-Faculty physicians on the MEC.

(2) Officers of MEC. The NTH Medical Staff President shall serve as the Chair of the MEC. The Chief of Staff shall serve as the Vice-Chair of the MEC. The initial NTH Medical Staff President will be selected from the non-Faculty physicians to be chosen by a majority vote of such persons. The NTH Medical Staff Bylaws shall provide for the election of successor NTH Medical Staff Presidents (who shall serve as successor Chairs of the MEC) and the Secretary-Treasurer of the MEC, all of whom can be selected from among either the non-Faculty physicians or the Faculty physicians, provided that the selection of such persons and the selection of such persons pursuant to Section 6.2(d)(i)(1)(a) and (b) will maintain in the aggregate the equal voting representation on the MEC described in Section 6.2(d)(i)(1)(a) and (b) of non-Faculty physicians and Faculty physicians. The terms of the initial Officers of the MEC shall be for two years.

(3) Concurrent Authority. The MEC shall not have any powers granted to the AMC Committee pursuant to this Agreement. The bylaws of Newco and the NTH Medical Staff shall provide that in the event that any regulatory or accrediting body requires the MEC to advise the Board of Newco on any matter which the Committee has concurrent rights under Section 4.4 of this Agreement, the MEC shall reference in whole without amendment, comment or clarification the applicable report of the Committee for all purposes of such requirements.

(ii) Credentials Committee. The members of the Credentials Committee will be appointed by the Medical Executive Committee and will consist of equal numbers of Faculty members and non-Faculty members. The Chair of the Credentials Committee will be appointed by the Medical Executive Committee and will serve a one-year term. The role of the Credentials Committee will include the following: make recommendations to the Medical Executive Committee on criteria for credentials and privileges for all Medical Staff members; make recommendations to the Medical Executive Committee on credentials and privileges for all medical specialties represented within the organized Medical Staff; and cooperate with the Medical Executive Committee on resolution of all credential and privilege disputes. Medical staff credential and privilege disputes will be handled through procedures established in the NTH Medical Staff bylaws, rules and regulations, and such disputes will not be subject to the dispute resolution procedures set forth in Sections 19 and 20 of this Agreement.

(iii) Quality and Patient Safety Committee. The role of the Quality and Patient Safety Committee will include the following: providing oversight of all quality, patient safety, and clinical performance improvement activities of the NTH Medical staff, and performing the initial review of peer review criteria recommended by the Chiefs of Service for each Clinical Department and making recommendations on those criteria to the NTH Credentials Committee and MEC. The members of the Quality and Patient Safety Committee shall be appointed by the MEC and shall consist of an equal number of Faculty members and non-Faculty physicians. The Chair of the Quality and Patient Safety Committee shall be selected by the MEC to serve a one year term.

(e) *Effective Date.* Sections 6.2(a) through (d) will become effective on July 1, 2012.

(f) *Miscellaneous.* A physician may be appointed as a Chief of Service or Clinical Department Chair at NTH only if such individual is the corresponding Academic Department Chair, unless such Academic Department Chair, with the concurrence of the Dean of University's School of Medicine, designates another individual.

(g) *Medical Directors.* Notwithstanding Section 17, Newco can enter into contracts with any member of the NTH Medical Staff (whether a non-Faculty physician or a Faculty physician) for medical administrative or clinical administrative services provided that: (1) Newco notifies the applicable Chief of Service of the terms and conditions of such agreement, and (2) Newco and the Chief of Service jointly coordinate and integrate the work plan attendant to such agreement with the work plan of the applicable Clinical Department.

6.3 Exclusive Services:

(a) *Hospital-Based Exclusive Contracting Arrangements.* Newco will enter into exclusive service contracts for Hospital-Based Services delivered within the NTH. These contracts will become effective July 1, 2012. Between January 1, 2012, and June 30, 2012, the Executive Vice President of Health Affairs of University (or his designee) and the existing exclusive service line providers shall develop a single contracting entity for the exclusive Hospital Based Services that will include the following concepts: (1) all parties to existing exclusive contracts at Old Jewish and Old ULH will be invited to participate; and (2) the option for some or all of both the full-time faculty physicians and non-full time faculty physicians to participate in teaching and research or participate solely in clinical activities. If the parties have not reached agreement by June 30, 2012 as to the form of such contracts, Newco will enter into exclusive contracts for Hospital-Based Services with the University's Hospital-Based Departments.

(b) *Other Exclusive Contracting Arrangements.* Newco will enter into exclusive contracts with University and shall maintain contracts with the University throughout the Term of this Agreement, which would grant the University the right to be the exclusive service provider of the following specialty services at NTH:

- (i) Trauma Services,
- (ii) Transplantation Services,
- (iii) Women's Services,
- (iv) Cardiac Surgery,
- (v) Neurology Hospitalist Services
- (vi) Intensive Care Services;
- (vii) Neonatal Services; and

(viii) Physical Medicine and Rehabilitation Services.

As of the Effective Date, existing agreements between UMC and the University for the service lines described in this Section 6.3(b) will remain in effect. Between the Effective Date and July 1, 2012, Newco and the University's Executive Vice President—Health Affairs ("EVPHA") will agree on new agreements for the service lines described in this Section 6.3(b), which new agreements will have an effective date of July 1, 2012 and which will incorporate the terms of this Agreement. If agreement is not reached by July 1, 2012, Newco and the EVPHA will continue to work in good faith to get the new agreements implemented as soon as reasonably possible, and until such time as such new agreements are entered into, the service lines will remain exclusive on substantially the same terms and with the same financial support as exist as of the Effective Date.

(c) *Contracting Provisions for Exclusive Contracts.* Exclusive contracting arrangements pursuant to this Section 6.3 shall in no way exclude the participation of other physicians in the care of the patients cared for within an exclusive service. Each exclusive service agreement entered into pursuant to this Section 6.3 shall include provisions to include, but not be limited to those identified in Section 5.5(d).

6.4 Radiation Oncology Services. The Parties acknowledge and agree that during the Term of this Agreement, NTH's Brown Cancer Center shall serve as the exclusive radiation oncology provider for Newco within downtown Louisville.

6.5 Medical Staff Members Who Are Not Full Time Faculty Members.

(a) Notwithstanding any provision in this Agreement, the NTH Medical Staff Bylaws, the Bylaws of Newco, or any other document concerning the governance of Newco and NTH among the Parties, except as provided in Sections 6.3 and 6.4 all physicians holding privileges on NTH's Medical Staff shall have comparable access to all NTH facilities and services, as all other physicians in the same Medical Staff classification regardless of whether they have Faculty appointments, gratis or otherwise, including, without limitation, each of the following areas:

(i) Access to NTH's operating rooms, catheterization and procedure rooms, and technical devices, except that any facilities or equipment that are dedicated to research will only be available to those eligible for such access under the appropriate research protocol;

(ii) Clinical support through access to specialist physicians.

(iii) Participation in Medical Staff governance.

(iv) Participation in undergraduate medical education and Graduate Medical Education activities if they have an appropriate Faculty appointment, including a gratis appointment.

(v) Access to Continuing Medical Education.

(vi) Collaboration with Faculty to improve policies and procedures at NTH for better patient outcomes.

(vii) The opportunity to join in the creation or operation of specialty centers of excellence.

(b) The Parties will work so that both academic and non-academic physicians will be able to effectively practice at NTH. Patient referrals shall be made in the best interest of the patient. Non-academic physicians will have the opportunity, but not the obligation, to serve as attendings engaged in student and residency education through application for membership on the Gratis Faculty, consistent with all University and Departmental policies concerning Gratis Faculty appointments.

7. PATIENT POLICIES

All patients admitted to NTH shall be considered medical teaching patients, unless: (i) a patient's attending physician determines, in his/her professional judgment, that the patient's participation in the teaching Program may adversely affect the patient's condition, or (ii) the patient affirmatively states his/her unwillingness to become a teaching patient. Any attending physician who excludes a patient from the teaching Program in accordance with (i) above, shall give written notice of his/her rationale for excluding such patient to the applicable Chief of Service, and must note such election on the patient's medical record.

8. FINANCIAL TERMS

8.1 Generally. Newco will be responsible for the operations of NTH and as such shall be entitled to all revenues and liable for payments due of all expenses, including but not limited to the expenses required by this Agreement for educational, clinical, research and community service.

8.2 Operating Budget. Newco will develop an annual operating budget for NTH, consistent with the process described in Section 4.4(b), which shall include, among other items, the following:

(a) Lease payments under the Leases.

(b) Complete funding (i.e salary, benefits, malpractice coverage, and a pro-rata portion of the University's cost for the GME program director) for 290 full-time equivalent resident positions for the first full year of NTH's operations. Thereafter, funding for residents will be subject to the NTH's internal budget process taking into account (a) staffing at comparable academic medical centers, (b) the services provided at NTH, and (c) clinical volume at NTH; provided, however, that the funding shall not be less than 290 full-time equivalent resident positions for any given year without the prior written consent of the University. All such funding shall be determined in accordance with the University's historical practice for establishing salary and benefits for residents and administrating the GME program at NTH.

(c) Continued aggregate funding in the minimum amount of \$_____ for professional services agreements and academic support for the clinical departments set forth on

Schedule 8.2(c). The funding level for such Clinical Departments shall be increased annually by the lesser of (i) the weighted average percentage increase in compensation to comparable employees at Newco, or (ii) the percentage increase in the Consumer Price Index for all urban wage earners and clerical workers for such period. The University and Newco will jointly determine the appropriate allocation of funding among various Clinical Departments on an as needed basis.

(d) Newco funding to subsidize the adult outpatient teaching clinics operated by the University. The funding level for the first year of NTH's operations shall be \$ _____ and thereafter shall be increased annually by the lesser of (i) the weighted average percentage increase in compensation to comparable employees at Newco, or (ii) the percentage increase in the Consumer Price Index for all urban wage earners and clerical workers for such period.

(e) Financial support as required under the provisions of Sections 9.2(a) and 10 of this Agreement.

9. RESEARCH

9.1 NTH will be the principal adult clinical research affiliate of the University. All aspects related to Research in NTH shall be managed through the office of University's Vice President of Research and the Vice-Deans for Research at the respective Health Science Center Schools of the University, and all grant applications, whether to governmental, private foundation, or industry affiliated grantors, shall be submitted through University, in accordance with the University's policies.

9.2 Newco will support the research mission of University and Newco in the following manner:

(a) Newco shall annually budget at least \$3,000,000 for Research and/or research infrastructure and architecture throughout Newco's facilities. Research funding pursuant to such budget shall be developed in consultation with the AMC Committee.

(b) In addition to direct financial support, Newco will allocate sufficient space and equipment at NTH so that individuals involved in supporting clinical research, such as research coordinators, may effectively carry out their responsibilities. In no event shall the aggregate physical space made available during the Term of this Agreement be less than the aggregate amount of physical space historically available to the University at the Old ULH and Old Jewish.

(c) Newco shall use University's IRB and grants/contract office, and shall equitably reimburse University for expenses of these entities related to research at NTH.

9.3 Notwithstanding anything in this Agreement or the Sponsorship Agreement to the contrary, the University will be permitted to continue its autologous stem cell research program (currently headed by Dr. Bolli) throughout the Initial Term and all Renewal Terms of this Agreement.

10. NTH INVESTMENT FUND

Newco shall commit Two Hundred Million Dollars (\$200,000,000.00) to be invested at NTH ("NTH Investment Fund"). Newco and University will use their best efforts to fully implement the plan described below for the NTH Investment Fund within the first thirty-six (36) months of this Agreement, or such later dates as described in the mutually-agreed upon plan. The NTH Investment Fund will include both capital and operating expenses based on approved business plans, as described below. At the Effective Date, the University and Newco will provide a preliminary allocation of the Fund into five categories:

- (i) The development or enhancement of a specific service line (which may include funding for manpower, equipment, technology, space, and/or for the support of basic and clinical research);
- (ii) Service line rationalization to reduce duplication, increase efficiency, and/or grow a service line within NTH;
- (iii) Program relocation to either attract new programs to NTH and/or expand or relocate NTH programs to other locations owned by Newco;
- (iv) Exceptional, unique customization of information technology which is specific to research or clinical trials conducted within NTH; and
- (v) Contingency funding.

The Parties acknowledge and agree that no portion of the budget set forth in the NTH Investment Fund shall be allocated to any of the following: (i) routine replacement, (ii) information technology infrastructure, (iii) deferred maintenance, or (iv) statewide program or service line investments of the Kentucky Statewide Network.

Newco will establish a line item operating account for the NTH Investment Fund, but, notwithstanding anything in this Section 10 to the contrary, the Parties intend that this Section 10 be interpreted so that Newco will treat the NTH Investment Fund as unrestricted funds (rather than board-designated or temporarily or permanently restricted funds) for purposes of GAAP financial reporting on Newco's balance sheet. The NTH Committee (described below) will present to the Newco Board of Directors by July 1, 2012, for the Board's approval, a plan or plans ("NTH Investment Plan") for the use of the NTH Investment Fund which will include reasonable business plans, budgets, performance metrics, strategy, alignment across the Kentucky Statewide Network, and tangible and intangible return on investment ("NTH Investment Fund Criteria"). The NTH Investment Plan may include reimbursement of expenses incurred by the University prior to the approval of the NTH Investment Plan in accordance with this Section. The NTH Committee will consist of the Newco Chief Executive Officer, the CHI Chief Operating Officer or his designee, the University's Executive Vice President – Health Affairs ("EVPHA"), and a person designated by the EVPHA. Utilization of the NTH Investment Fund pursuant to the NTH Investment Plan approved in accordance with this Section will require the approval of both the University's Executive Vice President – Health Affairs and Newco's CEO. Funds will be invested or distributed through the University Health Science Center Office of the Executive Vice President – Health Affairs, as the costs are encumbered and then incurred.

Multi-year requests will be funded as milestone metrics are met. Newco will include placeholders for annual capital and operating costs in the Network Entity's annual and five-year budgets. Expenditures from the NTH Investment Fund will not be contingent on CHI's approval or the CHI annual capital cycle.

If the NTH Committee cannot agree on an NTH Investment Plan for the entire \$200 million on or before July 1, 2012, or if the Newco Board of Directors does not approve the NTH Investment Plan within 60 days after the submission of the NTH Investment Plan to the Newco Board, either the University or Newco can invoke the conflict resolution procedures in Section 20. For purposes of Section 20, the Claim to be resolved shall be whether the NTH Investment Plan submitted by the NTH Committee, or if none, by the University, is reasonable in light of the NTH Investment Fund Criteria, and the arbitrators' decision can include any reasonable amendments to the NTH Investment Plan to fully expend the \$200 million based on reasonable NTH Investment Fund Criteria. Any NTH Investment Plan that results from such resolution process shall be an approved plan for all purposes of this Agreement.

11. **STATE TEACHING HOSPITAL.** The Commonwealth agrees that for the term of this Agreement, it will take such actions to recognize, perpetuate and treat NTH as: (1) a "state university teaching hospital" and a "university hospital" as defined in KRS § 205.639 (and any future or related statutory provisions and regulatory provisions implementing such statutes) for purposes of Medicaid disproportionate share payments or any similar future payment; (2) an "urban trauma center hospital" as defined in 907 KAR 10:825 (and any future or related regulatory provisions) for purposes of urban trauma center payments or any similar future payment; (3) as the "Hospital" and UMC as the "Corporation" as those terms are defined in that certain Revised Quality and Charity Care Trust Agreement ("**QCCT Agreement**"), or any similar future agreement, for purposes of satisfying the Commonwealth's funding share and other obligations described in the QCCT Agreement; and (4) as a "unit of government" for "intergovernmental transfer" and "certified public expenditure" purposes under rules promulgated by the Centers for Medicare and Medicaid Services.

12. **[RESERVED]**

13. **STANDARDS OF PERFORMANCE**

13.1 Newco Compliance with Law and Standards.

In performing all services required by this Agreement and any other Agreements ancillary thereto, Newco represents and warrants it will (i) comply in all material respects with all applicable Laws; (ii) provide such services in accordance with generally recognized standards for the operation of a quaternary care hospital that is part of an academic medical center, which missions include teaching, research, clinical care and community service; and (iii) exercise reasonable care and prudence in operating NTH.

13.2 University Compliance with Law and Standards.

University acknowledges that Newco's ability to provide certain services to the standard set forth above is, in part, dependent on the University's operation of a medical school, and University represents and warrants that it will (i) comply in all material respects with all

applicable Laws; (ii) provide teaching, research and clinical care Programs at a level generally recognized as meeting the standard for a medical school affiliated with a quaternary care hospital that is part of an academic medical center; and (iii) exercise reasonable care and prudence in the services it, and its Faculty, provide at NTH.

13.3 Licensure and Accreditation.

(a) Newco agrees to use its Best Efforts to keep all hospital programs at Old ULH and/or Old Jewish fully licensed and accredited by hospital licensing and accreditation agencies, and University shall fully cooperate in such efforts.

(b) Newco and University shall cooperate to obtain and maintain such accreditation such that NTH and each of the undergraduate medical, graduate medical, continuing medical, professional, undergraduate, and all other educational programs conducted by the University therein remain fully licensed and accredited (e.g., by the ACGME and other similarly recognized accreditation bodies) as needed to effectively conduct its business and such academic, clinical and research Programs.

13.4 Cooperation.

In performing the services contemplated hereunder, Newco shall use its Best Efforts to establish and maintain good cooperative relationships with Faculty (both full time and gratis), community physicians, other health care services and facilities, and with the community generally.

14. [RESERVED]

15. TAX CONSIDERATIONS

The operation of NTH by Newco upon the terms and conditions contained in this Agreement, and all other agreements to which the Parties, or any of them, have executed with relation to the Kentucky Statewide Network are intended to have no material adverse impact upon the tax exempt status of any Party to this Agreement. Upon the written request of any Party, the Parties agree to amend to terms of this Agreement, or any other agreement executed and delivered in connection hereto, from time to time on an economically neutral basis in order to comply with any tax law, rule or regulation applicable to any Party.

16. NTH EDUCATIONAL COMMITMENTS

16.1 Seminars and Continuing Medical Education. Newco will regularly sponsor in its facilities, particularly within NTH, University Continuing Medical Education and other healthcare education programs, featuring University Faculty and Programs, to the extent reasonable and consistent with past practice.

16.2 Patient and Community Education and Outreach. Newco will work with Faculty to develop, deliver, and market wellness and health prevention programs to the public.

17. FACULTY AGREEMENTS

University shall have the right of prior written approval, not to be unreasonably withheld, of all direct agreements between any full time member or members of the Faculty and Newco or any other affiliate of the Kentucky Statewide Network.

18. REPRESENTATIONS AND WARRANTIES

18.1 Representations and Warranties of Newco.

Newco represents and warrants to each of the other Parties as follows:

(a) Newco is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has full and unrestricted corporate power and authority to carry on its business as currently conducted, to execute and deliver this Agreement.

(b) The execution, delivery and performance by Newco of this Agreement, the fulfillment of and the compliance with its terms and provisions, and the consummation by Newco of the transactions contemplated hereby have been duly authorized by its Board of Directors (which authorization has not been modified or rescinded and is in full force and effect) and will not: (a) conflict with, or violate any provision of the Articles of Incorporation or Bylaws of Newco or (b) conflict with, or result in any breach of, or constitute a default under, any agreement to which Newco is a Party or by which Newco is bound.

(c) This Agreement and all other documents to be executed by Newco will constitute valid and binding obligations of Newco enforceable in accordance their respective terms upon execution.

18.2 [Reserved]

18.3 Representations and Warranties of University. University represents and warrants to each of the other Parties as follows:

(a) University is an independent agency of the Commonwealth of Kentucky, which has full and unrestricted power, acting through its Board of Trustees, to execute and deliver this Agreement and to carry out the transactions contemplated hereby, including all power and authority necessary or appropriate under the laws of the Commonwealth of Kentucky.

(b) The execution, delivery and performance by University of this Agreement, the fulfillment of and the compliance with its terms and provisions, and the consummation by University of the transactions contemplated hereby have been duly authorized by its Board of Trustees (which authorizations have not been modified or rescinded and are in full force and effect), and will not: (a) conflict with, or violate any provision of, any term or provision of the University's organizational documents, or (b) conflict with, or result in any breach of, or constitute a default under, any agreement to which University is a Party or by which University is bound.

(c) This Agreement and all other documents to be executed by University will constitute valid and binding obligations of University and the Commonwealth of Kentucky enforceable in accordance with their respective terms upon execution.

19. TERM AND TERMINATION

19.1 Term.

(a) *Initial Term.* The Initial Term of this Agreement shall be for a period of twenty-five (25) years commencing on January 1, 2012, and continuing through midnight on December 31, 2037 (the “**Original Term**”).

(b) *Renewal Terms.* The term of this Agreement shall automatically renew for three (3) successive fifteen (15) year renewal terms (each a “**Renewal Term**,” and collectively with the Original Term, the “**Term**”) unless (i) this Agreement shall have been previously terminated as provided in Sections 19.2(b), 19.2(c), or 20.2(i) of this Agreement, or (ii) Newco or the University shall have notified the other Parties in writing no later than eighteen (18) months prior to the end of the Initial Term, or any renewal term, as the case might be, of its intent not to renew, unless the other Parties agree to a shorter notice period.

(c) Renegotiation of Certain Provisions in 15th and 20th Years of Initial Term. Twelve months prior to the commencement of both the 15th and 20th anniversaries of the date of this Agreement, Newco and University will commence good faith negotiations of potential revisions to the financial provisions in Sections 8.2, 9.2(a) and 10. If Newco and University cannot agree to revisions to such sections, the dispute will be subject to the resolution process described in Section 20, including the binding arbitration described in Section 20.2, but neither the existence of such dispute nor binding decision of the arbitration panel will give rise to a right of any Party to terminate this Agreement. In determining appropriate remedies, the arbitrator will weigh the relative value of the remedy to each Party, taking into account market conditions for healthcare entities and schools of medicine; the need for Newco to maintain a competitive hospital and remain financially viable; and the need of the University to maintain a competitive and financially healthy school of medicine.

19.2 Termination.

(a) *Term.* This Agreement shall terminate at the end of the Term.

(b) *Immediate Termination by Newco upon certain Events.* Newco may, at its option and without waiving its rights hereunder, terminate this Agreement by providing written notice of such termination (“**Termination Notice**”) to University upon the occurrence of a material breach of Sections 5.1, 5.2, 6.2, 6.3 or 10 (but only after the Negotiation Period described in Section 20.1 has expired with respect to such breach) of this Agreement;

(c) *Immediate Termination by University upon certain Events.* Notwithstanding the provisions of Section 20 to the contrary, the University may, at its option and without waiving its rights hereunder, terminate this Agreement by providing a Termination Notice to Newco upon the occurrence of (i) a monetary breach relating to failure to pay an undisputed (in good faith) and agreed upon sum of money when due (“**Undisputed Monetary**

Breach”), or (ii) a breach of any of the following events (but only after the Negotiation Period described in Section 20.1 has expired with respect to such breach):

(i) if Newco becomes insolvent or makes a general assignment for the benefit of creditors, or, unless otherwise prohibited by law, if a petition in bankruptcy is filed by Newco, or such a petition is filed against and consented to by Newco or not dismissed within thirty (30) days, or if a bill in equity or other proceeding for the appointment of a receiver of Newco or other custodian for Newco’s business or assets is filed and consented to by Newco, or if a receiver or other custodian (permanent or temporary) of Newco’s assets or property, or any part thereof, is appointed;

(ii) if Newco breaches Sections 5.1, 5.2, 6.2, 6.3, 6.4, 8.2 or 10 of this Agreement in any material respect; provided, however, that with respect to Section 10 (a) the following will not constitute a breach of Section 10: failure of the NTH Committee to present a NTH Investment Plan to the Newco Board, failure of the Newco Board to approve the NTH Investment Plan, or the submission of a dispute regarding the NTH Investment Plan to the conflict resolution procedures of Section 20, but (b) the following will constitute a breach of Section 10: a failure by Newco to make any payments required by any NTH Investment Plan approved in accordance with Section 10;

(iii) if Newco willfully, intentionally and repeatedly breaches a material provision of this Agreement after it has received written notice from University with respect to a breach of the same or a similar provisions of this Agreement;

(iv) if Newco fails to comply in all material respects with any arbitration award granted pursuant to Section 20.2; or

(v) upon the closing of the purchase of NTH by the University pursuant to Article VIII of the Sponsorship Agreement; or

(vi) if the Leases are terminated without the University’s consent.

(d) *Opportunity to Cure.* University shall permit Newco an opportunity to cure any breach set forth in the Notice of Termination in accordance with the provisions of this Section. If the breach is a Undisputed Monetary Breach, Newco shall have until ten (10) business days after receipt of the Termination Notice, (a “Monetary Cure Period”) to cure such monetary breach. For all other breaches described in the Notice of Termination, Newco shall have thirty (30) days to cure such breaches; provided, however, if such breach is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Newco, Newco shall be given an additional period of time as is reasonably necessary for Newco in the exercise of due diligence to cure such non-monetary breach for so long as such additional period of time does not exceed sixty (60) days, unless such non-monetary breach is of a nature that can not be cured within such sixty (60) days, in which case, Newco shall have such additional time as is reasonably necessary to cure such non-monetary breach. The CEO of Newco and the Executive Vice President of Health Affairs of the University will negotiate and otherwise work in good

faith, including without limitation, one or more meetings, to discuss and attempt to design and implement any such cure.

(e) *Jurisdiction, Venue and Waiver of Jury Trial.* Notwithstanding the provisions of Section 20, each of the Parties irrevocably agree that the provisions of this Section 19 shall not be subject to binding arbitration and any legal action or proceeding arising out of such Section shall be brought and determined in Franklin County Kentucky Circuit Court (“Franklin County Courts”), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid court for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the relationship contemplated hereby. Each of the Parties agrees not to commence any action, suit or proceeding relating to the matters described above except in the Franklin County Courts, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by the Franklin County Courts. Each of the Parties further agrees that notice as provided herein shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the relationship contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the Franklin County Courts as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of the Franklin County Courts or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISIONS OF THIS SECTION 19.

19.3 Effect of Termination.

(a) *Transition Period.* Following any termination or expiration of this Agreement, Newco and University shall cooperate to develop a transition plan, reasonably acceptable to the Parties, to effectuate the orderly termination of this Agreement and Newco and University shall take all actions reasonably requested to facilitate the transition of the ownership, operation and management of NTH from Newco to University or a University affiliate. In implementing the termination plan, each Party shall provide to the others a level of support and cooperation, reasonably necessary to complete the transition plan, and to satisfy each Party’s duties and obligations under the plan.

(b) *Return of Proprietary and Confidential Information.* Upon expiration or other termination of this Agreement, for any reason, each Party shall promptly return all Proprietary and Confidential Information to the owner of such Proprietary and Confidential Information.

20. **CONFLICT RESOLUTION**

Any controversy or claim arising out of or relating to this Agreement (a “**Claim**”) shall be settled by negotiation and arbitration in accordance with the following provisions (provided, however, that any agreement referred to in this Agreement shall be subject to its own remedies section and disputes under such agreements will not be subject to resolution under this Section 20):

20.1 If a dispute arises between any of the Parties relating to this Agreement that cannot be resolved informally, each Party involved in such dispute shall, for a period of 20 calendar days after the dispute first arises (“**Initial Negotiation Period**”), to negotiate in good faith a resolution of the dispute (“**Initial Negotiation**”). The Initial Negotiation will include no less than two in-person meetings among the University’s Executive Vice President – Health Affairs and Newco CEO. If the dispute is not resolved during the Initial Negotiation Period, the Parties shall, for an additional period of 20 calendar days after the end of the Initial Negotiation Period (“**Extended Negotiation Period**,” and together with the Initial Negotiation Period, the “**Negotiation Period**”), continue to negotiate in good faith to negotiate a resolution of the dispute (“**Extended Negotiation**”). The Extended Negotiation will include no less than two in-person meetings among the CEO of CHI and the President of the University. Any Party may request the appointment of a mediator mutually acceptable to the Parties to participate in the Initial Negotiation and any Extended Negotiation. The place of the Initial Negotiation and any Extended Negotiation shall be in Louisville, Kentucky, or such other place as may be mutually agreed to by the Parties. The mediator may meet or communicate with the Parties together or with each of them separately.

20.2 If such controversy or claim is not resolved as contemplated by Section 20.1 during the Negotiation Period, any Party may elect to submit such Claim to arbitration upon the following terms:

(a) *Scope.* Except as provided in Section 19.2, the agreement of the Parties to arbitrate covers all disputes of every kind relating to or arising out of this Agreement, and any instrument, certificate or other document executed or delivered pursuant to the terms of this Agreement. Disputes include actions for breach of contract with respect to this Agreement or such related documents, as well as any Claim based upon tort or any other causes of action relating to the arrangement contemplated herein or therein, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth above shall determine the arbitrability of any matter brought to them.

(b) *Forum.* The forum for the arbitration shall be Louisville, Kentucky.

(c) *Law.* The governing law for the arbitration shall be the law of the Commonwealth of Kentucky, without reference to its conflicts of laws provisions. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, the Parties acknowledge and agree that this Agreement evidences a transaction involving interstate commerce and that any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16). Nothing herein shall prohibit a Party from seeking provisional remedies in aid of arbitration from the Franklin County Courts in accordance with the provisions of Section 19.2(d).

(d) *Arbitrator(s)*. There shall be three arbitrators, unless the Parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, University shall select one arbitrator and Newco shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator who shall chair the arbitration panel. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by JAMS in accordance with its rules. All such arbitrators shall be knowledgeable in the operation of academic medical centers and teaching hospitals and at least one arbitrator shall be a practicing lawyer or retired judge. The decision in writing of at least two of the three arbitrators shall be final.

(e) *Administration and Procedural Rules*. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, as modified by any other instructions that the Parties may agree upon at the time. If there is any conflict between those rules and the provisions of this Section, the provisions of this Section shall prevail.

(f) *Substantive Law*. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

(g) *Decision*. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award.

(h) *Expenses*. Each Party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the Parties shall share equally the fees and expenses of JAMS and the arbitrators; provided, however, that the arbitrators' award shall include payment of the non-breaching Party's reasonable attorney's fees and other costs associated with the arbitration.

(i) *Remedies and Awards*. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in Commonwealth of Kentucky; provided, however, that except for breaches described in Section 19.2(c), the Parties acknowledge and agree that termination of this Agreement should be an extraordinary remedy granted only when other remedies will not adequately resolve the non-breaching Party's Claim(s).

21. INSURANCE

Newco shall maintain in full force and effect at all times during the Term of this Agreement commercial general liability insurance coverage with combined limits of not less than Twenty Million (\$20,000,000) Dollars per occurrence and in the aggregate, and other customary and reasonable insurance coverages or self insurance arrangements reasonably acceptable to

University. Self insurance arrangements that meet the conditions of tax exempt, or similar self insurance arrangements are deemed to be reasonably acceptable to University. All insurance policies carried by Newco, and related to NTH, shall be (i) issued by an insurance company reasonably acceptable to University, or through a self-insurance trust; (ii) in a form reasonably acceptable to University; (iii) designate University as an additional insured; and (iv) provide for thirty (30) days' prior written notice of any material change or cancellation or other expiration of such policy or any defaults thereunder to University. Newco shall promptly pay all premiums for insurance policies required under this Section 19. Newco shall provide evidence of current satisfaction of this condition to University upon request.

22. PROPRIETARY AND CONFIDENTIAL INFORMATION

Newco and University Proprietary and Confidential Information and all copies and modifications thereof are the property of Newco and University respectively. Each Party acknowledges that the Proprietary and Confidential Information of each other Party constitutes valuable assets and trade secrets of the owning Party. During the term of this Agreement, and at all times thereafter, each Party agrees that, except as required by Law or order of court:

22.1 It will hold the Proprietary and Confidential Information of either of the other Parties in strict confidence with at least the same degree of care as it uses for its own Proprietary and Confidential Information.

22.2 It will not, and will instruct its employees and agents not to, directly or indirectly, voluntarily or involuntarily, use, sell, lease, assign, transfer, disclose or otherwise make available any part of the Proprietary and Confidential Information of either of the other Parties to others, except with the express written consent of the Party owning such Proprietary and Confidential Information.

22.3 It will not copy or duplicate by any means, in whole or in part, any Proprietary and Confidential Information of either of the other Parties, except with the express written consent of the Party owning such Proprietary and Confidential Information.

22.4 Except with respect to third Parties approved in advance in writing by the owner of any Proprietary and Confidential Information (which approval shall not be unreasonably withheld or delayed), each Party will limit access to each of the other Parties' Proprietary and Confidential Information to only those of its employees and agents who need access to such Proprietary and Confidential Information, and, if requested by the owner of such Proprietary and Confidential Information, will require its employees, agents and other approved third Parties to execute reasonable nondisclosure agreements.

23. MISCELLANEOUS PROVISIONS

23.1 Assignment; Change of Control. During the Term hereof no Party may sell, transfer, or assign (including by operation of Law) its interest in this Agreement to any third party without the consent of the other Parties; provided, however, this provision shall not prevent any Party from transferring its interest in this Agreement to another entity which the transferring entity wholly controls.

23.2 **[Reserved]**

23.3 Entire Agreement; Amendment. This Agreement, including all Exhibits hereto which are incorporated herein by reference, contains the entire agreement between the Parties relating to the subject matter herein and all prior proposals, discussions and writings by and among the Parties and relating to the subject matter herein are superseded hereby. None of the terms of this Agreement may be amended, unless such amendment is in writing and signed by all Parties hereto, and recites specifically that it is an amendment to the terms of this Agreement

23.4 Waiver. No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement shall impair any such right, power or privilege or be construed as a waiver of any event of default hereunder or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

23.5 Severability. If either (a) a court of competent jurisdiction holds that a particular provision or requirement of this Agreement is in violation of any applicable Law, or (b) the Parties are definitively advised by a government agency which has jurisdiction that a feature or provision of this Agreement violates Laws or regulations over which such department or agency has jurisdiction, then each such provision, feature or requirement shall be fully severable and (i) this Agreement shall be construed and enforced as if such illegal, invalid, or otherwise unenforceable provision had never comprised a part hereof; (ii) the remaining provisions hereof shall remain in full force and effect, and shall not be affected by the severed provision; (iii) the Parties shall in good faith negotiate and substitute a provision similar in terms to such severed provision as may be possible and still be legal, valid and enforceable, unless the effect of the severance and substitution would be to deprive a Party substantially of the benefits contemplated under this Agreement, in which case any Party may terminate this Agreement upon thirty (30) days' (or such greater period as is acceptable to such court or governmental agency and is necessary to provide for an orderly transition in accordance with Section 19.3 of this Agreement) written notice to the other Parties.

23.6 Governing Law. This Agreement is deemed to have been entered into in the Commonwealth of Kentucky and its interpretation, construction, and the remedies for its enforcement or breach are to be applied pursuant to and in accordance with the laws of the Commonwealth of Kentucky (excluding the conflict of law principles thereof).

23.7 Notices and Consents. All notices, consents, demands, requests, or other communications desired or required to be given hereunder by one Party to any other Party or Parties shall be in writing, and shall be hand delivered (including delivery by courier or overnight delivery service), mailed by U. S certified mail, return receipt requested, postage prepaid, or by facsimile transmission with confirmation of receipt acknowledged, addressed as follows:

[i] if to Commonwealth:

with a copy to:

[ii] if to University:

with a copy to:

[iii] if to Newco:

with a copy to:

Each Party may designate by notice in writing a new address to which any notice, consent, demand, request or communication may thereafter be so given, served or sent. Each notice, consent, demand, request, or communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee with the return receipt, the delivery receipt, the affidavit of messenger being deemed conclusive, but not exclusive, evidenced of such delivery having been made, even if delivery is refused by the addressee upon presentation.

23.8 Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions to execute, deliver and file or cause to be executed, delivered and filed such further documents, and to use Best Efforts to obtain such consents

(including regulatory approvals), as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

23.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.

23.10 Survival. Neither the expiration nor other termination of this Agreement shall terminate those obligations and rights of the Parties that have arisen from performance during the period in which this Agreement was in effect, or that by their express terms are intended to survive, and except as specifically limited herein, such rights, obligations and provisions shall survive the expiration or other termination of this Agreement.

23.11 Benefit of Agreement. It is the explicit intention of the Parties hereto that no person or entity other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties hereto as a third party beneficiary or otherwise, and that the covenants, undertakings, and agreements set forth in the Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto and their respective permitted successors and assigns. Notwithstanding the foregoing, JHHS shall be entitled to bring an action to enforce Section 4.2(b) of this Agreement as a third party beneficiary

23.12 Construction. Each Party hereto hereby acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than against another Party.

23.13 Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto.

[Remainder of Page Blank, Signature Page Follows]

Each of the Parties has caused this Agreement to be duly executed in its name and on its behalf, on the respective date(s) stated below, but effective as of the date first indicated above.

COMMONWEALTH OF KENTUCKY

By: _____
Steven L. Beshear
Governor

COMMONWEALTH OF KENTUCKY,
acting through its Secretary of Finance and
Administration Cabinet

By: _____
Lori Hudson Flanery
Finance and Administration Cabinet
Secretary

THE UNIVERSITY OF LOUISVILLE, an
independent agency of the Commonwealth
of Kentucky

By: _____
Name: _____
Title: _____

JH Properties, Inc., a Kentucky nonprofit
corporation

By: _____
Name: _____
Title: _____

UNIVERSITY MEDICAL CENTER, INC., a
Kentucky nonprofit corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

**LEASE BETWEEN UNIVERSITY, COMMONWEALTH OF KENTUCKY, AND UMC
FOR OLD ULH**

EXHIBIT B

**LEASE BETWEEN UNIVERSITY, COMMONWEALTH OF KENTUCKY, JEWISH
HOSPITAL HEALTHCARE SERVICES, AND UMC FOR OLD JEWISH**

EXHIBIT C

**LIST OF PROFESSIONAL SERVICE AND ACADEMIC SUPPORT AGREEMENTS
BETWEEN NTH AND UNIVERSITY**

SCHEDULE 8.2(c)
LISTING OF UNIVERSITY CLINICAL DEPARTMENTS TO BE SUPPORTED