

EMPLOYEE SERVICES AGREEMENT
[between the University of Kansas and
the University of Kansas Center for Research, Inc.]

THIS EMPLOYEE SERVICES AGREEMENT ("Agreement") is effective as of the 14th day of June, 2009 ("Effective Date") by and between the University of Kansas (the "University") and the University of Kansas Center for Research, Inc. ("KUCR").

WHEREAS, the University employs a number of individuals to perform services at the University of Kansas who have education, training, and experience that could be useful to KUCR;

WHEREAS, KUCR is in need of personnel to assist in various KUCR functions and activities, and KUCR wishes to obtain the services of certain individuals employed by the University on the terms and conditions set forth below; and

WHEREAS, the University has determined it furthers the University mission to make the services of these employees available to KUCR on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

1. University Provision of Employee Services.

(a) The University agrees to provide to KUCR the services of University employees as necessary and by mutual agreement of the University and KUCR (the " Employees"); provided that the services of the Employees can be modified, transferred or removed from KUCR at any time, upon fourteen (14) days' prior written notice to KUCR by KU. Upon removal, a former Employee may remain a University employee with other duties as assigned. Further, the University shall have no obligation to find a replacement for the removed Employee.

(b) KUCR's management of any alleged employee misconduct by an Employee occurring during a period of services provided to KUCR shall be subject to appropriate University personnel policies, in consultation with the KU Lawrence HR/EO office and the University General Counsel office, as necessary.

(c) The services of each Employee shall be provided to KUCR for such time and compensation as the parties mutually agree. It is understood and agreed that the Employees will not be available to provide services under this Agreement when they are on vacation, sick or other leave from the University; however, the parties will use their mutual best efforts to coordinate vacation and other planned leave of Employees so as to minimize disruption to KUCR's schedule. If an Employee is unavailable to provide services at any time, the University shall not be obligated to provide substitute services to KUCR.

(d) The parties agree that all services under this Agreement shall be performed in accordance with applicable laws and regulations, as well as the policies, procedures and administrative rules governing conduct at the University of Kansas. The KUCR duties of each Employee shall be set forth in a position description prepared by University and KUCR. KUCR and the University may, by mutual agreement, execute other employee service agreements.

2. Fringe Benefits and Other Employment-Related Responsibilities.

At all times relevant to this Agreement, each Employee shall remain an employee of the University and shall be deemed to be a "borrowed servant" within the meaning of agency law. It is agreed by the parties that the University:

(a) shall be the employer of each Employee, shall be responsible for administration of payment of all salaries, wages and other forms of compensation to each Employee, and shall comply with all rules and regulations governing reporting, payment and withholding of federal and state taxes imposed with respect to each Employee, including but not limited to: (i) federal income tax withholding; (ii) state and local income tax withholding; (iii) Federal Insurance Contributions Act (FICA) and Medicare tax withholding, as well as the employer component of FICA and Medicare tax; (iv) Federal Unemployment Tax Act (FUTA) obligations; and (v) applicable state unemployment tax obligations.

(b) shall be responsible for compliance with applicable workers' compensation laws applicable to each Employee, including without limitation: (i) procuring workers' compensation insurance or insurance to cover workplace injuries to each Employee; (ii) completing and filing all required reports with respect to each Employee; and (iii) administering claims made by or with respect to each Employee.

(c) shall treat the Employees as subject to and eligible to participate in the vacation and other fringe benefit programs (including without limitation the State/Regents retirement and health/medical, life and disability insurance plans) pursuant to the conditions established therefore from time to time by the State, Regents or University for such employment category to which each Employee may, from time to time, be assigned by University.

(d) shall be responsible for providing and processing all health insurance and other benefits which it has agreed to provide to each Employee.

The parties agree that KUCR's sole financial responsibility with respect to the Employees shall be to make the payments to the University described in Section 4 below, and that KUCR shall not be treated or recognized as the employer of the Employees for tax or fringe benefit purposes.

3. Term and Termination.

It is agreed that this Agreement shall begin as of the Effective Date and shall continue in effect through the fiscal year, unless terminated as hereinafter provided. Thereafter, this Agreement shall automatically renew for additional consecutive one (1) year renewal terms, unless either party notifies the other party, in writing, of its intention not to renew at least 180 days prior to the expiration of the then current term. During the term of this Agreement (including any renewal term), either party may terminate this Agreement, with or without cause, at any time upon 180 days' prior written notice given by one party to the other.

4. Payment.

In consideration of the services of the Employees provided to KUCR by the University, KUCR agrees to pay to University an agreed-upon amount for its management of grants, awards, and contracts for which the University has delegated for management authority to KUCR. The amount paid by KUCR to University shall be determined by the parties taking into consideration the following factors:

(a) if specific hours are established for the Employee's performance of services for KUCR, the compensation paid by the University for the then current hourly or hourly-equivalent salary compensation and proportionate benefit costs in effect for the Employee at the time services are rendered (the "Hourly Compensation-Benefits Cost"), multiplied by the actual number of hours of service to KUCR performed by the Employees under this Agreement and processed through KU's reimbursable billing processes; and

(b) if specific hours are not established for the Employee's performance of services for KUCR, the compensation payable by KUCR to the University shall be the total compensation and benefit costs in effect for the Employee at the time the services are rendered (the "Total Compensation-Benefits Cost") to KUCR and processed through KU's reimbursable billing process.

The Hourly Compensation-Benefits Cost and the Total Compensation-Benefits Cost for the Employees shall be adjusted immediately based on changes in compensation and benefits costs to the University.

The University agrees to create a bi-weekly accounting record that verifies the hours of service performed by each Employee for KUCR and the charges for such services, including compensation and benefit information for each Employee. The University shall submit such records to KUCR on a regular basis, as KUCR shall reasonably require. KUCR agrees to remit payment to the University for the services of the Employees within the payment procedures and processes of KUCR. KUCR agrees to assign Employees to duties that are consistent with their overtime status under the provisions of the Fair Labor Standards Act. Moreover, if KUCR uses the services of any Employee categorized as "non-exempt" resulting in the payment of overtime or other premium pay to said Employee, the University will automatically include the additional overtime or premium pay costs in the reimbursable billing payment request..

5. Commitments from Employees.

Each Employee shall be required to sign and deliver to KUCR the form attached hereto as [Exhibit A](#), agreeing:

(a) To comply with all applicable laws and regulations; all rules, regulations, policies and procedures of KUCR and the University of Kansas.

(b) To comply with, and perform all training, review and other requirements of KUCR and the University of Kansas.

(c) That, through employment with the University and by virtue of this Agreement, Employee owes a duty of loyalty to KUCR as well as to the University.

(d) That Employee will not, at any time, directly or indirectly, divulge to any person, firm, organization or corporation, except to KUCR, the University, and their respective officers, directors, employees, representatives or agents or as otherwise reasonably required in connection with the performance of Employee's duties on behalf of KUCR, any Confidential Information (as hereinafter defined) acquired by Employee in performing services for or on behalf of KUCR. "Confidential Information" shall mean any business plans, strategies or other information belonging to KUCR or relating to KUCR's affairs, including without limitation all trade secrets, unpublished proprietary and other information of KUCR, whether or not invented, discovered, developed, originated or created by Employee, with respect to any business conducted or proposed to be conducted by KUCR or any present or proposed services or programs of KUCR, and any and all records, data and information of KUCR, including without limitation lists, supplier information, price lists, financial data, program development, and marketing plans or strategies; provided, however, that Confidential Information shall not include any information which has entered or enters the public domain through no fault of Employee.

(e) That Employee will make no use whatsoever, directly or indirectly, at any time of Confidential Information obtained in the course of Employee's assignment to KUCR, except use in the performance of Employee's assignment to KUCR and only as reasonably required in connection therewith.

(f) That upon KUCR's request at any time and for any reasonable reason whatsoever, Employee will deliver to KUCR any materials (including all copies thereof) in Employee's possession which contain or relate, directly or indirectly, to Confidential Information obtained in the course of Employee's assignment to KUCR.

(g) That all inventions, developments or improvements made by Employee in the scope of Employee's performance of services for KUCR, either alone or in conjunction with others, at any time or at any place during the term of Employee's performance of services for KUCR, whether or not reduced to writing or practice during such term, which relate to the business in which KUCR is engaged or in which KUCR intends to engage shall be subject to the Board of Regents and University policies on Intellectual Property and to any existing agreement between the University and the Employee.

(h) That all copyrightable work by Employee, in the scope of Employee's performance of services for KUCR is intended to be "work made for hire" as that term is defined in Section 101 of the Copyright Act of 1976, as amended and shall be the property of the University.

6. Supervening Law.

The parties recognize that this Agreement at all times is subject to applicable federal, state and local law and all public and safety provisions of state law and regulation. All provisions of law or regulation that invalidate or otherwise are inconsistent with the terms of this Agreement, or which would cause one or both of the parties to be in violation of law or regulation, shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible, consistent with the requirements of law and regulation.

7. Access to Records.

The University shall, until the expiration of four years after the furnishing of services of Employees under this Agreement, upon written request, make available to the Secretary of the United States Department of Health and Human Services, or to the Comptroller General of the United States, or to any of their duly authorized representatives, this Agreement and the books, documents, and records of the University that are necessary to verify the nature and extent of costs to the University for the services of the Employees under this Agreement.

8. KUCR Control of Employees.

Subject to all terms of this Agreement (including without limitation Section 1), during such hours (or shifts) as each Employee is assigned to KUCR under this Agreement, KUCR shall have, and shall exercise, control over all actions taken by the Employee in performing services for KUCR to the same extent as KUCR would exercise such control if such Employee was employed directly by KUCR.

9. HIPAA.

Each party agrees to maintain the security and privacy of any individually identifiable patient health information ("protected health information" or "PHI") received from or created for the other party under or pursuant to this Agreement in accordance with the Health Insurance Portability and Accountability Act of 1996 and the privacy regulations promulgated pursuant thereto, including regulations which may become effective during the term of this Agreement ("HIPAA").

10. Indemnification.

In the event an Employee makes a claim of discrimination, sexual harassment or other violation of law, policy or procedure which results in a judicial award of damages against the University, KUCR agrees to indemnify the University for any such damages including any and all attorney's fees incurred in defending such successful claim, but only if and to the extent that the claim is directly related to the Employee's performance of his/her assignment to KUCR under this Agreement.

11. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be deemed given at the time it is hand-delivered or upon the earlier of actual receipt or three (3) business days after it is deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, and addressed to the party to whom it is to be given and to the party's counsel as follows:

University:

Chancellor
The University of Kansas
1450 Jayhawk Boulevard
230 Strong Hall
Lawrence, Kansas 66045

Attention: Chancellor

Office of the University General Counsel
1450 Jayhawk Boulevard
245 Strong Hall
Lawrence, Kansas 66045

Attention: General Counsel

KUCR:

President, University of Kansas Center for Research, Inc.
2385 Irving Hill Rd.
201 Youngberg Hall
Lawrence, Kansas 66045

Attention: President

Cal Karlin
Barber Emerson L.C.
1211 Massachusetts Street
Lawrence, KS 66044

Attention: Cal Karlin

Either party may change its notice address by written notice to the other complying with the notice provisions set forth above.

12. Miscellaneous.

Any alteration, modification, amendment or change in the provisions of this Agreement shall be reduced to writing and executed by both parties. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach by any party. This Agreement constitutes the entire agreement between the parties. No oral statements or prior written agreements not specifically incorporated herein shall be of any force and effect. In the event that any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. The parties agree that this Agreement shall be governed by and construed in accordance

with the laws of the State of Kansas. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto.

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their successors and permitted assigns.

UNIVERSITY OF KANSAS

UNIVERSITY OF KANSAS CENTER FOR
RESEARCH, INC.

By: /s/ Danny J. Anderson

By: /s/ Steven F. Warren

Printed Name: Danny J. Anderson

Printed Name: Steven F. Warren

Title: Interim Provost

Title: Vice Provost for Research

[This is the signature page to the Employee Services Agreement
between KUCR and the University.]

[Exhibit A: Employee Acknowledgment and Agreement](#)