

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Agreement**”) is entered into as of this 17th day of December 2015, by and among Norton Healthcare, Inc. (“**Norton**”), the University of Louisville (“**University**”), and the Commonwealth of Kentucky, Finance and Administration Cabinet (“**Commonwealth**”). Any of the foregoing may be hereinafter referred to individually as a “**Party**” or together as the “**Parties**.”

### RECITALS

WHEREAS, Norton, through its predecessor, NKC, Inc., and the Commonwealth, for the use and benefit of the University, are parties to that certain “**Lease**” dated December 8, 1981, pursuant to which Norton leases from the Commonwealth certain real property located in Jefferson County, Kentucky, as more particularly described in the Lease, upon which Norton has constructed and currently owns and operates a pediatric healthcare facility located at 231 East Chestnut Street, Louisville, Kentucky (such facility located at 231 East Chestnut Street alone is referred to herein as “**Kosair Children’s Hospital**”);

WHEREAS, Norton and the University of Louisville are parties to that certain “**Agreement**” dated August 12, 1981 (“**1981 Agreement**”) and that certain Master Affiliation Agreement dated as of July 1, 2008 (“**Master Affiliation Agreement**”);

WHEREAS, on August 27, 2013, the University sent Norton a notice, as amended on March 2, 2015, claiming that Norton was in default of the Ground Lease, 1981 Agreement, and other documents (“**Notice of Default**”);

WHEREAS, on September 6, 2013, Norton filed the lawsuit styled *Norton Healthcare, Inc. v. University of Louisville*, Case No. 13-CI-1060 (the “**Lawsuit**”) in Franklin Circuit Court (the “**Court**”), seeking declaratory relief in a Complaint, as amended;

WHEREAS, the University has filed Counterclaims, as amended, and Norton has filed Reply Counterclaims, as amended, in the Lawsuit; and

WHEREAS, the Commonwealth has intervened as a defendant in the Lawsuit.

In consideration of the mutual promises, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IT IS HEREBY AGREED as follows:

1. **Amendment to Lease.** The Parties have agreed to and executed the “First Amendment to Lease” attached hereto as Exhibit A and made a part of this Agreement.
2. **Amendment to Master Affiliation Agreement.** Norton and the University have agreed to and executed the “First Amendment to Master Affiliation Agreement” attached hereto as Exhibit B and made a part of this Agreement.

3. **Amendment to 1981 Agreement.** Paragraphs 1 and 2 of the 1981 Agreement are hereby deleted in their entirety. In lieu of Paragraph 1 of the 1981 Agreement, communication between Norton and the University shall be facilitated by the "PAMCC" (as defined in the First Amendment to Master Affiliation Agreement). In addition, the Norton Board of Trustees shall permit a representative of the University to present annually to the board of Norton. Further, the parking currently provided to the University shall continue.

4. **Financial Support.** Norton agrees to provide the University with support payments over the next eight (8) years ("**Financial Support Term**") beginning January 1, 2016 on the following terms. All funding shall be payable under "Individual Agreements" (as hereinafter defined) and used by the University for faculty salary support, teaching, research, or other purposes as recommended by the "PAMCC" and approved by Norton (as defined in the First Amendment to Master Affiliation Agreement).

- a. **Annual Support Payments.** In each year of the Financial Support Term, Norton shall pay the University at least Thirty Million Dollars (\$30,000,000.00) ("**Annual Support Payments**"). Any and all amounts paid by Norton to the University, any University department, University of Louisville Physicians, Inc., or the University of Louisville Research Foundation, Inc. related to pediatrics, including but not limited to all funding provided for research, academic support, residencies and fellowships (salaries and benefits), malpractice premiums, gratis rental space, gifts, donations, and all similar payments, and all amounts paid pursuant to the Individual Agreements, shall be applied to and count towards the Annual Support Payments and the payments set forth in Paragraph 4(b).
- b. **Additional Financial Support.** In addition to the Annual Support Payments, Norton shall pay the University Twenty Four Million Dollars (\$24,000,000.00) in the aggregate, to be paid over eight years.

- c. PAMCC. The PAMCC shall recommend how Norton should spend the Additional Financial Support payments, as well as any monies representing the amount, if any, of unspent Annual Support Payments as determined each year by subtracting from each Annual Support Payment all qualifying expenditures as described in Paragraph 4(a). As an example, if in 2016 qualifying expenditures are \$29,500,000.00, then \$500,000.00 shall be deemed to constitute an unspent Annual Support Payment amount that shall be referred to the PAMCC. If the PAMCC fails to make a recommendation or Norton determines not to approve a PAMCC recommendation, then the unspent monies shall be held by Norton and accounted for until a recommendation is made by the PAMCC that is agreed upon by both Norton's Chief Executive Officer (or equivalent) and the University's Executive Vice President of Health Affairs (or equivalent). Recommendations by the PAMCC shall be made within ninety (90) days following identification of any unspent Annual Support Payments. For the avoidance of doubt, recommendations made by the PAMCC may include establishing a reserve fund for future expenditures to be made within the Financial Support Term.
- d. Capital Improvements. During the Financial Support Term, Norton shall expend at least Thirty Five Million Dollars (\$35,000,000.00) in facility improvements and other capital expenditures at Kosair Children's Hospital.
- e. Transparency. Norton and the University shall meet in May or June of each year in which Annual Support Payments are made and any review period to develop and mutually agree upon a detailed plan and budget for the use of the funds payable by Norton under this Agreement and the Individual Agreements. The University shall permit an annual independent audit of all payments from Norton to the University, such audit to be conducted at the expense of Norton.
- f. Exclusivity Requirement. Norton shall not be required to satisfy the funding floors set forth in Paragraphs 4(a) and 4(b) if the University does not maintain at least 90% of its pediatric inpatient resident rotations at Kosair Children's Hospital or the University fails to maintain a majority of the annual inpatient admissions at Kosair Children's Hospital by the University faculty.
- g. Individual Agreements. Norton and the University shall enter into an individual agreement for each service, obligation, or relationship as to which Norton has agreed to provide funding to the University (collectively, the "**Individual Agreements**").

- i. Norton and the University shall compile all Individual Agreements in effect as of the Effective Date and create a schedule listing them. Such schedule shall be updated by Norton and the University annually by no later than each anniversary of this Agreement.
- ii. Norton and the University shall comply with all applicable requirements regarding the privacy, security, use, and disclosure of personal data (including protected health information) including but not limited to the requirements set forth in 45 C.F.R. Parts 160, 162, and 164. Norton and the University agree to conform to the requirements of all applicable regulations and requirements under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the American Recovery and Reinvestment Act of 2009 no later than the compliance date of each of those requirements or regulations and shall, at all times subsequent to the applicable compliance dates, be in compliance with such requirements and regulations. Norton and the University shall execute any agreements Norton and the University determine are necessary to comply with HIPAA requirements.
- iii. To the extent any Individual Agreements contain provisions prohibiting the University from having non-compete provisions in faculty employment agreements, Norton and the University agree that such provisions are hereby terminated.
- h. End of Financial Support Term. Norton and the University agree that, at the end of the Financial Support Term, they will engage in discussions no later than July 1, 2022 (eighteen months prior to the end of the Financial Support Term) regarding future funding arrangements. Norton and the University acknowledge that some level of funding support is necessary to operate an academic medical center at Kosair Children’s Hospital, but do not agree as to which party bears responsibility for such funding nor as to the amount of funding; provided, however, (i) Norton agrees to fund resident stipends as long as (1) Norton receives federal Graduate Medical Education funds to compensate it for the same, (2) the University maintains at least 90% of its pediatric inpatient resident rotations at Kosair Children’s Hospital, and (3) the University maintains a majority of the annual inpatient admissions at Kosair Children’s Hospital by the University faculty and (ii) Norton and the University acknowledge that a process is necessary to determine how to support faculty needed for accredited training programs at Kosair Children’s Hospital.

5. Mutual Exclusivity at Kosair Children’s Hospital. Norton shall make available to the University no less than 90% of the pediatric inpatient resident slots at Kosair Children’s Hospital. The University shall maintain at least 90% of its pediatric inpatient resident rotations at Kosair Children’s Hospital and maintain a majority of the annual inpatient

admissions at Kosair Children's Hospital by the University faculty. So long as the University performs the foregoing obligations, University shall have the right to be the sole sponsoring institution for pediatric residency programs at Kosair Children's Hospital. The University, however, shall not unreasonably prevent residents from other institutions from participating in clinical training at Kosair Children's Hospital. For the avoidance of doubt, this provision is not intended to close the medical staff at Kosair Children's Hospital and nothing in this provision shall be deemed to prohibit physicians whose primary offices are at facilities other than Kosair Children's Hospital from treating their own patients at Kosair Children's Hospital.

6. **Exclusivity Term.** If the University participates (including in conjunction with any affiliate) in the construction, operation, management, or staffing of a pediatric hospital service, pediatric ambulatory surgery or care center, or primary pediatric diagnostic center in Jefferson, Bullitt, Spencer, Carroll, Shelby, Nelson, Hardin, Trimble, Meade, and Scott, and Oldham Counties in Kentucky and Clark, Floyd, Jefferson, and Harrison Counties in Indiana ("**Greater Louisville Region**"), then Norton's obligations pursuant to Paragraphs 4(a), 4(b), and 7 shall terminate. For the avoidance of doubt, the limitations contained in this Paragraph shall not apply to the provision of pediatric services by the University (or any affiliates) at physician practices. In the event Norton's obligations pursuant to Paragraphs 4(a), 4(b), and 7 are terminated under this Paragraph, the Individual Agreements shall remain in effect and be terminable pursuant to their terms. The University's current staffing arrangements shall be grandfathered; provided, however, any change in the services offered at a grandfathered site shall not proceed without prior approval of PAMCC.

7. **Future Pediatric Academic Affiliation.** Norton shall provide the University a written right of first offer to jointly collaborate and participate on substantially similar terms with other universities (including the University of Kentucky) on future pediatric academic affiliations within the Greater Louisville Region; provided, however, that the University must provide a written response accepting or rejecting such offer within thirty (30) days after such offer is received by the University.

8. **Right to Collaborate.** Subject to Paragraphs 5 and 7, each party may collaborate with any third parties in programs, ventures, rural outreach, development of a regional pediatric care network, managed care contracting, and other relationships.

9. **University of Kentucky Children's Hospital Letter of Intent.** Norton may implement the August 22, 2013 letter of intent with the University of Kentucky's Children's Hospital and the transactions contemplated by the letter of intent, as well as any substantially similar arrangement; provided, however, that nothing in this Paragraph shall relieve Norton of the obligations imposed by this Agreement.

10. **Kosair Children's Hospital Physicians.** In the event that Norton identifies a need to hire a new physician at Kosair Children's Hospital in any of these specialties – adolescent medicine, cardiovascular surgery, genetics, endocrinology, forensics, hematology/oncology, nephrology, neurology, pulmonary, rheumatology, sleep medicine, critical care, hospitalists, and emergency department – then Norton shall provide the University a right to make a written offer to Norton provide such physician at Kosair Children's Hospital; provided, however, the University must provide such offer within thirty (30) days after notice is

received and such physicians must be available to commence work within one hundred and eighty (180) days of the date such notice is received. Norton shall not be required to extend any right of first offer in connection with the hiring of any *locum tenens* physician for a period of less than one (1) year. Norton shall accept or reject any offer provided pursuant to this Paragraph in its reasonable discretion.

**11. Certain Current Norton Employees.** Norton shall encourage its current physicians in the pediatric specialties to accept faculty status with the University. Norton shall discuss with its current pediatric infectious diseases and pediatric gastroenterology physicians to consider the possibility of transferring their employment to the University. Norton shall confirm that such discussion has occurred within thirty (30) days of the Effective Date.

**12. Settlement Payment.** Within twenty (20) days of the Effective Date, Norton shall make a one-time, lump sum settlement payment to the University in the amount of Eight Million Dollars (\$8,000,000.00). The University shall expend such funds solely on expenses incurred by the University's Department of Pediatrics in connection with services provided at or faculty practicing at Kosair Children's Hospital. For the avoidance of doubt, this settlement payment resolves any and all claims released pursuant to Paragraph 18, including among other things any claims based on amounts allegedly owed relating to Emergency Department and Hematology-Oncology services.

**13. Accreditation.** The University and Norton each shall be responsible for maintaining all of its accreditations necessary for its performance under this agreement (*e.g.*, the University is responsible for maintaining ACGME and LCME accreditations, and Norton is responsible for maintaining Joint Commission accreditation for Kosair Children's Hospital); provided, however, that neither the University nor Norton shall take any action for the purpose of and with the effect of causing the other to lose such accreditations. The parties agree to amend this agreement and their relationship as necessary to meet changing accreditation standards applicable to the University and Norton.

**14. Bylaws.** The University shall use best efforts, and the Chief of Staff of Kosair Children's Hospital and the Executive Vice President of Health Affairs of the University shall use personal best efforts, to cause the prompt adoption of standardized "Bylaws" (Rules and Regulations) for consistency across the Norton system for compliance with Joint Commission Accreditation.

**15. No Admission of Liability or Wrongdoing; Preservation of Arguments.** This Agreement, the First Amendment to Lease, and the First Amendment to Master Affiliation Agreement shall not in any way be construed as an admission of wrongdoing or liability by any Party. With respect to conduct subsequent to the Effective Date, the Parties preserve their respective arguments concerning their rights and obligations under the Lease and other agreements, except to the extent modified by this Agreement, the First Amendment to Lease, or the First Amendment to Master Affiliation Agreement. All claims asserted or which could have been asserted in this action are dismissed with prejudice, but all rights and defenses under pre-existing Individual Agreements or which arise subsequent to this Agreement are reserved. Specifically, any matters related to interpretation of duties and agreements between and among the parties have not been adjudicated by a Kentucky court.

16. **Dismissals.** Within three (3) business days of the Effective Date, (a) the University shall formally withdraw the Amended Notice of Default, and (b) the Parties shall file an agreed order of dismissal with prejudice of their respective claims, counterclaims, and other pleadings in the Lawsuit. The Parties shall bear their own costs and fees. The Court shall retain jurisdiction to resolve all disputes arising out of or related to this Agreement.

17. **Releases.**

- a. **Release by the University.** The University, on behalf of itself and any of its departments, foundations, affiliates (including University of Louisville Physicians, Inc.), successors, agents, legal representatives, officers, directors, employees, insurers, predecessors, and assigns, finally and forever releases and discharges (1) the Commonwealth and any of its agencies, agents, employees, legal representatives, officers, directors, insurers, predecessors, and assigns and (2) Norton and any of its shareholders, members, parents, subsidiaries, affiliates (including Norton Hospitals, Inc.), successors, agents, heirs, legal representatives, officers, directors, insurers, predecessors, and assigns, from any and all claims, demands, rights, and obligations from the beginning of time to the date hereof, whether asserted or unasserted, to the extent known, related to the Lawsuit and the allegations contained therein.
- b. **Release by Norton.** Norton, on behalf of itself and any of its shareholders, members, parents, subsidiaries, affiliates, successors, agents, heirs, legal representatives, officers, directors, insurers, predecessors and assigns, finally and forever releases and discharges (1) the Commonwealth and any of its agencies, agents, employees, legal representatives, officers, directors, insurers, predecessors, and assigns and (2) the University and any of its departments, foundations, affiliates (including University of Louisville Physicians, Inc.), successors, agents, legal representatives, officers, directors, employees, insurers, predecessors, and assigns, from any and all claims, demands, rights and obligations from the beginning of time to the date hereof, whether asserted or unasserted, to the extent known, related to the Lawsuit and the allegations contained therein.
- c. **Release by the Commonwealth.** The Commonwealth, on behalf of itself and any of its agencies, agents, employees, legal representatives, officers, directors, insurers, predecessors and assigns, finally and forever releases and discharges (1) the University and any of its departments, foundations, affiliates (including University of Louisville Physicians, Inc.), successors, agents, legal representatives, officers, directors, employees, insurers, predecessors, and assigns and (2) Norton and any of its shareholders, members, parents, subsidiaries, affiliates (including Norton Hospitals, Inc.), successors, agents, heirs, legal representatives, officers, directors, insurers, predecessors, and assigns, from any and all claims, demands, rights and obligations from the beginning of time to the date hereof,

whether asserted or unasserted, to the extent known, related to the Lawsuit and the allegations contained therein.

- d. Future Claims. In addition to the general release of claims set forth in Paragraphs 18(a)-(c) above, the parties release and agree not to assert any claim that the amounts owed under Paragraphs 4(a) and 4(b) are insufficient during the Financial Support Term.

**18. Warranty and Authority.** Each Party warrants, covenants, and represents that it has not assigned, transferred, or conveyed or purported to have assigned, transferred, or conveyed, to any person or entity, any of the claims released under this Agreement. Each Party further warrants, covenants, and represents that it has the complete right and authority to enter into this Agreement. For avoidance of doubt, and without limitation, the University warrants, covenants, and represents that it has authority to enter into this Agreement on behalf of and to bind University of Louisville Physicians, Inc. to perform all of the obligations that must be performed by the University contained in this Agreement. Each individual whose signature is affixed hereto in his or her representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity or entities on whose behalf his or her signature is affixed, subject only to ratification by the governing boards of the University and Norton.

**19. Binding Agreement.** This Agreement and the obligations set forth herein shall be binding on and shall inure to the benefit of the Parties and their respective parents, subsidiaries, affiliates (including but not limited to Norton's affiliate Norton Hospitals, Inc. and the University's affiliate University of Louisville Physicians, Inc.), shareholders, members, officers, employees, agents, heirs, personal and legal representatives, successors, and assigns. The respective parents, subsidiaries, affiliates, shareholders, members, officers, employees, agents, heirs, personal and legal representatives, successors, and assigns of the Parties, to the extent not a party to this Agreement, are express third party beneficiaries of this Agreement and shall have the independent right to enforce this Agreement directly against the Parties hereto, including, without limitation, an action for specific performance, without the joinder or consent of any other entity, person or party.

**20. Applicable Law and Forum.** The construction, interpretation, and enforcement of this Agreement shall at all times and in all respects be governed by the laws of the Commonwealth of Kentucky without reference to the Commonwealth of Kentucky's choice of law or conflict of law provisions or principles. Any claim arising from or relating to this Agreement in any way shall be brought and maintained exclusively in Franklin Circuit Court.

**21. Construction.** This Agreement shall not be construed more strictly against any Party, it being recognized that all of the Parties hereto, with the advice of counsel, have contributed substantially and materially to its preparation and that this Agreement has been the subject of negotiations between the Parties and is a product of that negotiation.

**22. Counterparts.** This Agreement may be executed in one or more counterparts, including facsimile counterparts or counterparts delivered by electronic mail, which shall be



deemed an original, with the same force and effect as if all signatures were appended to one instrument.

23. **Entire Agreement.** This Agreement, the First Amendment to Lease, and the First Amendment to Master Affiliation Agreement (collectively, the “**Three Agreements**”) contain the entire agreement and understanding between the Parties. No change or modification of the Three Agreements shall be valid or binding upon the Parties unless and until the same is in writing and signed by the Party against whom enforcement of such change or modification is sought.

24. **No Representations.** The Parties acknowledge and expressly represent and warrant that they have relied solely upon their own judgment, together with advice of counsel, when deciding whether to enter into this Agreement. Each Party further agrees, acknowledges and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement or agreement of any kind, whether oral or written, made by or on behalf of any other Party shall be, or has been, relied upon by it unless specifically contained and incorporated herein.


25. **Effective Date.** The “**Effective Date**” of the Three Agreements shall be the date by which the Three Agreements are (1) fully executed by each party to each respective agreement, including but not limited to the Secretary of Finance and Administration Cabinet, and (2) the governing boards of Norton, the University, and University of Louisville Physicians, Inc. have each ratified the Three Agreements. For the avoidance of doubt, the Three Agreements shall not be effective, nor the obligations in those agreements effective, unless and until the Three Agreements are fully executed by each party to each respective agreement and Norton’s, the University’s, and University of Louisville Physicians, Inc.’s governing boards have each ratified the Three Agreements.

26. **Notices.** Any notices (including without limitation notices relating to any right of first offer) pursuant to any of the Three Agreements shall be provided by written communication delivered via certified mail to the chief executive officer and chief legal officer of the party to whom notice is directed.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below, on behalf of themselves and their respective parents, subsidiaries, affiliates, shareholders, members, officers, employees, agents, heirs, personal and legal representatives, successors, and assigns.

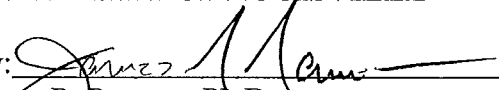
[signatures appear on next page]

**NORTON HEALTHCARE, INC.**

By:   
Stephen A. Williams  
Chief Executive Officer  
Subject to Board Ratification

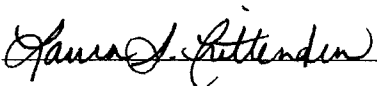
Date: 12-17-2015

**UNIVERSITY OF LOUISVILLE**

By:   
James R. Ramsey, Ph.D  
President  
Subject to Board Ratification

Date: 12-17-2015

**COMMONWEALTH OF KENTUCKY,  
FINANCE AND ADMINISTRATION  
CABINET**

By:   
Printed Name: Laura S. Crittenden  
Title: Assistant Attorney General  
Date: 12/17/2015