

## JOINT USE AGREEMENT

This joint use agreement (this "Agreement") is made and entered into as of the 22<sup>nd</sup> day of JUNE, 2009 by and between The Ohio State University (the "University"), acting under the provisions of Chapter 3335 of the Revised Code of Ohio, and the Research Institute at Nationwide Children's Hospital ("Nationwide"), a non-profit corporation organized and existing under the laws of the State of Ohio.

### RECITALS

WHEREAS, the General Assembly has appropriated funds to the University for the following project (the "project"):

Project Name: Nationwide Children's Hospital Capital Equipment  
Legislation: House Bill 562  
Capital Appropriation: C315U7  
OSU Project Number: # OSU-090499

In the total amount of Two Million and Five hundred thousand dollars (\$2,500,000.00), (the "Appropriation").

WHEREAS, in 2008 the Ohio General Assembly appropriated state capital funds in the amount of \$ 2,500,000.00 to The Ohio State University for the Nationwide Children's Hospital Capital Equipment and The Ohio State University College of Medicine to provide for the purchase of equipment for the use of The Ohio State University faculty appointed as principal investigators, to assist them in the development and execution of their research.

WHEREAS, capital appropriations released by the Chancellor of the Ohio Board of Regents (the "Chancellor") require compliance with Ohio Administrative Code 3333-1-03(E), which specifically calls for the execution of a joint use agreement.

WHEREAS, the University has concluded that the value of the use of the facilities by the University as provided in this agreement is reasonably related to the amount of the appropriation.

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and Nationwide hereby agree as follows:

### AGREEMENT

1. Commitment. Nationwide commits to the University that the monies for the project will be used to purchase equipment for the use of The Ohio State University faculty appointed as principal investigators, to assist them in the development and execution of their research.

2. Term. The term of this Agreement shall commence as of the date of its approval by the Chancellor and shall expire twenty (20) years from the date thereafter. In the event that this Agreement is terminated prior to its expiration, Nationwide shall reimburse the State of Ohio with an amount calculated by (a) dividing the amount of the appropriation actually paid to Nationwide under the Agreement by twenty (20), and (b) multiplying the resulting amount by (i) twenty (20), less (ii) the number of full years the project has been utilized by the University in accordance with the Agreement (the "Reimbursement Amount"). The Reimbursement Amount shall be paid in cash.
3. Compliance with Laws. On this project Nationwide shall comply with all pertinent federal, state and local laws as well as state administrative regulations including those relating to competitive bidding and prevailing wage.
4. Funds used for Capital Improvements. Except for the funds used to cover the University's administrative costs, the funds provided under this Agreement shall be used by Nationwide only for purchase of equipment for the use of The Ohio State University faculty appointed as principal investigators with The Ohio State University College of Medicine, Nationwide Children's Hospital located at Nationwide Children's Hospital, 700 Children's Drive, Columbus, Ohio 43205 and shall not be used for operating expenses. Nationwide, in connection with the Agreement, shall use, where applicable, competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
5. Nationwide Children's Hospital and Insurance. Nationwide's facility located at 700 Children's Drive, Columbus, Ohio 43205 is a non-profit corporation organized and existing under the laws of the State of Ohio, and is fully insured.
6. Hold Harmless. The University shall have no liability for, and Nationwide shall indemnify and hold the University harmless from, all construction, operation and maintenance costs of the project.
7. Distribution of Funds and Administrative Costs. Upon execution of this Agreement, the University shall submit to the Chancellor a formal request for the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the construction of the project. Such administrative costs shall be \$ 37,500.00 which is equal to 1.5% of the appropriation and shall be paid by the University to itself concurrently with the University's payment to Nationwide. Nationwide shall submit a draw request of permitted use of funds to the University in the amount of \$ 2,462,500.00 as soon as practicable upon the signing of this Agreement; but not longer than eleven months from the date of the signing of this Agreement. The University shall, within 30 calendar days after State of Ohio Office of Budget and Management Controlling Board approval for release of funds, disburse the Appropriation.

8. The terms and conditions of such use by the University shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the University's investment in the facility. The Chancellor shall, upon request, be provided with pertinent records by Nationwide and the University that measure the nature and extent of the collaboration between Nationwide and the University, and the terms and conditions governing such collaboration.
9. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
10. Assignment. This Agreement may not be assigned in any form or to any extent by either party without the written consent of the other party.
11. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University: Christopher M. Culley  
General Counsel  
Office of Legal Affairs  
The Ohio State University  
1590 North High Street  
Suite 500  
Columbus, Ohio 43210-2178

To Nationwide: Aaron Ufferman  
Nationwide Children's Hospital  
700 Children's Drive  
Columbus, Ohio 43205

Katherine Milem, Vice President  
Nationwide Children's Hospital  
700 Children's Drive  
Columbus, Ohio 43205

With a copy to:

Dr. John Barnard  
ED 4<sup>th</sup> Floor  
Nationwide Children's Hospital  
700 Children's Drive  
Columbus, Ohio 43205

11. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.
12. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Chancellor.
13. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

THE OHIO STATE UNIVERSITY

By: 

~~William J. Shkurti~~  
~~Senior Vice President, Business & Finance~~  
Jeff Kaplan  
Senior Vice President, Administration & Planning,  
and Special Assistant to the President

NATIONWIDE CHILDREN'S HOSPITAL

By: 

Katherine Milem  
Vice President