

HUNTSMAN CANCER INSTITUTE SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

This Supplemental MOU (“SMOU”) is entered into as of July 1, 2017 (“Effective Date”), by and between the Huntsman Cancer Foundation (“Foundation”) and the University of Utah (“University”) for the purpose of setting forth the understanding of the Parties with respect to the management and operations of Phases I–IV of the Huntsman Cancer Institute (“HCI”), including the Huntsman Cancer Hospital (“HCH”). The Foundation and the University are hereinafter sometimes referred to as the Parties. The Parties hereby agree as follows:

1. The University, the Huntsman family, and the Foundation are all dedicated to maintaining HCI as a premier Comprehensive Cancer Center and world-class research and cancer medical treatment facility. This shared commitment is reflected in the cooperative history of work between the Parties, and is documented in a number of agreements between the Parties. The Foundation and the University are signatories to three agreements governing the operations of Phases I-IV of HCI: (1) a Support Agreement, dated September 30, 1995, together with First and Second Amendments (“Support Agreement”); (2) a Memorandum of Understanding, dated December 15, 2014 (“2014 MOU”); and (3) a Memorandum of Understanding, dated January 10, 2007 (“2007 MOU,” and together with the Support Agreement and 2014 MOU, collectively, the “Current Agreements”).
2. The Parties acknowledge and agree that the three-fold mission of HCI is and will continue to be:
 - a. Advancement in research and scientific discoveries relating to cancer,
 - b. Clinical and medical care for its patients, and
 - c. Cancer education and cancer outreach to all.
3. The Chief Executive Officer of HCI will oversee HCI and will continue to report directly to the President of the University. The Chief Executive Officer of HCI will collaborate with the University’s Senior Vice President of Health Sciences, the University’s Senior Vice President for Academic Affairs, and the Chief Executive Officer of the Foundation. No other reporting relationships are being changed by this SMOU. The relationship between HCH and UUHC will continue as stated in the 2007 MOU
4. A five-member Joint Oversight Committee (“JOC”) shall be established and shall meet as necessary and at least twice each year during the term of this SMOU to review the clinical care and the research performance of HCI to consider measures to strengthen the relationship between the Parties, to resolve all disputes between the Parties, to discuss and approve any change in the Chief Executive Officer of HCI in

advance, and to perform other oversight functions specifically assigned to it in this SMOU or as jointly requested by the Parties. The JOC's decisions shall be made by a vote of the majority of its members. The JOC shall consist of the following members: (i) the President of the University; (ii) the Chief Executive Officer of the Foundation; (iii) a person designated from time to time by the University; (iv) a person designated from time to time by the Foundation; and (v) a prominent cancer specialist, who is not directly associated with either of the Parties or HCI, and who shall be designated jointly by the University and the Foundation who will serve at the pleasure of the two co-chairs. The University's President and the Chief Executive Officer of the Foundation shall serve as the co-chairs of the JOC. The JOC shall replace the Executive Committee and its functions and governance, as described in the 2007 MOU.

5. (a) HCH Adjusted Net Income (defined in subparagraph 5(b), below) will be distributed as follows: twenty-five percent (25%) to be retained by HCH to pay for its own projects, programs, and capital equipment, facilities and infrastructure; twenty-five percent (25%) to be transferred to UUHC; and fifty percent (50%) to be transferred to HCI. The Foundation shall have access to, and the University shall make available to it upon request, and at least annually UUHC audited financial statements. The books of UUHC are maintained on a full accrual GAAP basis of accounting. For the purposes of this MOU, UUHC shall maintain a specific GAAP-based HCH income statement, balance sheet, and a statement showing the calculation and distribution of HCH Adjusted Net Income, including the designated cash amount of the HCH Adjusted Net Income. At the written request of the Foundation, UUHC shall allow the Foundation to review all financial information necessary to understand the calculation of HCH Adjusted Net Income. Any distributions of HCH Adjusted Net Income to other University programs, departments and divisions shall also be reported by UUHC to the Foundation.

(b) From the Effective Date, the "HCH Adjusted Net Income" shall mean the total of HCH's net revenue from HCH for the fiscal year; (i) **minus** (A) all direct costs and expenses of HCH, (B) an amount equal to HCH's directly attributable share of all fairly allocated indirect costs of HCH and UUHC for cancer-related infrastructure, cancer-related support services, and cancer-related clinical network development for the fiscal year, and (C) UUHC's payment of interest and principal on HCH debt (net of the State appropriation to replace tobacco settlement funds); (ii) **plus** HCH depreciation expense for the fiscal year; (iii) in all cases calculated in accordance with GAAP. If needed, the JOC shall appoint a certified public accountant who does not perform accounting, audit or other services for either of the Parties to (i) establish, review or advise the Parties on the appropriate method to calculate the HCH Adjusted Net Income, (ii) ensure consistency in the calculation of HCH Adjusted Net Income and the GAAP-based accounting principles used from year to year, and (iii) resolve any disputes concerning the calculation of HCH Adjusted Net Income.

6. The Foundation will provide or cause to be provided \$120,000,000 in new funding (including pledges) for HCI between the Effective Date and December 31, 2025 (the "Commitment") – for which the University is exceedingly grateful. The Commitment will be satisfied through: donations and pledges made by the Foundation, gifts raised by the Foundation which are deposited into HCI or other University development accounts due to donor preferences, future bond issuances paid for or guaranteed by the Foundation, referrals made by the Jon M. Huntsman family or the Foundation, and donations and pledges by the Huntsman family to other University departments or programs. This Commitment is in addition to the existing funding guarantee for the construction of Phase IV referred to in paragraph 7. All funds provided by the Foundation to the University through the Commitment shall be used solely for (i) cancer research, clinical care and/or education, consistent with the Institute's mission and (ii) such other uses as the donors direct or the Foundation may specifically approve in writing. All funds provided by the Huntsman family shall be used for the purposes specifically provided with such donation. No portion of the Commitment shall be used by the University or its departments or divisions for operations, overhead, administrative costs, or other expenses that could be construed as administrative/overhead costs, unless approved in writing by the Foundation or the Huntsman family, as the case may be, or as directed by the donor. For budget planning purposes, by the beginning of each fiscal year, the Foundation will endeavor to share with the CEO of HCI and the President of the University its funding plans for the coming year.

7. It is acknowledged by the Parties that all monies paid to construct Phases I, II and III have been donated by the Foundation and other generous donors, provided by the Federal Government, paid by funds generated by HCH or the University, paid by tobacco settlement funds, or donated directly by the Huntsman family. Additionally, the bond payments associated with Phase IV will continue to be the responsibility of the Foundation until paid in full, for which the University is exceedingly grateful, which the Foundation estimates will be approximately \$172,000,000 in total principal and interest payments.

8. Disputes have arisen between the Parties regarding the obligation of the University to assume and replace funding for operating costs of HCI previously provided by the Foundation, as described in the 2014 MOU. To fully resolve these disputes, the University will transfer to HCI the total amount of \$68,000,000, which shall be used to support cancer research, cancer clinical care and other needs of HCI as recommended annually by the Chief Executive Officer of HCI and approved by the President. This amount shall be transferred to HCI in three equal annual payments of \$16,000,000 each on or before January 15 of each of 2018, 2019 and 2020. In addition for calendar years 2021, 2022, 2023 and 2024, the University will transfer not less than \$5,000,000 to HCI pursuant to paragraph 3 of the 2014 MOU. All transfers

made pursuant to this paragraph 8 shall be in addition to all other funding to HCI from the University (including pursuant to paragraph 5(a) above) and shall not reduce the University's other financial support of HCI.

9. Donations of money made by third parties to the Foundation, HCI, HCH, or the University that the donor has earmarked for specific cancer-related clinical programs or cancer-related research programs shall be used exclusively for those programs. No donation directed to the Foundation, HCI, HCH, or the University shall be redirected to any entity other than the one designated by the donor. The department chairs or other physicians in the University's School of Medicine may solicit donations from their grateful patients for cancer-related programs in which they are professionally interested. All such donations will be processed through the Foundation before being distributed to the donor's designee.

10. Faculty appointments at the University (including those at HCI) shall be made by the relevant departmental chair in accordance with normal University policy. In making cancer-related faculty appointments involving HCI resources, department chairs will collaborate with and secure the approval of (i) the Chief Executive Officer of HCI and (ii) the UUHC Chief Medical Officer and/or the HCH Executive Director, as appropriate. The participants will work together to recruit and retain the most highly qualified candidates and will share financial responsibility as mutually agreed. Designation of all HCI investigators and assignment of all HCI resources, including space in HCI Phases I-IV, shall be the responsibility of the Chief Executive Officer of HCI.

11. This SMOU shall continue through December 31, 2025 and will automatically renew every 8 years thereafter unless (i) earlier terminated by mutual agreement of the Parties or (ii) if earlier termination is necessary to comply with any law applicable to HCI, the University, or the Foundation. In the event that this SMOU is terminated in accordance with the terms of this paragraph, then neither Party shall have any further obligation to the other under the terms of this SMOU, provided, however, that the terms of the Current Agreements shall remain in full force and effect following any such termination.

12. This SMOU contains the entire understanding of the Parties with respect to the subject matter hereof for periods from and after the Effective Date and supersedes all prior agreements and understandings between the Parties with respect to the specific agreements contained herein. All of the Current Agreements referenced in Paragraph 1, and the terms, conditions and agreements of the Parties contained therein, shall remain in full force and effect except as specifically amended in this SMOU. This SMOU may be amended only by a written instrument signed by the Parties thereto.

13. The Parties hereby release each other from all obligations, debts, and liabilities of any kind, whether known or unknown, arising up to the date of this SMOU.

IN WITNESS WHEREOF, the Parties have executed this agreement effective as of July 1, 2017.

HUNTSMAN CANCER FOUNDATION

UNIVERSITY OF UTAH

By: _____

Name: Jon M. Huntsman
Title: Chairman Emeritus and Founder
Huntsman Cancer Foundation

Name: David W. Pershing
Title: President
University of Utah

By: _____

Name: Peter R. Huntsman
Title: Chief Executive Officer
Huntsman Cancer Foundation

Name: H. David Burton
Title: Chair, Board of Trustees