

## JOINT VENTURE POLICY

### I. INTRODUCTION AND PURPOSE

This Policy and Procedure on Joint Venture Participation (this “**Policy**”) has been created and approved by the Board of Directors (the “**Board**”) of XYZ Hospital System, Inc. (the “**System**”) to provide guidance as to participation of the System, directly or through any of its tax-exempt controlled entities (together with the System referred to herein as the “**System Entities**”), in a Joint Venture or similar arrangement. For these purposes, “**Joint Venture**” means any joint ownership or contractual arrangement with any for-profit or private interest (including, without limitation, any physician(s) on the medical staff of any System Entity) through which there is an agreement to jointly undertake a specific charitable or business enterprise. Joint undertakings between a System entity and one or more other IRC Section 501(c)(3) organizations are outside the scope of this policy.

*[Drafter’s Note – As written, this Policy would encompass Joint Ventures regardless of their legal form, i.e., via an entity treated as a partnership for tax purposes, via a separate corporation, or via contract. Organizations should consider whether this relatively broad approach is workable for their circumstances. At a minimum, the policy should address arrangements treated as partnerships for tax purposes, however, since these arrangements have been (and likely will continue to be) subject to substantial IRS scrutiny.]*

### II. APPLICABILITY

This Policy applies to any Joint Venture where participation by a System Entity involves either (i) activities that would, but for the Joint Venture, be in furtherance of the tax-exempt purposes of the System Entity, or (ii) the transfer into joint ownership of any health care activity previously conducted by the System Entity. This Policy excludes investments of cash or marketable securities or other joint ownership arrangements where the primary purpose of the System Entity’s participation is either investment or the active conduct of an unrelated trade or business with respect to the System Entity (and not the provision of health care or other activities that would, but for the Joint Venture, be in furtherance of the tax-exempt purposes of the System Entity). As to the latter, the System’s Chief Financial Officer will annually provide to the Board a report describing all such excluded Joint Ventures and the amount, if any, of unrelated trade or business income generated by the Joint Ventures.

### III. POLICY AND PROCEDURE

#### A. Charitable Purposes and Effect.

It is the policy of the System that appropriate provisions be included in the terms of any Joint Venture arrangement covered by this Policy that are sufficient to protect the tax-exempt status of any System Entity participating in the Joint Venture.

1. All Joint Venture operating agreements or similar documents will contain a binding statement of charitable purpose of the Joint Venture that ensures, and explains how, participation in the Joint Venture furthers the tax-exempt purposes of the System Entity participating.
2. All patient care Joint Ventures in which a System Entity participates will have a written charity care policy that is either (i) the same as the policy of such System Entity as now in effect or subsequently modified, or (ii) has been approved by the Board.
3. All Joint Venture operating agreements or similar documents will contain clear, binding provisions sufficient to ensure that charitable purposes are furthered by Joint Venture activities and that a System Entity participating does not cede control of Joint Venture activities to for-profit interests. A System Entity may participate in a Joint Venture that furthers charitable purposes, if either:
  - (i) The System Entity at all times maintains majority voting control, or
  - (ii) The System Entity at all times maintains fifty percent (50%) voting control and the Joint Venture operating agreement or similar documents contain adequate reserved powers to establish that the System Entity does not cede control of Joint Venture activities to for-profit interests.
4. The System's legal counsel or designee will review all Joint Venture operating agreements or similar documents prior to execution and will, pursuant to Sections 1 and 3, above, determine the adequacy of provisions governing majority voting or applicable reserved powers after considering the effect of any other applicable governance provisions or arrangements, including, without limitation, any management agreements.
5. A System Entity will not participate in any Joint Venture covered by this Policy if such Joint Venture is not described in Section 3(i) or Section 3(ii) above, without advance approval of the Board.

**B. Economic Terms.**

1. All transfers of property or existing charitable or business activity to any Joint Venture by a System Entity will be valued at fair market value, and such System Entity will receive fair market value consideration or appropriate credit to its capital account for such transfer.
2. Unless otherwise approved by the Board, a System Entity will not participate in any Joint Venture covered by this Policy that is treated as a

partnership for tax purposes unless such Joint Venture involves allocations of items of income and loss that are proportional to the owners' respective capital accounts.

3. A System Entity will not make any loan to any Joint Venture or to any other participant in any Joint Venture without the prior approval of the Board.
4. Any provision of services to any Joint Venture covered by this Policy by a System Entity will be at fair market value, except as otherwise determined by the Board based on a review of the totality of the facts and circumstances.

**C. Prohibited Activities.**

The operating agreement or similar documents of any Joint Ventures in which a System Entity participates will include an express prohibition on Joint Venture participation in political campaign activities and political campaign contributions, including contributions to any political action committee (“PAC”).

**D. Required Approvals.**

If a proposed Joint Venture will involve any of the following: (i) participation by physicians on the medical staff of any System Entity; (ii) assets of any System Entity in excess of \$250,000; or (iii) the ownership or operation of any hospital; such Joint Venture will require prior approval by both the governing body of the System Entity proposing such Joint Venture and the System Board.

**IV. AMENDMENTS TO POLICY**

Any substantive change to this Policy will require the approval of the Board.

**V. REFERENCE TO OTHER POLICIES**

In addition to this Policy, the Board has approved additional policies to provide specific guidance on particular common transactions, including, without limitation, the XYZ Hospital System Policy on Excess Benefit Transactions and the XYZ Hospital System Policy on Conflicts and Dualities of Interest. These policies should be consulted in addition to this Policy, as appropriate.

*We would like to thank T.J. Sullivan (Drinker Biddle & Reath LLP, Washington, DC) for providing this Practice Corner submission.*