INSTITUTIONAL COMPLIANCE AGREEMENT

BETWEEN THE

OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

KANSAS UNIVERSITY PHYSICIANS, INC.

I. PREAMBLE

Kansas University Physicians, Inc., ("KUPI") for itself and on behalf of the physician foundations ("Foundations") identified in Attachment A hereto hereby enters into this Institutional Compliance Agreement ("ICA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance with the reimbursement requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs") as they relate to the submission of claims by KUPI with regard to professional services rendered by its providers.

At the present time, KUPI contracts with the Foundations affiliated with, and employing certain members of the physician faculty of, the University of Kansas School of Medicine ("SOM") to supply physicians and other appropriate health care providers who provide professional medical services for and on behalf of KUPI. The Foundations have agreed that the Foundation physicians and other appropriate health care providers shall perform all of their clinical services for and on behalf of KUPI. The Foundations have further agreed that if a Foundation physician or other appropriate health care provider fails to participate in, and comply with, the corporate compliance plan established by KUPI, the Foundation shall cause such individual to discontinue providing services to KUPI patients, upon notice from KUPI. For the purposes of this ICA, the term "provider" shall mean all physician faculty of the SOM or ancillary health providers who provide professional medical services as employees of KUPI, or pursuant to contracts between their employers and KUPI. For the purposes of this ICA, the term "employee" shall mean: all KUPI employees who are involved in the generation and submission of reimbursement claims for physician services, including, but not limited to, coders and billing personnel. This ICA also applies to all third parties KUPI may choose to engage as its billing agents. Finally, this ICA applies to the medical residents assigned to the SOM clinical departments and acting under the supervision of the providers at the University of Kansas Medical Center campus in Kansas City, Kansas (hereinafter referred to as "residents") to the extent specifically set forth herein. The Foundations agree to be bound by the terms of this ICA, and they authorize the undertakings of KUPI as set forth in this ICA.

Prior to the execution of this ICA, KUPI voluntarily established a compliance plan (known as the "Compliance Plan") which provides for integrity policies and procedures

and which, as represented by KUPI in this ICA, is aimed at ensuring that its participation in the Federal health care programs (which includes any requests for payments) is in conformity with the statutes, regulations and other directives applicable to those programs. Therefore, pursuant to this ICA, KUPI hereby agrees to maintain in full operation, or adapt as required by this ICA, the Compliance Plan as it relates to the submission of claims for physician services for the term of this ICA. The Compliance Plan may be modified by KUPI as appropriate, but at a minimum, shall always include the integrity obligations enumerated in this ICA.

II. TERM AND SCOPE OF THE ICA

The period of the compliance obligations assumed by KUPI under this ICA shall be five (5) years from the effective date of this ICA (unless otherwise specified). The effective date of this ICA shall be the date on which the final signatory of this ICA executes this ICA. The obligations imposed upon KUPI pursuant to this ICA relate solely to the provision of, and reimbursement of claims for, physician services in connection with Federal health care program patients.

III. INTEGRITY OBLIGATIONS

Pursuant to this ICA, and for its duration, KUPI will make the following integrity obligations permanent features of its Compliance Plan, which shall be established in accordance with the provisions below:

A. COMPLIANCE COMMITTEE

Within ninety (90) days after the effective date of this ICA, KUPI shall appoint, pursuant to its Compliance Plan, a Compliance Committee to monitor KUPI's compliance activities. Pursuant to this ICA, KUPI agrees to charge the Compliance Committee with responsibility for overseeing compliance with the integrity obligations in this ICA. KUPI shall ensure that the Compliance Committee is continuously composed of representatives of multiple disciplines and segments of KUPI's operations. At a minimum, the Compliance Committee shall include or shall receive reports from the Manager of Compliance and Audit (who shall also chair the Compliance Committee), the Billing Services Manager, no less than four (4) physician providers and no less than two (2) practice administrators from KUPI. The Compliance Committee must be able to make reports directly to KUPI's management and its board of directors. Any changes in the positions that comprise the Compliance Committee must be reported to OIG within thirty (30) days of the effective date of the action.

B. MANAGER OF COMPLIANCE AND AUDIT

KUPI has represented to OIG that, pursuant to its Compliance Plan, it has created a compliance officer position (known as the "Manager of Compliance and Audit") and appointed an individual to serve in that capacity. Accordingly, KUPI shall formally maintain the appointment of an individual to serve as the Manager of Compliance and Audit throughout the term of this ICA. At a minimum, the Manager of Compliance and Audit must continuously be charged with the responsibility for the day-to-day compliance activities in furtherance of the integrity obligations assumed herein, as well as for any reporting obligations established under this ICA. The Manager of Compliance and Audit must have the authority and ability to report directly to KUPI's management and board of directors. Any changes in the identity or position description of the Manager of Compliance and Audit (including voluntary or involuntary personnel changes) or any actions or changes that would materially affect his or her ability to perform the duties necessary to meet the obligations in this ICA must be reported to OIG within thirty (30) days of the effective date of the action.

C. WRITTEN STANDARDS

1. CODE OF CONDUCT. Within ninety (90) days after the effective date of this ICA, KUPI shall develop and distribute to all employees and providers a written Code of Conduct as part of its Compliance Plan, and shall maintain it in effect for the duration of this ICA. The Code of Conduct shall also be readily accessible to employees and providers through means that KUPI considers effective. New employees and providers shall receive the Code of Conduct within thirty (30) days after the commencement of their employment, or within ninety (90) days after the effective date of this ICA, whichever is later.

   KUPI shall document the actions taken to distribute the Code of Conduct to all employees and providers. Such documents shall be produced to OIG upon request.

   KUPI will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed to all employees and providers within thirty (30) days of initiating such a change, unless the nature of the revision is such that it warrants earlier notice.

   KUPI shall make the promotion of, and adherence to, the Code of Conduct an element (1) in evaluating the performance of all employees and (2) in determining whether to continue to contract for the provision of a provider's services to KUPI patients. At all times, the Code of Conduct shall, at a minimum, set forth:

a. KUPI's commitment to full compliance with all statutes, regulations, and guidance applicable to the Federal health care programs, including its commitment to prepare and submit accurate reimbursement claims consistent with Federal health care program statutes and regulations, as well as guidance otherwise communicated by the Health Care Financing Administration ("HCFA") (or other regulatory agencies that administer the Federal health care programs) and/or its agents;

b. KUPI's requirement that all of its employees and providers comply with all statutes, regulations, and guidance applicable to the Federal health care programs and with KUPI's own policies and procedures (including the requirements arising from this ICA);

c. The requirement that KUPI employees and providers are expected to report through the Compliance Plan any suspected violations of any statute, regulation, or guidelines applicable to the Federal health care programs or of KUPI's own policies and procedures;

d. The potential consequences to both KUPI and to any of its employees or providers as a result of any failure to comply with the applicable Federal health care program requirements and/or with KUPI's own Policies and Procedures or any failure to report such non-compliance; and

e. The right of all employees and providers to use KUPI's confidential disclosure mechanisms, as well as KUPI's commitment to confidentiality and non-retaliation policy with respect to good faith disclosures.

Within ninety (90) days of the effective date of this ICA, all employees and providers shall certify, in writing, that they have received, read, understand and will abide by KUPI's Code of Conduct. New employees and providers shall receive the Code of Conduct and shall complete the required certification within forty-five (45) days after the commencement of their employment or contract, or within ninety (90) days after the effective date of this ICA, whichever is later.

2. POLICIES AND PROCEDURES. KUPI has represented to OIG that it has developed, distributed to its employees and providers and placed into effect written policies and procedures (hereinafter the "Policies and Procedures") regarding the operation of its Compliance Plan and its overall compliance with all Federal health care program statutes,

regulations, and guidance issued by the agency in charge of administering the program and its agents. Accordingly, KUPI hereby agrees to maintain its Policies and Procedures, which at all times shall specifically address: (1) the need for compliance in connection with all submissions for reimbursement for professional medical services; (2) documentation requirements as it pertains to the physician services rendered and/or claimed for reimbursement by or through KUPI; and (3) a process for reasonable verification of compliance with these requirements. In addition, the Policies and Procedures shall include guidelines and methods for employees and providers to make disclosures or otherwise report on compliance issues to management and/or supervisors, and through the Confidential Disclosure mechanisms required by Section III.F. KUPI shall assess and update the Policies and Procedures at least annually or more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report, as provided in Section V.A. The Policies and Procedures will be made available to OIG upon request.

Within one-hundred and twenty (120) days of the effective date of this ICA, KUPI shall provide to all of its employees and providers the Policies and Procedures relevant to their tasks and responsibilities in connection with KUPI's participation in the Federal health care programs. KUPI shall take actions that it considers reasonable and effective to ensure that these Policies and Procedures are communicated and readily available to employees and providers, and understood by them. Compliance staff or supervisors should be duly identified and made continuously available to explain any and all Policies and Procedures.

D. TRAINING AND EDUCATION.

1. GENERAL INITIAL TRAINING. Within one-hundred and twenty (120) days of the effective date of this ICA, KUPI shall provide general compliance training to its employees and providers. This general training shall explain KUPI's:

   a. Institutional Compliance Agreement requirements;

   b. Compliance Plan (including the Policies and Procedures established pursuant to Subsection C.2, above), except that OIG shall consider training conducted by KUPI under the Compliance Plan since July 1, 1999 to meet this obligation; and

   c. Code of Conduct.

The training materials (including attendance logs) shall be maintained by KUPI and made available to OIG, upon request.

New employees and providers shall receive the general training described above within forty-five (45) days of beginning their employment with KUPI or within one hundred and twenty (120) days after the effective date of this ICA, whichever is later. All employees and providers shall receive such general training on an annual basis.

2. SPECIFIC TRAINING. Within one-hundred and twenty (120) days of the effective date of this ICA, KUPI shall provide to all its employees and providers additional training to supplement the general training required above. At a minimum, this training shall include a discussion of:

   a. The submission of accurate requests for reimbursement for physician services rendered to patients of the Federal health care programs;

   b. The Policies and Procedures and other requirements applicable to the documentation of medical records;

   c. The personal obligation of each individual to ensure that the information documented by the individual, whether relating to actual patient care, the type of services or items delivered or the coding of such services or items is accurate and meets the Federal health care program's requirements and KUPI's policies;

   d. Reimbursement rules and statutes applicable to the services for which KUPI seeks reimbursement from Federal health care programs;

   e. The legal sanctions for improper reimbursement submissions (including the submission of false or inaccurate information); and

   f. Relevant examples of proper and improper billing practices, as it pertains to the rendering of physician services.

These training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Within forty-five (45) days of the beginning of employment, or within one hundred and twenty(120) days of the effective date of this ICA, whichever is later, KUPI shall provide all new employees and providers with specific

training using internal or external resources. If the new employee or provider has any responsibility for the delivery of patient care, the preparation or submission of claims and/or the assignment of procedure codes prior to completing this specific training, a KUPI employee who has completed the substantive training shall conduct sporadic reviews of the untrained person's work regarding the documentation of services and/or the assignment of billing codes until such time as the new employee or provider is duly trained. The time periods during which training must be provided to an employee or provider pursuant to section IV.D.1 and 2 and the Code of Conduct and Policies and Procedures must be distributed to an employee or provider pursuant to section III.C.1 and 2, shall be tolled during any period of more than thirty (30) days for which such individual is not present at the Kansas University Medical Center in Kansas City, Kansas.

All employees and providers shall receive refresher sessions on this specific training each year for the duration of this ICA. The substance of the training and the identity of the individuals must be documented in accordance with subsection D.3, below.

KUPI recognizes the importance of educating medical trainees concerning billing requirements and the importance of compliance. To further that objective, KUPI will include residents in the training described in this section IV.D.2. Residents will not otherwise be treated as new employees for the purposes of this ICA, but they will be required to attend compliance training during the first year after they become residents. Residents will be instructed to include their attendance at compliance training sessions in their logs of activities.

3. CERTIFICATION. KUPI shall maintain documents that reflect attendance at both general and specific training sessions by employees and providers, and the topics covered. KUPI may choose the format of these documents, but it is expected that the materials will include sheets with the signatures of the persons who attended. The Manager of Compliance and Audit shall retain the attendance logs as well as the course materials. All of these documents shall be made available to OIG, upon request.

KUPI shall certify that such training has been provided in its Implementation and Annual Reports to OIG, in accordance with section V, below. Information concerning the format, dates, and copies of the materials provided will be made available, upon request, for review by OIG.

For the purposes of meeting the obligations under this subsection D, for

the term of the first Annual Report under this Agreement, OIG shall consider KUPI's training and educational activities carried out pursuant to the Compliance Plan since July 1, 1999.

4. DEPARTING PERSONS. The provisions of this subsection D shall not apply to providers, employees or residents who terminate their relationship with KUPI or the SOM within the applicable time periods.

E. ANNUAL REVIEWS OF BILLING POLICIES, PROCEDURES AND PRACTICES

1. ANNUAL REVIEWS. KUPI has developed a protocol, attached hereto as Attachment B, for reviewing, on an annual basis, a sample of claims for each provider who submits claims for professional services through KUPI. An objective of the annual review is to verify compliance with the reimbursement and billing requirements of the Federal health care programs. Implementation of the agreed upon procedures set forth in the protocol shall be an element of this Agreement. For the fiscal year ending June 30, 2001, and annually thereafter through the fiscal year ending June 30, 2005, KUPI shall contract with an independent entity (the "Annual Reviewer") with expertise in the reimbursement and billing requirements of the Federal health care programs to verify whether KUPI is implementing the agreed upon procedures. KUPI will request the Annual Reviewer to produce a report on its work, which report shall be included in the Annual Report to OIG.

   If any of these annual reviews, or other KUPI source, uncovers overpayments that were not already addressed in connection with KUPI's routine monitoring, KUPI shall notify the entity in charge of processing the claim or reimbursement (such as the Medicare Part B carrier or similar Federal health care program payor) within sixty (60) days of determining that there has been an overpayment and take remedial steps within ninety (90) days of such determination (or such additional time as may be agreed to by the payor in writing) to correct the problem, including preventing the deficiency from recurring, and make any appropriate refunds. The notice to the payor shall include:

   a. a statement that the refund is being made pursuant to this ICA;

   b. a description of the circumstances surrounding the overpayment;

   c. the methodology by which the overpayment was determined;

   d. the amount of the overpayment;

   e. any claim-specific information used to determine the overpayment

(e.g., beneficiary health insurance number, claim number, service date, and payment date); and

f. the provider identification number under which the repayment is being made.

If any annual review or monitoring reveals that there may be a material billing deficiency, KUPI shall take reasonable steps to determine the extent of the problem, including the amount of overpayments by any Federal health care program. To determine the amount of potential overpayment, KUPI shall conduct a special review, as set forth in subsection E.2 below. For the purposes of this Agreement, a "material billing deficiency" shall mean credible evidence of: (i) a substantial overpayment affecting a Federal health care program; or (ii) conduct or policies that constitute violations of Federal health care program statutes, regulations or directives issued by HCFA and/or its agents. KUPI shall notify OIG within sixty (60) days of discovering that a material billing deficiency exists.

KUPI's notice to OIG shall include: (i) a detailed description of the material billing deficiency and the amount of overpayment resulting therefrom; (ii) KUPI's actions to correct the deficiency and prevent recurrences; (iii) the name of the third-party payor (e.g., Medicare Part B carrier) to whom any refunds relating to the matter have been sent, its address and the names of representatives contacted, if any; (iv) the date of the check or electronic transfer and the identification number (or electronic transfer number) with which all refunds have been made; and (v) a report on the calculation of the overpayment amounts, as provided in subsection E.2 below.

2. SPECIAL REVIEWS. In the event that a material deficiency has been identified, KUPI shall conduct a special review in accordance with the review guidelines as set forth in Attachment C.

F. CONFIDENTIAL DISCLOSURE

KUPI has represented to OIG that it has established a confidential disclosure mechanism as a means to enable employees, providers and residents to report instances of noncompliance and/or make inquiries on compliance issues. Pursuant to this ICA, KUPI shall maintain this confidential disclosure mechanism, which shall be available to all employees, providers and residents for the purpose of reporting or inquiring on matters of compliance with Federal health care program standards and the obligations in this ICA.

The confidential disclosure mechanism shall emphasize a non-retribution, non-

retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Manager of Compliance and Audit, in good faith, shall attempt to gather the information in such a way as to elicit all relevant information from the individual reporting the alleged misconduct. KUPI shall require the internal inquiry of any disclosure or inquiry that is sufficiently specific so that it: (i) permits a determination of the appropriateness of the practice alleged to be implicated; and (ii) reasonably permits corrective action to be taken and ensures that proper follow-up is conducted. In an effort to address each disclosure and inquiry received KUPI shall, in good faith, make a preliminary inquiry for every disclosure to ensure it has obtained all of the necessary information that is required to determine whether an internal inquiry, in accordance with the language above, should be conducted. KUPI shall maintain an internal tracking system to record, and follow up on, all disclosures and inquiries received. KUPI shall ensure that it continually provides sufficient notice of its disclosure mechanism to all employees, providers and residents.

KUPI shall include in each Annual Report to OIG a summary of the communications received under its confidential disclosure mechanism (including the number of disclosures received and the dates of such disclosures) concerning KUPI's billing practices reported as, and found to be, inappropriate. KUPI shall also report the results of its internal inquiries and any follow-up activities on such matters. KUPI hereby agrees to maintain said reports in a manner consistent with Section VII of this ICA.

G. INELIGIBLE PERSONS

1. DEFINITION. For the purposes of this ICA, an "Ineligible Person" shall be any individual or entity who: (a) is currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs; or (b) has been convicted of a criminal offense related to the provision of health care items or services, but has not yet been excluded, debarred or otherwise declared ineligible. A "contractor," as used in this subsection, shall mean an individual or entity engaged by KUPI or its agents for the purpose of rendering health care items or services or for the processing, generation and/or submission of reimbursement claims to the Federal health care programs; provided that this term shall not include any individual or entity employed or engaged by a contractor. However, KUPI shall demand assurances from its prospective contractors, or from contractors with which it renews contracts, that such contractors will not utilize any Ineligible Person related to its engagement with KUPI.

2 SCREENING REQUIREMENTS. KUPI shall not knowingly hire as an employee or engage as a provider or contractor any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, KUPI shall screen

all prospective employees, providers and contractors prior to engaging their services by: (i) requiring applicants to disclose whether they are Ineligible Persons; and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at http://www.arnet.gov/epls) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at http://www.hhs.gov/oig) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. REVIEW AND REMOVAL REQUIREMENT. Within one hundred and twenty (120) days of the effective date of this ICA, KUPI shall review its list of current employees, providers and contractors against the Exclusion Lists. Thereafter, KUPI shall review the list every six (6) months. In addition, KUPI shall require employees, providers and new contractors or contractors with which KUPI renews contracts, to disclose immediately any debarment, exclusion or other event that makes any such individual an Ineligible Person. If KUPI has notice that an employee, provider or contractor has become an Ineligible Person, KUPI shall remove such person from responsibility for, or involvement with, KUPI's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with federal funds at least until such time as the person is reinstated into participation in the Federal health care programs. For the purposes of this ICA, KUPI shall be considered to have "notice" of only verified information that is within the actual current knowledge of any member of the Compliance Committee or which such persons should have known through the exercise of reasonable diligence.

4. PENDING CHARGES AND PROPOSED EXCLUSION. If KUPI has notice that an employee, provider or contractor, is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, KUPI shall take appropriate actions to ensure that the responsibilities of that individual do not adversely affect the quality of care rendered to any patient, or the accuracy of any claims submitted to any Federal health care program.

IV. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, contract or pursuant to this ICA, OIG or its duly authorized representative(s) may examine KUPI's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (i) KUPI's compliance with the terms of this ICA; and (ii) KUPI's compliance with the requirements of the Federal health care programs. The documentation described above shall be maintained and made available by KUPI at all

reasonable times for inspection, review and reproduction by OIG. OIG's inspection and review activities pursuant to this Section may include on-site visits. KUPI shall have the right to have representatives present at the time of OIG's onsite examination of documents. Nothing in this section requires KUPI to provide OIG or its agents with any legally-privileged documents.

Furthermore, for the purposes of this provision, OIG or its authorized representative(s) may interview any KUPI employees, KUPI providers or residents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. KUPI agrees to assist OIG in contacting and arranging interviews with such individuals upon OIG's request. KUPI employees, KUPI providers and residents shall have the right to request the presence of a KUPI representative (or an SOM representative in the case of residents) during such interviews.

V. IMPLEMENTATION AND ANNUAL REPORTS

A. IMPLEMENTATION REPORT

Within one hundred and fifty (150) days after the effective date of this ICA, KUPI shall submit a written report to OIG summarizing the status of its implementation of the requirements of this ICA. This Implementation Report shall include:

1. the names and positions of the members of the Compliance Committee required by section III.A;

2. the name, address, phone number and position description of the Manager of Compliance and Audit required by section III.B;

3. a copy of KUPI's Code of Conduct required by section III.C.1;

4. a summary of the Policies and Procedures required by section III.C.2 or a copy of the Policies and Procedures;

5. a description of the training programs required by section III.D, including a description of the targeted audiences and a schedule of the dates on which the training sessions were held;

6. a certification by the Manager of Compliance and Audit that, to the best of his or her knowledge and upon reasonable efforts and inquiry, the actions described in sections III.C and III.D.1 of this ICA have taken place;

7. a description of the confidential disclosure mechanisms required by section III.F;

8. a summary of personnel actions taken pursuant to section III.G; and

9. a list of all of KUPI's locations at which providers regularly render

professional medical services to patients for which KUPI bills (including locations and mailing addresses), the corresponding name under which KUPI is doing business at each location, the corresponding phone numbers, each location's Federal health care program provider identification number(s), and the name, address, and telephone number of the payor (specific contractor) that issued each provider identification number.

B. ANNUAL REPORT

KUPI shall make annual reports (each one of which is referred to throughout this ICA as the "Annual Report") to OIG describing the measures KUPI has taken to ensure compliance with the terms of this ICA. The initial Annual Report shall cover the period July 1, 2000 through June 30, 2001. Subsequent Annual Reports will correspond to succeeding fiscal years, with the final Annual Report covering the period July 1, 2004 through June 30, 2005. In accordance with the provisions above, the Annual Reports shall include the following information:

1. in the first Annual Report, copies of the document or documents that comprise KUPI's Compliance Plan, as adopted by KUPI and implemented by the Compliance Committee and the Manager of Compliance and Audit. For subsequent years, KUPI shall note in the Annual Report any amendments or revisions to the Compliance Plan documents made during the period covered by the Annual Report;

2. any change in the identity, position or duties of the Manager of Compliance and Audit and/or the positions that comprise the Compliance Committee, as set forth in sections III.A and III.B;

3. copies of any revisions or amendments (including the reason(s) for the change(s)) made to the Code of Conduct or the Policies and Procedures used or followed in the generation of claims submitted to the Federal health care programs during the period covered by the Annual Report pursuant to section III.C;

4. a description of the Training and Education activities engaged in pursuant to section III.D of this ICA and a summary of the activities undertaken to implement this program, including schedules, topic outlines of the training sessions, and lists of the participants organized by department or division. Additionally, KUPI shall include a certification by the Manager of Compliance and Audit that the education and training activities required under this ICA have taken place;

5. a summary of the findings made during the reviews conducted pursuant to section III.E. of this ICA relating to the year covered by the Annual Report; a copy of the report prepared by the Annual Reviewer concerning KUPI's performance of the agreed upon procedures; copies of any disclosures or notice documents prepared by KUPI pursuant to that

section; and a description of the corrective steps and proof of refund to the pertinent payor (where applicable);

6. a summary of all material billing deficiencies reported during the period of the Annual Report pursuant to section III.E;

7. a summary of communications (including the number of disclosures by employees and the dates of disclosure) received through the Confidential Disclosure Program established pursuant to section III.F that alleged possible improper billing in such detail as to allow further inquiry, and the results of all investigations, internal reviews, and any follow up on such disclosures;

8. a written description of any personnel action (other than hiring) and/or any activity carried out by KUPI as a result of the requirements in section III.G and the identities of the individuals subjected to such an action or activity; and

9. a summary describing any ongoing investigation, audit or legal proceeding conducted or brought by a governmental entity involving an allegation, made known to KUPI by such entity, that KUPI has committed a crime or has engaged in fraudulent activities. The statement shall include a description of KUPI's understanding of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information.

10. a description of all changes to the most recently provided list (as updated) of KUPI's locations at which providers regularly render professional medical services to patients for which KUPI bills (including locations and mailing addresses), the corresponding name under which KUPI is doing business at each location, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the name, address, and telephone number of the payor (specific contractor) that issued each provider identification number.

The first Annual Report shall be received by OIG no later than September 1, 2001. Subsequent Annual Reports shall be received no later than the anniversary date of the due date of the first Annual Report. Each Annual Report shall cover the complete prior fiscal year.

C. CERTIFICATIONS

The Implementation Report and Annual Reports shall include a certification by the Manager of Compliance and Audit that: (1) to the best of his or her belief and, upon reasonable inquiry, KUPI is in compliance with all of the requirements of this ICA; and (2) the Manager of Compliance and Audit has reviewed the Annual Report and has made a reasonable inquiry regarding its content and believes that,

upon such an inquiry, the information is accurate and truthful.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this ICA, all notifications and reports required under the terms of this ICA shall be submitted to the entities listed below:

ATTENTION:
Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201
Ph. 202-619-2078
Fax 202-205-0604

ATTENTION:
Manager of Compliance and Audit
Kansas University Physicians, Inc.
3901 Rainbow Boulevard, 2041 Delp
Kansas City, KS 66160-7802
Ph. 913-588-6629
Fax 913-588-2575

WITH A COPY TO:
Chief Executive Officer
Kansas University Physicians, Inc.
Suite 5238, KU Hospital
3901 Rainbow Boulevard
Kansas City, KS 66160
Ph. 913-588-6620
Fax 913-588-6621

VII. DOCUMENT AND RECORD RETENTION

KUPI shall maintain for inspection all documents and records relating to its compliance with the obligations in this ICA, as well as those relating to the reimbursement claims submitted to the Federal health care programs during the term of this ICA for a period of six (6) years following the execution of this ICA (or longer if otherwise required by law).

VIII. BREACH AND DEFAULT

KUPI's compliance with the terms and conditions in this ICA shall constitute an element of KUPI's present responsibility with regard to participation in the Federal health care programs. Full and timely compliance by KUPI shall be expected throughout the duration of this ICA with respect to all of the obligations herein agreed to by KUPI.

A. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN OBLIGATIONS

As a contractual remedy, KUPI and OIG hereby agree that failure to comply with certain obligations set forth in this ICA may lead to the imposition of specific monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of $2,500 for each day KUPI fails to comply with any of the following, which Stipulated Penalty shall begin to accrue one day after the date the obligation becomes due:

    a. Submission of the complete Annual Report, in accordance with the requirements in section V.B, by the due date established in section V.B;

    b. Confirmation of the existence of a Manager of Compliance and Audit in the Implementation Report as required under section V.A; and

    c. Confirmation of the existence of a Compliance Committee in the Implementation Report as required under section V.A.

2. A Stipulated Penalty of $2,500 for each day KUPI fails to comply by having in force during the term of this ICA any of the following, which Stipulated Penalty shall begin to accrue on the date of OIG's notice of noncompliance, in accordance with section VIII.B below:

    a. the Compliance Plan adopted pursuant to section III of this ICA;

    b. the Compliance Committee and the Manager of Compliance and Audit, discharging their respective duties, as required under sections III.A and III.B of this ICA;

    c. the training and education activities required under section III.D of this ICA; and

    d. the Confidential Disclosure requirements under section III.F of this ICA.

3. A Stipulated Penalty of $2,500 for each day KUPI fails to grant reasonable access to the information or documentation necessary to exercise OIG's inspection, audit and review rights set forth in section IV of this ICA,

which Stipulated Penalty shall begin to accrue on the date KUPI fails to grant access.

4. A Stipulated Penalty of $1,500 (which shall begin to accrue on the date the failure to comply began unless otherwise noted) for each day KUPI:

   a. hires or enters into a contract with an Ineligible Person after the date upon which that person has been listed on the Exclusion Lists by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Federal health care programs, and KUPI had or should have had notice, as defined in section III.G.3, of such exclusion, debarment or suspension; this Stipulated Penalty shall not be demanded for any time period during which KUPI can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.G) as to the status of the person;

   b. continues to employ or contract with a person who becomes an Ineligible Person, after KUPI had notice, as defined in section III.G.3, that such person had become an Ineligible Person and that person: (i) has responsibility for, or involvement with, KUPI's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with federal funds; this Stipulated Penalty shall not be demanded for any time period during which KUPI can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.G) as to the status of the person; or

   c. fails to take action or engage in the required activities in accordance with subsection III.G.4 above; this Stipulated Penalty shall not be demanded for any period before ten (10) days after KUPI's receipt of OIG's notice of noncompliance.

5. A Stipulated Penalty of $1,000 (which shall begin to accrue ten (10) days after the date of receipt of OIG's notice of noncompliance in accordance with section VIII.C) for each day KUPI fails to comply with any other requirement in this ICA, which is not covered by provisions 1, 2, 3 and 4 of this section VIII.A. In its notice to KUPI, OIG shall state the specific grounds for its determination of noncompliance.

B. **TIMELY WRITTEN REQUESTS FOR EXTENSIONS.** KUPI may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this ICA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, at such time KUPI shall not be in default under this ICA and Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after KUPI fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this section, if OIG denies such a timely written request, KUPI shall not be in default under this ICA and Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after KUPI receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. **PAYMENT OF STIPULATED PENALTIES**

Upon finding that KUPI has failed to comply with any of the above-enumerated obligations, OIG may choose to demand payment of the Stipulated Penalties above. To effectuate the demand, OIG shall notify KUPI in writing of: (i) KUPI's failure to comply; (ii) the specific grounds for its determination of noncompliance; and (iii) OIG's decision to exercise its contractual right to demand payment of the Stipulated Penalties payable under this ICA. This notification is hereinafter referred to as the "Demand Letter."

Within ten (10) days of receipt of the Demand Letter, KUPI shall respond by either: (i) curing the breach to OIG's reasonable satisfaction, paying the applicable Stipulated Penalties, if any, and notifying OIG of its corrective actions; or (ii) sending in writing to OIG a request for a hearing before an HHS administrative law judge to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth in section VIII.D of this ICA. KUPI's election of the contractual right herein to seek review of OIG's noncompliance determination shall not preclude KUPI from also choosing to pay the applicable Stipulated Penalties at any time after receiving the Demand Letter. Failure to respond to the Demand Letter shall be considered a material breach of this ICA and shall be grounds for exclusion under section VIII.D, below.

Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI of this ICA.

Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's determination that KUPI has materially breached this ICA, which decision shall be made at OIG's discretion and governed by the provisions in section VIII.D, below.

D. REMEDIES FOR MATERIAL BREACH OF THIS ICA

If KUPI engages in conduct that OIG determines to be a material breach of this ICA, OIG may seek the exclusion of KUPI from participation in the Federal health care programs. Upon making its determination, OIG shall notify KUPI of the alleged material breach by certified mail, stating the specific grounds for its determination, and expressing its intent to exclude KUPI as a result thereof. This letter shall be referred to hereinafter as the "Notice of Material Breach and Intent to Exclude." KUPI shall have thirty (30) days from the date of receipt of the letter to:

1. demonstrate to OIG's satisfaction that KUPI is in full compliance with this ICA;

2. cure the alleged material breach; or

3. demonstrate to OIG's reasonable satisfaction that the alleged material breach cannot be cured within the thirty (30) day period, but that KUPI has begun to take action to cure the material breach and that it shall pursue such an action with due diligence. KUPI shall, at this time, submit a timetable for curing the material breach for OIG's approval.

If at the conclusion of the thirty-five-day period (or such other specific period as subsequently agreed to by OIG and KUPI), KUPI fails to meet the requirements of provisions 1, 2 or 3 above, OIG may exclude KUPI from participation in the Federal health care programs. OIG shall notify KUPI by certified mail of its determination to exclude KUPI. This letter shall be referred to hereinafter as the "Exclusion Letter."

Notwithstanding any provisions in Chapter 42 of the Code of Federal Regulations, the exclusion pursuant to this ICA shall take effect thirty (30) days following the date of the Exclusion Letter unless, during such a period, KUPI exercises its contractual right to seek review of OIG's exclusion determination by requesting a hearing before an administrative law judge as provided in Section VIII.E, below. In the event KUPI requests such a hearing, the exclusion shall not be effective unless and until an administrative law judge issues a decision supporting OIG's exclusion determination. The exclusion of KUPI shall have national effect and will also apply to all other federal procurement and non-procurement programs. If KUPI is excluded pursuant to this ICA, it may seek reinstatement in accordance with 42 C.F.R. §§ 1001.3001-1001.3004.

For purposes of this section, a "material breach" shall mean: (i) a failure to report a material billing deficiency, take corrective action and pay the appropriate refunds, as provided in section III.E of this ICA; (ii) repeated or flagrant violations of the obligations under this ICA, including, but not limited to, the obligations addressed in section VIII.A of this ICA; or (iii) failure to respond to a

Demand Letter concerning the payment of Stipulated Penalties in accordance with section VIII.B above.

In connection with OIG's determination to exclude KUPI pursuant to this provision, KUPI shall have the right to dispute OIG's determination in accordance with the agreed-upon provisions set forth in section VIII.E of this ICA.

E. DISPUTE RESOLUTION

Upon OIG's delivery to KUPI of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this ICA, KUPI shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this ICA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS administrative law judge in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. With respect to disputes regarding OIG's determination to demand payment of Stipulated Penalties, KUPI and OIG agree that the administrative law judge's decision shall be considered final for the purposes of this ICA. With respect to OIG's determination to seek exclusion, KUPI and/or OIG may appeal the administrative law judge's decision to HHS's Departmental Appeals Board ("DAB") in a manner consistent with the provisions in the above-referenced regulations. For purposes of the parties' contractual remedies herein, the decision of the DAB shall be considered final. Neither the review by the administrative law judge nor the review by the DAB provided for above shall be considered to be appeal rights arising under any statutes or regulations.

Notwithstanding the language in 42 C.F.R. § 1005.2(c), requests for hearings involving Stipulated Penalties shall be made within five (5) days of the date of receipt of the Demand Letter and requests for hearings involving exclusion shall be made within twenty-five (25) days of the date of receipt of the Exclusion Letter.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this ICA shall be: (i) whether KUPI was in compliance with the obligations of this ICA for which OIG demands payment; (ii) whether KUPI failed to cure; (iii) whether the alleged noncompliance could have been cured within the ten-day period or such other period as previously agreed to in writing between OIG and KUPI; and (iv) the period of noncompliance. For the purposes of paying Stipulated Penalties under this ICA, and if KUPI chooses to seek review in lieu of curing the breach and paying the Stipulated Penalties as set forth above, if the administrative law judge agrees with OIG with regard to a finding of a breach of this ICA and orders KUPI to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the administrative law judge issues such a decision unless KUPI requests DAB

review of the administrative law judge's decision. If the administrative law judge's decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable twenty (20) days after the DAB issues its decision.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this ICA shall be: (i) whether KUPI was in material breach of one or more of its obligations under this ICA as set forth in the Exclusion Letter; (ii) whether the alleged material breach was continuing on the date of the Exclusion Letter; (iii) whether the alleged material breach could have been cured within the thirty-five day period, or such other period as agreed to in writing between KUPI and OIG; (iv) whether KUPI began to take action to cure the alleged material breach with due diligence; and (v) whether KUPI provided OIG a timetable for curing the alleged material breach. For the purposes of the exclusion procedure herein agreed to, in the event of a material breach of this ICA, an administrative law judge's decision finding in favor of OIG shall be deemed to make the exclusion effective, at which time OIG may proceed with its exclusion of KUPI; provided, however, that KUPI may request a DAB review of the administrative law judge's decision.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, OIG shall have the burden of going forward and the burden of persuasion with respect to the issue of whether KUPI was out of compliance (for Stipulated Penalties) or in material breach (for exclusion) and with respect to the period of noncompliance or material breach. KUPI shall bear the burden of going forward and the burden of persuasion with respect to the issue of whether, during the specified period, KUPI cured the alleged noncompliance or material breach, and with respect to the issue of whether the alleged noncompliance or material breach could have been cured during the specified period. The burden of persuasion will be judged by a preponderance of the evidence.

All notices required under any of the aforementioned proceedings shall be given to OIG and KUPI in accordance with section VI of this ICA.

IX. PRIVILEGES AND DISCLOSURES

Nothing in this ICA shall constitute or be construed as a waiver by KUPI of its attorney-client or other applicable privileges. Subject to HHS's Freedom of Information Act ("FOIA") procedures and definitions set forth in 45 C.F.R. Part 5, OIG shall make reasonable efforts to notify KUPI prior to any release by OIG of information submitted by KUPI pursuant to its obligations under this ICA and identified upon submission by KUPI as: (i) trade secrets; or (ii) commercial or financial information that is privileged or confidential under applicable FOIA requirements. KUPI shall make a good faith effort to refrain from identifying any information as trade secrets, commercial or financial information, or privileged and confidential that does not meet the criteria for exemption

from disclosure under FOIA.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this ICA is entered, and into which this ICA is incorporated by reference, KUPI and OIG agree as follows:

A. This ICA shall be binding on the successors, assigns and transferees of KUPI that assume responsibility for submitting claims to the Federal health care programs for professional medical services rendered to KUPI patients by physicians and other health care providers who, for purposes of providing such professional services, are employed by KUPI or who are independent contractors with KUPI. This ICA shall also be binding on any entity owned or controlled by KUPI that assumes responsibility for billing for professional services rendered by KUPI's physician faculty members.

B. This ICA shall become final and binding only upon signing by each respective party hereto;

C. Any modifications to this ICA may be made only by a writing signed by the parties to this ICA; and

D. The undersigned KUPI and Foundation signatories represent and warrant that they are authorized to execute this ICA on behalf of KUPI and the respective Foundations. The undersigned OIG signatory represents that he is signing this ICA in his official capacity and that he is authorized to execute this ICA on behalf of OIG.

ON BEHALF OF KANSAS UNIVERSITY PHYSICIANS, INC.
AND THE FOUNDATIONS

Kansas University Physicians, Inc.

By: _____ 6-8-00
President DATE

Clinical Radiology Foundation

By: _____ 5/30/00
President DATE

Kansas Family Medicine Foundation

By: _____ 5/30/00
President DATE

Kansas University Anesthesiology Foundation

By: _____ 6/6/00
President DATE

Kansas University Children's Center Foundation

By: _____ 6/1/00
President DATE

Kansas University Gynecological and Obstetrical Foundation

By: Sterling B. Williams, MD 5/30/2000
President DATE

Kansas University Internal Medicine Foundation

By: _____ 06/01/2000
President DATE

Kansas University Neurological Foundation

By: _____ 5/31/00
President DATE

Kansas University Ophthalmic Foundation

By: _____ 5/30/00
President DATE

Kansas University Psychiatry Foundation

By: _____ 5/31/2000
President DATE

Kansas University Rehabilitation Medicine Association

By: _____ 6/1/00
President DATE

Kansas University Surgery Association

By: _____ 5/26/00
President DATE

Otolaryngology Head and Neck Surgery Foundation

By: Gary Alberson MD 6/9/00
President DATE

Radiation Therapy Foundation

By: _____ 5/30/00
President DATE

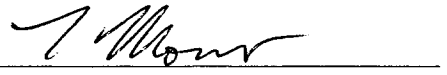
University Health Care Associates

By: _____ 5/30/00
President DATE

University Pathology Association

By: _____ 5/30/00
President DATE

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES



LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U. S. Department of Health and Human Services

6/15/00
DATE