I. Purpose

This Policy and Procedure on Joint Venture Participation (this “Policy”) has been created and approved by the Board of Directors (the “Board”) of the East Carolina University Medical & Health Sciences Foundation, Inc. (the “MHSF”) to provide guidance as to participation of the MHSF, directly or through any of its affiliates or subsidiaries, in a joint venture or similar arrangement. The Policy requires that the MHSF evaluate its participation in joint venture arrangements under Federal tax law and take steps to safeguard the MHSF’s tax exempt status with respect to such arrangements.

II. Definitions

For the purposes of this policy, the term “joint venture” is defined as any arrangement, including contractual or more formal arrangements undertaken through a limited liability company, partnership, or other entity, through which the MHSF and another entity jointly undertake an activity or business venture, or otherwise agree to joint ownership of any asset. This is without regard to: (1) whether the MHSF controls the venture or arrangement; (2) the legal structure of the venture or arrangement; or (3) whether the venture or arrangement is taxed as a partnership or as an association or corporation for Federal income tax purposes. A venture or arrangement is disregarded if it meets both of the following conditions:

A. 95% or more of the venture’s or arrangement’s income for its tax year ending within the MHSF’s tax year is excluded from unrelated business income taxation [including but not limited to: (1) dividends, interest, and annuities; (2) royalties; (3) rent from real property and incidental related personal property except to the extent of debt-financing; and (4) gains or losses from the sale of property]; and

B. the primary purpose of the MHSF’s contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.

III. Procedures

A. Safeguard Protection of Exempt Status

Before making any decision to participate in a joint venture, the MHSF will ensure that the joint venture furthers the MHSF’s exempt purposes and will negotiate at arm’s length contractual and other terms of participation that safeguard the MHSF’s exemption from Federal income tax. Such terms shall be in writing in the operating agreement of the joint venture and shall include the following minimum requirements:

1. The MHSF would maintain control over the joint venture or arrangement sufficient to ensure that it furthers the tax exempt purpose of the MHSF.
2. The MHSF’s voting and ownership interest in the joint venture are consistent with its capital contributions.

3. The joint venture or arrangement gives priority to the MHSF’s tax exempt purposes over maximizing profits for other participants.

4. The joint venture or arrangement will not engage in activities that would jeopardize the MHSF’s tax exempt status.

5. All contracts entered into with the MHSF will be on terms that are at arm’s length or more favorable to the MHSF.

B. Required Approvals

1. Any decision to enter into a joint venture or arrangement will be made after consultation with legal and/or tax counsel, the results of which will be presented in full to the Board.

2. Any proposed joint venture or arrangement must be in compliance with the MHSF’s Operating Agreement with the University, and approved by a voting majority of the Board.

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

Unanimously passed by the full Board on June 18, 2009