



SUPPLEMENT

ANNOTATED MODEL PHYSICIAN-HOSPITAL EMPLOYMENT AGREEMENT

2011 EDITION

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Legal disclaimer

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The AMA Model Annotated Physician-Hospital Employment Agreement is not intended to, and does not, convey legal advice. Users of the AMA Model Annotated Physician-Hospital Employment Agreement should always consult their own legal counsel or other professional advisors regarding the users own particular situation.

The AMA has used reasonable efforts to identify and include, where appropriate, citations to relevant statutory and regulatory authorities, along with references to pertinent policy of the AMA's House of Delegates. There can be no assurance all relevant citations have been located or are appropriately indicated. The AMA intends, but shall have no obligation, to revise or update the AMA Model Annotated Physician-Hospital Employment Agreement from time to time, but there can be no assurance any revisions or updates will occur on a basis which satisfies a user's needs.

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Introduction

The scope of this manual

While a vast body of law governs employer and employee relations generally, this manual specifically addresses employment of physicians by hospitals. This manual does **not** cover:

- State and federal statutes and regulations, Occupational Safety and Health Administration, workers' compensation, and/or the myriad collateral legal issues that physicians face in their daily practice
- Employment agreements between a professional corporation and its sole shareholder, which are primarily tax-driven documents, rather than a contract negotiated at arm's length between two or more parties
- Independent contractor arrangements (the Internal Revenue Service uses an 11 factor test to determine if an individual is providing services as in independent contractor or an employee of an organization; a breakdown of each of the factors included in the test can be found at www.irs.gov/pub/irs-pdf/p15a.pdf)
- Particular nuances of employment agreements between physicians (either as shareholders/partners/owners or non-shareholders/partners/owners) and non-hospital owned medical practices

Legal representation

The American Medical Association (AMA) cannot overemphasize the importance of the physician retaining an attorney with experience representing physician interests and evaluating and negotiating employment contracts with hospitals. Not only can the contract involve complex legal issues centered around health care regulatory, contract, employment, tax, and other applicable federal and state laws, but the contract can also go to the heart of the physician-hospital working relationship and the day-to-day operational and clinical practice of medicine.

The employment contract not only establishes the expectations in the relationship, but governs the tone of the relationship as well. A lawyer's experience in working with physicians on these practical issues can be very important to the success of the overall arrangement. This manual does not constitute legal advice and cannot substitute for individual analysis by a legal advisor experienced in handling physicians' affairs consistent with the applicable state law.

How to Use This Model Employment Agreement

The purpose of this model employment agreement is to provide a discussion of and sample language that benefits a physician entering into an employment agreement with a hospital. Unfortunately, the reality may be that the physician may not be presented with or be able to negotiate a contract that completely favors the physician-employee. Accordingly, this model identifies language that may be included in the contract presented by the hospital but is detrimental to the physician and, as such, merits evaluation and often modification or deletion. Additionally, the model contract may, in some instances, identify possible compromise language that may be used by the parties to achieve a negotiated agreement. Do not select contractual language without reading the comments and without consulting your own attorney.

This model is not intended to be used verbatim. The language in an actual contract will be the product of negotiations between the parties and will reflect the specific employment situation. Some of the model provisions may be inapplicable, inappropriate or not sufficiently detailed.

Brackets [] are used to indicate optional language or language indicating a subject of negotiation between the parties. For example:

“Remuneration from medical-related teaching, lecturing, writing, directorships, etc., shall belong to [Employer or Physician].”

The language in brackets means that either the word employer or physician could be chosen.

Cautions to physicians are identified by a bolded “**Note**:...” followed by text giving examples or discussing the problematic language.

Physicians deciding whether to enter into any particular employment contract are cautioned to make an independent decision based on their personal circumstances and on the advice of their counsel. This model is for general informational purposes only and is not intended as legal advice. Physicians should consult an attorney specifically experienced in handling physician business transactions for a personal legal opinion. Salary is typically just part of the financial package. Deferred compensation arrangements should be reviewed by a tax or legal expert familiar with Internal Revenue Code Section 409A and emerging Internal Revenue Service (IRS) regulations.

Letter of Intent, Offer Letter and Term Sheet

Sample “Binding Letter of Intent” Language

The prospective parties intend for [Doctor] to receive an annual salary of \$_____ in return for the services to be performed under an employment agreement executed by the prospective parties” or language that states that “The parties agree that [Doctor] shall receive an annual salary of \$_____ in return for x, y, and z services provided by [Doctor] by and on behalf of Employer.

Sample “Non-binding Letter of Intent” Language

This Letter of Intent outlines a [proposed] arrangement whereby Dr. X [would become] is a physician-employee of [prospective] Employer. This letter of intent is a [non] binding agreement between the parties. [The proposed terms described in this letter are subject to the execution of a definitive employment agreement by and among Dr. X and prospective Employer.

-OR-

This Letter of Intent is [not] a binding agreement and [not] enforceable on the parties. The letter is [not] a contract and it [does not] constitutes an offer to contract, and the parties’ execution of this letter [does not] creates a binding, enforceable obligation with respect to the parties. [Such binding and enforceable obligations will only arise if the parties complete their negotiations and execute the Employment Agreement, the Recruitment Agreement, and all related documents. Upon execution of this Letter of Intent by each party, the parties will reasonably cooperate to provide information requested by the other party in order for each party to fully evaluate the business of the other. This letter will expire upon the earlier of (i) the date on which the parties execute the Employment Agreement; (ii) _____ (the “Expiration Date”); or (iii) such other dates as may be mutually agreed by the parties.]

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Annotated Physician-Hospital Employment Agreement with Sample Model Provisions

1. Preliminary Considerations and Basic Agreements

Sample “Parties” Provision

This Physician Employment Agreement (“Agreement”) is made and entered into as of this ___ day of _____, 20__ (“Effective Date”) by and between _____ a [insert the type of corporate entity of the hospital-employer, which may include corporation, limited liability company, or other state-recognized vehicles] organized under the laws of the state of _____ (“Employer”), and _____ [MD or DO, a physician licensed to practice medicine in the state of _____ (“Physician”). (Employer and Physician may be referred to individually as “Party” or collectively as the “Parties,” from time to time herein.)

Sample “Employment” Provision

The Employer employs the Physician, and the Physician accepts employment with the Employer, under the terms and conditions set forth in this Agreement. The purpose of Physician’s employment shall be to apply Physician’s particular skill and knowledge and provide professional medical services to Employer’s patients on a [full or part]-time basis in the specialty of _____, including _____ [list any specialized services]. The Physician’s duties are set forth in greater detail in Section 3 herein. Physician shall fulfill his/her duties in accordance with the terms of this Agreement, all applicable federal, state and local laws, and regulations, and the applicable professional and ethical standards of the medical profession. The parties agree that the Physician shall be an employee of Employer, not an independent contractor.

Sample “Limitation on Professional Services” Provision

Physician agrees that he or she shall not provide professional medical services on behalf of any other person or entity during the term of this Agreement, without prior written approval of Employer.

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2. Term

Sample “Initial Term” Provision

The initial term of this Agreement shall commence on _____ (the “Effective Date”) and shall continue for/until ___ [months or years or a specific date, which may be easier for the Physician to remember] thereafter subject to earlier termination (paragraph 10) or to extension (paragraph 2.2). The Physician’s first day of work shall be _____ (the “Starting Date”).

Following the initial Term, this Agreement shall renew automatically for succeeding terms of [_____ years or months] unless sooner terminated pursuant to any of Sections 9.1 through 9.5 of this Agreement. Any renewal of this Agreement shall be on the same terms and conditions as set forth herein, subject to any Amendment in writing and signed by both parties per paragraph _____ below.

Sample “Employer Right to Extension of Agreement” Provision

Employer shall have the right to extend this Agreement on the same terms and conditions for an additional period of _____ by giving Physician written notice no later than _____. [If no notice of extension is given by Employer, this Agreement shall expire at the end of the term] or [In the event no formal extension is signed, the Agreement shall remain in place from [month to month, quarter to quarter or year to year] subject to the termination provisions of paragraph _____, or, as alternate means of termination, subject to either party giving [____ days or months] notice of termination].

Sample “Probationary Period” Provision

The first _____ months of employment shall be probationary, with periodic informal reviews of Physician’s performance by _____. During this probationary period [Employer or either party] may terminate employment with _____ weeks’ notice. During the probationary period, Employee shall receive the compensation under paragraph _____ below, [and or but] shall [not] be entitled to other benefits specified in this Agreement.

Sample “Liquidated Damages for Physician’s Failure to Report for Work” Provision

The Physician acknowledges that the Employer is relying on the Physician to commence employment on the Starting Date set forth above. In the event that the Physician breaches this Employment Agreement by failing to commence employment on the Starting Date, the Employer will suffer substantial damages as a result of the

Physician failing to report for work. These damages include, but are not limited to, the costs of locating a replacement, the loss of services during the search for a replacement and the costs of unused facilities. Both the Physician and the Employer agree that these damages are difficult to predict and to determine, and they have, therefore, agreed to the amount of \$ _____ as the amount of liquidated damages (not a penalty) to be paid by the Physician to the Employer in the event that the Physician fails to commence his or her employment as required by this Agreement.

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3. Duties of Physician

Sample “Scope of Physician’s Duties” Provision

Simple provision

The Physician shall provide professional medical services in the Physician’s specialty on a [full or part]-time basis to the patients of the Employer [as more specifically described on Attachment ____]. The Employer will assign patients and distribute payer mix [at the Employer’s sole discretion or equitably]. The Physician shall only perform such other services relating to the practice of medicine as delineated on Attachment ____, attached hereto and incorporated by reference, or upon hospital’s request and the parties’ execution of a revised Attachment ____ and a revised compensation Attachment ____, to reflect a fair market value payment for such other services. Physician shall perform all duties hereunder in accordance with the terms of this Agreement, all applicable federal, state and local laws, regulations and ordinances, and the applicable professional and ethical standards of the medical profession.

-OR-

More common provision

Physician’s duties: Physician shall render medical care and treatment, consistent with Physician’s licensing and medical specialty, to patients of Employer at such place as assigned by Employer for the number of hours per week that are commensurate with the employee benefits structure that is afforded Physician pursuant to this Agreement. Furthermore, Physician agrees that Physician will: (i) keep and maintain (or cause to be kept and maintained) in a timely fashion accurate and appropriate records relating to all professional services rendered by Physician under this Agreement and timely prepare and attend to, in connection with such services, all reports, claims, and correspondence necessary and appropriate in the circumstances or as Employer may from time to

time require; (ii) comply with the policies, procedures, protocols, bylaws, orders, rules, and regulations of Employer and of any institution at which Physician will from time to time perform services for or on behalf of Employer; (iii) to the satisfaction of Employer, devote Physician's efforts and the amount of professional time (commensurate with the employee benefits structure that is afforded Physician pursuant to this Agreement) necessary to perform Physician's duties under this Agreement; (iv) at all times during employment hereunder be subject to Employer's direction and control with respect to activities on behalf of Employer, including without limiting the generality of the foregoing, the assignment of patients, the setting of work hours, the setting of office location(s), the setting of outreach clinics, the setting of vacations and leaves, the times which Physician will be on call, the establishment of professional policies and procedures; (v) not pursue any activity that materially interferes with Physician's successfully carrying out Physician's duties under this Agreement; (vi) participate in professional activities consistent with the maintenance and improvement of Physician's professional skills, such as attendance at professional conventions and post-graduate seminars and participation in professional societies; (vii) submit to and participate in quality assurance, peer review, risk management and utilization review programs in compliance with the medical staff's expectations of its members; (viii) participate as a provider of medical services with each third-party payor, including but not limited to any HMO, PPO or federal health care program, with which Employer participates, subject to the provisions of Section 3.6¹; and (ix) comply with Employer's corporate compliance program, as amended from time to time.

Other professional duties: Physician shall perform such other duties as the Employer or its designee may from time to time reasonably request, including but not limited to "on duty" and "on call" assignments at night and on Saturdays, Sundays and holidays, rotated in a reasonable manner; provided, however, that all duties and assignments to be performed by Physician shall be of a nature consistent with Physician's professional position and similar in nature to those duties and assignments performed by other physicians of Employer. The choice by any patient of Physician shall be respected as long as such choice is not unreasonable in view of the patient's medical circumstances and Employer's method of operation.

Sample "Hours" Provision

As of _____ (the "Start Date"), Physician shall perform his/her services hereunder on a _____ [part/full]-time basis, which shall, for purposes of this Agreement mean a minimum of ___ days per calendar

¹ Physicians need to be sure to include Section 3.6 of this model Agreement, which ensures they are not adversely affected by the hospital's unfavorable managed care agreements. If the hospital will not include Section 3.6, or the language of this Section 3.1(a)(viii), any similar language included by the hospital should be deleted.

week, and an average of ____ hours per calendar week, including night, weekend, and holiday hours, on such days and hours as may, from time to time, be determined by Physician and Employer, whose respective prior written consent to the same shall not be unreasonably withheld. In addition to these hours, Physician shall participate in a call schedule for unassigned patients in Physician's Specialty, who present to Employer for medical services, on an equitable and rotating basis with other physician employees of Employer.

Sample "Administrative and Miscellaneous Duties and Responsibilities" Provision

The Physician shall only perform such other services relating to the practice of medicine as delineated on Attachment ____, attached hereto and incorporated by reference, or upon hospital's request and the parties' execution of a revised Attachment ____ and a revised compensation Attachment ____, to reflect a fair market value payment for such other services.

Sample "Billing and Compliance" Provision

The Physician shall not directly submit a billing or statement of charges to any patient or other entity for services arising from the practice of medicine, nor shall the Physician make any surcharge or give any discount for care provided without the prior written authorization of the Employer. The Employer has complete authority to assign patients to various employees, set fees, determine write-offs, bill patients and other appropriate parties for services rendered by Physician or any other employee or contractor, and take any other action relating to billing and collection of fees for clinical services provided by Physician or any other employee or contractor. Physician acknowledges and agrees that all accounts receivable generated for services rendered by the Physician pursuant to this Agreement are the property of the Employer. Consequently, Physician expressly assigns to Employer, its affiliates or assigns, and designates Employer, or its designee, as its billing agent for the collection of all benefits payable to Physician by third party payors, including, without limitation, Medicare, Medicaid, CHAMPUS/TriCare, and any other governmental reimbursement program, and Employer assumes all responsibility associated therewith. Physician agrees to take such actions as are reasonably necessary to assist Employer and/or its agents in the accurate and timely preparation and submission of claims for reimbursement for services provided by Physician and by Employer's other employees and contractors, including, but not limited to, keeping complete, accurate and legible records of the services provided by Physician necessary to enable Employer to bill and collect for such services. The Physician shall have the right to review any and all codes assigned or bills submitted for his or her services and request the correction of any

errors including providing a refund to payers, if warranted. The Physician shall participate in, and Employer shall adopt, all such compliance programs mandated by federal and/or state law or regulation.

Sample “Representations and Warranties” Provision

Physician covenants, represents and warrants at all times during the term of this Agreement (including any Renewed Term) that:

(a) Physician shall meet the credentialing criteria established by Employer’s Medical Staff Bylaws;

Optional approach to eliminate paragraphs (b)–(k) as discussed above.

(b) Physician is not in material breach of, and will not during the Agreement Term be in breach of, any other contract, obligation or covenant that could affect his or her ability to perform hereunder and, as a result of entering into this Agreement, will not materially breach any such contract, obligation, or covenant.

(c) Physician is duly licensed and registered and in good standing under the laws of the state of _____ to engage in the practice of medicine and to prescribe and administer controlled substances, and that such license and registration have not been suspended, revoked or restricted in any manner. As a condition of employment hereunder, Physician, at his or her sole expense unless specifically provided for in this Agreement, shall secure and maintain at all times during the Agreement Term an unrestricted, non-probationary license to practice medicine in the State of _____. Physician shall report, in writing, any probation, suspension, restriction, limitation, or revocation on any license related to the practice of medicine on the day of such probation, suspension, restriction, limitation or revocation.

(d) Physician shall maintain in good standing unrestricted staff membership and privileges on the medical staff of _____ Hospital unless otherwise agreed by Employer’s operating board.

(e) Physician has current controlled substances certifications and registrations issued by the state of _____ and the United States Drug Enforcement Administration, which certifications and registrations have not been surrendered, suspended, revoked, expired or restricted in any manner. As a condition of employment hereunder, Physician shall, at his or her sole expense unless specifically provided for in this Agreement, secure and maintain at all times during the Agreement Term unrestricted, non-probationary certifications and registrations with the state of _____ and the United States Drug Enforcement Administration to administer and prescribe controlled substances. Physician shall report, in writing, any probation, suspension,

restriction, limitation or revocation of any certification or registration related to the practice of medicine on the day of such probation, suspension, restriction, limitation or revocation.

- (f) Physician shall at all times render services to patients in a competent, professional and ethical manner, in accordance with prevailing standards of medical practice in the relevant community, perform professional and supervisory services in accordance with recognized standards of the medical profession, and act in a manner consistent with the *Principles of Medical Ethics* of the American Medical Association and all applicable statutes, regulations, rules, orders, and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction.
- (g) In connection with the provision of professional services to patients of Employer, Physician shall use the equipment, instruments, pharmaceuticals and supplies furnished by or on behalf of Employer for the purposes for which they are intended and in a manner consistent with sound medical practice.
- (h) Physician shall participate in the Medicare and Medicaid Programs, workers compensation, other federal and state reimbursement programs, and the payment plan of any commercial insurer, health maintenance organization, preferred provider organization, accountable health plan or other health benefit program with which Employer contracts unless excluded by the plan or otherwise limited by Section 3.6 herein.²
- (i) Physician shall keep and maintain (or cause to be kept and maintained) appropriate records, consistent with prevailing standards of medical practice in Physician's relevant community, relating to all professional services rendered by him under this Agreement and shall prepare and attend to, in connection with such services, all reports, claims, and correspondence necessary or appropriate in the circumstances, as determined mutually by Employer and Physician, all of which records, reports, claims and correspondence shall belong to Employer.
- (j) Physician covenants not to use, or permit any other personnel under the supervision of Physician to use, any part of the premises of Employer for any purpose other than the performance of the services hereunder.
- (k) Physician (A) is not currently excluded, debarred or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f) (the "Federal Health Care Programs"); (B) is not convicted of a criminal offense related to the provision of health care items or services and has not yet been excluded, debarred or otherwise declared ineligible to participate in the federal health care programs; and

² Physicians need to be sure to include Section 3.6 of this model Agreement, which ensures they are not adversely affected by the hospital's unfavorable managed care agreements.

(C) is not under investigation or otherwise aware of any circumstances which may result in Physician's being excluded from participation in the federal health care programs.

The representations, warranties and covenants set forth herein shall be ongoing representations, warranties, and covenants during the Agreement Term, and Physician shall immediately notify Employer of any change in the status of the covenant, representation or warranty set forth herein. Any material breach of representations, warranties or covenants contained herein by Physician shall give Employer the right to terminate this Agreement immediately for cause as defined in this Agreement.

Sample "Managed Care Contracts, Discounted Fees and Bundled Payment" Provision

Physician acknowledges and agrees that Employer shall have the right to negotiate and contract for his or her services at discounted rates with any self-insured employer plan or third party payor plan; provided, however, (i) Physician shall be prospectively involved in any Employer negotiation of managed care contracts (including capitation and global billing contracts); and (ii) all such contracts shall be held in Employer's name and Physician shall not be a party to such contracts. Employer shall make all reasonable efforts to obtain membership for the Physician in all health maintenance organizations (HMOs), preferred provider organizations (PPOs), physician-hospital organizations (PHOs), independent practice associations (IPAs), accountable care organizations (ACOs), and any other managed care organizations with whom the Employer contracts. The Employer shall make its best efforts to ensure that the Physician is eligible to participate in all managed care contracts in which the Employer participates. Employer shall notify Physician of any agreement as to which fees for Physician's services shall be negotiated and/or bundled; and in such discounted or bundled fee arrangements, under no circumstances shall Physician be required to accept fees which are discounted at a rate proportionately greater than the discount given to such plans by Employer or take greater risk than Employer.

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4. Employer's Obligations

Sample "Equipment, Facilities and Personnel" Provision

Employer shall provide or arrange to have provided an office, examination rooms on its premises at [address], for use by Physician in treating and examining patients. Employer, at its expense, shall engage the services of

such administrative, nursing, scheduling and billing assistance as necessary for Physician to fulfill his or her obligations under this Agreement.

The facilities provided shall contain such medical equipment and supplies, and shall be stocked with such medicines, drugs, dressings and other items necessary to practice Physician's specialty. Employer shall also furnish access to such [computer equipment,] instruments, gloves and items of wearing apparel required to perform Physician's services under this Agreement. [All parties agree that Physician is a third-party beneficiary of the Management Services Agreement dated _____ between _____ and _____ (exhibit ____), and has standing to enforce its terms and conditions to ensure that the facilities, equipment, supplies and services necessary to practice medicine are furnished as provided therein.]

-OR-

Physician shall have the right to interview any nurses or employees directly supervised by Physician and to make recommendations regarding the hiring, firing or disciplining of those personnel. Employer retains the final discretion to discipline, hire or fire any such administrative or nursing staff. Employer shall provide equipment, facilities and support staff reasonably necessary for Physician's practice of medicine in accordance with the community standard.

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5. Physician Compensation

Sample "Physician Compensation" Provision

Compensation for the first 24 months.

Initial base compensation

Year 1: \$_____ base compensation per year for first year.

Year 2: \$_____ base compensation per year for second year in addition, on-call pay of \$_____ per day (per 24-hour period) for coverage of the _____ Call Schedule, which includes trauma and emergency department services.

Compensation after month 24

After the initial term (the first twenty-four (24) months of the Agreement), Physician's base compensation shall be \$ _____ for 12 months: this base compensation shall be subject to productivity-based adjustment. Compensation is for 52 weeks per year.

Call coverage at \$ _____ per day (Monday–Sunday).

In addition, actual payor mix percentages will be adjusted to reflect up to a 75 percent managed care payor mix. This payor mix adjustment will recognize RVU productivity up to an agreed-upon amount to account for indigent care work.

The productivity-based adjustment shall calculate Net Revenue on an annual accrual basis utilizing the following protocols:

1. Physician productivity shall be measured on an RVU basis.
2. All Income shall be determined by valuing the RVU productivity, assuming that 75 percent of Physician's payor mix was made up of managed care patients paying the current average managed care rates.
3. The pool available for the productivity-based adjusted pay shall be determined by subtracting the Physician's direct expenses (salary, benefits, liability insurance, etc.) from the Net Income. For purposes of this Agreement, Net Income shall be (a) actual cash collections (less refunds) of Employer attributable to Physician's professional services less (b) fully allocated expenses of Employer attributable to Physician's practice, including but not limited to Physician's Full-Time Salary and any Annual Production Incentive as described in Section 5.5 below.

Sample "Incentive Compensation" Provision

In addition to Salary, from the Start Date through the third (3rd) anniversary thereof, Physician shall have the opportunity to earn additional incentive compensation intended to reward outstanding contributions to the quality of care and services to Employer. The minimum wRVU Threshold that Physician must meet to achieve incentive compensation is Physician's _____ ("Physician's Minimum Production"). Only wRVUs in excess of Physician's Minimum Production shall be eligible for incentive compensation. Incentive compensation will be paid to Physician by multiplying (X) the number of units greater than Physician's

Minimum Production times (Y) the specialty compensation wRVU rate. If Physician's wRVUs are less than _____ percent (_____%_ of Physician's Minimum Production), Physician's Salary for the next year of the Agreement shall be reduced by _____.

Sample "Year-End Reconciliation: Bonus or Adjustment to Compensation" Provision

(a) Employer shall pay Physician a base salary of \$ _____ ("Physician's Base Salary"); the amount of Physician's Compensation for Physician's first pay period and Physician's last pay period will be determined based on the number of days worked in each of such pay periods.

(b) At the end of each contract year during the Agreement Term, Employer shall reconcile Physician's Compensation against the product of (x) the number of wRVUs produced by physician during such year and (y) the specialty compensation wRVU rate (such product hereinafter referred to as "Physician's Current Production"). If Physician's Current Production exceeds _____ during ____ [year] ____ ("Physician's Minimum Production"), in addition to the Compensation, Physician shall receive bonus compensation for such year in the amount of such excess, and Physician's Compensation for the next contract year shall equal Physician's Base Salary. If Physician's Current Production is ninety-five percent (95 percent) or more of Physician's Minimum Production but less than one-hundred percent (100 percent) of Physician's Minimum Production, Physician shall not be entitled to bonus compensation for such year, and Physician's Compensation for the next contract year shall equal Physician's Base Salary. If Physician's Current Production is less than ninety-five percent (95 percent) of Physician's Minimum Production, Physician shall not be entitled to bonus compensation for such year, and Physician's Compensation for the next contract year shall be reduced on a percentage-by-percentage basis by the amount of such shortfall. Physician's Minimum Production for the next year similarly shall be reduced on a percentage-by-percentage basis. If Physician's Compensation has been reduced pursuant to the immediately foregoing sentence, if Physician's Current Production exceeds Physician's Minimum Production (as reduced by the immediately foregoing sentence) in the next contract year, Physician's Compensation for the next contract year shall be increased, on a percentage-by-percentage basis, by the amount of such excess, and Physician's Minimum Production for the next contract year similarly shall be increased on a percentage-by-percentage basis; provided, however, that in no event shall Physician's Compensation exceed the amount specified in above.

Sample “Draw with Performance Based Bonus” Provision

In addition to Physician’s base salary, Employer shall, in its sole discretion, pay bonus compensation to Physician pursuant to the following formula that compares Physician’s capitated gross collections, as defined in paragraph 1 below, with other physicians in the group, and if they are above average for the group when adjusted for overhead and Physician’s direct expense, then a bonus accrues. If they are below average, a negative bonus accrues. Specifically:

1. The gross (i.e., capitated revenue, minus excess overcharge, minus 25 percent, minus fee-for-service revenue) fee-for-service equivalent cash collections received by the Employer during each subject period during the term of the Agreement shall be calculated (“gross collections”).
2. During the initial one (1) year of this Agreement, the Physician’s “percent of charges” shall be calculated by dividing the total [number of patient contacts, or relative value units (RVUs), or the amount of charges for professional services rendered] by the Physician during the initial one (1) year term of this Agreement, by the total [number of patient contacts, or RVUs, or the amount of charges] for professional services rendered by all of partners and employees of Employer during the same one (1) period. Thereafter, and during any renewal of subsequent term of this Agreement, the Employee’s percent of [patient contacts, RVUs or charges] shall be calculated on a monthly basis, using a rolling twelve (12) month average.
3. The amount of the Employer’s gross collections shall be multiplied by the Employee’s percent of [patient contacts, RVUs or charges], with the result thereof equaling the collections which shall be attributed to the Physician during the subject term (“Physician’s collections”).
4. From the amount of the Physician’s collections shall be deducted the following:
 - a. An amount equal to 10 percent of the Physician’s collections during the subject period
 - b. An equal share of the fixed expenses of Employer during the subject period
 - c. An amount calculated by multiplying the total variable expenses of Employer during the subject term, multiplied by the Physician’s percent of charges during the subject period
 - d. All direct expenses attributed to Physician
5. The total amount paid to the Physician as base salary during the subject term shall be subtracted from the result of the above referenced calculation. If the difference thereof is a positive number, Physician shall receive bonus compensation in such amount. If the difference thereof is a negative number, it will accumulate

with any other negative monthly totals paid back to Employer when the difference between the base salary and above calculation is consistently a positive number. When the accumulated negative total has been paid in full, all positive differences will be paid to Physician as bonus compensation.

6. The calculation of amounts owed to Physician as bonus compensation under this Agreement, if any, shall be undertaken once each month during the term of this Agreement. The payment of any bonus compensation from Employer to Physician shall be made promptly, and in no event later than within ____ days following the completion of the above referenced calculation. The payment of any amount owed by the Physician to the Employer shall be deducted promptly, and in no event later than within ____ days following the completion of the above referenced calculation.

7. The definition of the specific expenses which shall be classified as Employer's fixed expenses, variable expenses and direct expenses, shall be determined from time to time by the Employer, and the Employer shall have the right to amend and/or modify the specific expenses within each category of expense from time to time, provided that the application of any amendment and/or modification shall be equally binding upon all equity physicians and non-equity physician employees of the Employer.

Sample "Annual Salary Adjusted Based on Meeting Threshold RVU Amounts" Provision

1. **Annual Full-Time Salary.** Subject to Section A-2 hereof, for full-time professional services rendered pursuant to this Agreement, Physician shall be paid an annual salary in the amount of \$_____.00 ("Full-Time Salary"). Such amount shall be paid to Physician, via direct deposit, in equal bi-weekly installments in the amount of \$_____ (the "Bi-Weekly Compensation Payment") in conformity with the Payroll and Holiday Calendar, or any other payroll schedule, determined by Employer during the Term of Agreement.

2. **Annual Salary Adjustment.** Physician's annual, Full-Time Salary, as referenced in Section A-1 hereof shall be reviewed on an annual basis, and such salary shall be adjusted, either through an increase or a decrease in such salary, based upon changes in Relative Value Units ("RVU") in excess of ten percent (10%) of the annual threshold (as hereinafter stated). The annual threshold or base at which RVUs shall be measured against shall be 18,912 for purposes of this salary adjustment. Thus, Physician's Full-Time Salary shall be subject to adjustment if annual RVUs either exceed 20,803 or are below 17,020. This adjustment shall be done within thirty (30) days of the end of each Year of this Agreement, with the Full-Time Salary adjustment to take effect for the compensation paid in the following Year under this Agreement. Thus, by way of example, if Physician's

actual RVUs in Year One of this Agreement are 20,900, Physician's Full-Time Salary shall be increased in Year Two of this Agreement to \$ _____. Any adjustments pursuant to this provision in Year Three of this Agreement shall be to the Full-Time Salary paid in Year Two of this Agreement. The attached Attachment A-2 provides further examples of hypothetical calculations of this salary adjustment process.

3. **Production Incentive.** Effective as of Year One of this Agreement, in addition to the Full-Time Salary set forth in Section A-1 hereof, Physician may be entitled to receive an annual production incentive (the "**Annual Production Incentive**"). The Annual Production Incentive due to Physician, if any, will be paid to Physician in quarterly interim payments (the "**Quarterly Incentive Payment**"), based upon the projected Annual Production Incentive and subject to an annual reconciliation as set forth below.

i. *Incentive Payment.* Physician may be entitled to an Annual Production Incentive Payment in the event that Physician's actual RVU production during the applicable annual period exceeds Physician's RVU Threshold (as defined below). Physician's RVUs in excess of the RVU Threshold are multiplied by a compensation rate per RVU (the "**Conversion Factor**") to calculate the Annual Production Incentive Payment, subject to the limitations set forth herein. For the Term of Agreement, Physician's annual RVU Threshold is 18,912, and the Conversion Factor is \$21.79.

ii. *Quarterly Incentive Payments.* Quarterly Incentive Payments will be computed on the basis of the projected Annual Production Incentive during each calendar quarter of the Term of Agreement commencing with Year One hereunder, and Physician's Quarterly Incentive Payment, if any, shall be paid within thirty (30) days of the end of each applicable quarter. Quarterly documentation regarding a projected Annual Production Incentive shall be provided to Physician. Such documentation shall be in substantially the form of the attached Attachment A-1, entitled "Physician Incentive Compensation Productivity Calculation." The attached Attachment A-1 provides illustrative examples of descriptions of RVU production incentive calculations with scenarios in which an Annual Production Incentive is reached and in which an Annual Production Incentive is not reached.

iii. *RVU Work Schedule.* The RVU work schedule will be based upon the RVUs set forth in the Medicare Physician Fee Schedule, as published by the Centers for Medicare & Medicaid Services, effective as of January 1, 2008 (the "Medicare Fee Schedule").

iv. *Modifications to RVU Work Schedule.* The methodology for calculating RVUs for services that are not included in the Medicare Fee Schedule and the methodology for crediting RVUs when modifiers are

involved will be reflected in an Employer RVU Policy established and modified from time to time by the Employer at its sole discretion.

v. *Calculation of Production Incentive.* Provided Physician meets the requirements set forth in (i) above, Physician shall receive an Annual Production Incentive, as adjusted to reflect the following patient satisfaction percentile score received by Physician for professional services provided by Physician during the applicable annual period:

(a) A patient satisfaction percentile score of greater than eighty-five percent (>85 percent), would result in earning one hundred percent (100 percent) of the Annual Production Incentive.

(b) A patient satisfaction percentile score between seventy percent and eighty-five percent (70 percent–85 percent), would result in earning ninety-five percent (95 percent) of the Annual Production Incentive.

(c) A patient satisfaction percentile score between fifty percent and sixty-nine percent (50 percent–69 percent), would result in earning ninety percent (90 percent) of the Annual Production Incentive.

(d) A patient satisfaction percentile score of less than fifty percent (<50 percent), would result in no Annual Production Incentive.

vi. *Limitations on Annual Production Incentive.* Notwithstanding anything to the contrary herein:

Except in the first year of this Agreement, no Annual Production Incentive (or portion thereof) shall be paid unless Physician's annual Net Income exceeds zero. For purposes of this Agreement, Net Income shall be (a) actual cash collections (less refunds) of Employer attributable to Physician's professional services less (b) fully allocated expenses of Employer attributable to Physician's practice, including but not limited to Physician's Full-Time Salary and Annual Production Incentive.

No Production Incentive shall be paid unless Physician complies with federal and state laws, rules, regulations and guidelines, including those applicable to coding, billing and collection, as solely determined by Employer, and shall fully cooperate with Employer relative to the same.

vii. *Annual Reconciliation.* Reconciliation Calculation. Within thirty (30) days of the completion of each Year, commencing with Year One, under this Agreement, Employer shall compute the Annual Production Incentive due to Physician based upon Physician's actual RVU production in the previous year, subject to the limitations in paragraph 3.vi above (the "Compensation Computation"). Upon completion of each

Compensation Computation, Employer shall deliver a copy of same to Physician, together with a comparison of the total amount of Quarterly Incentive Payments paid to Physician pursuant to paragraph 3.iii above (the “Quarterly Amount Paid”) to the Compensation Computation (each a “Reconciliation Statement”). To the extent that the Compensation Computation is greater than the Quarterly Amount Paid, as reflected on the Reconciliation Statement, Employer will pay to Physician an amount equal to such excess amount within ten (10) days after delivery of the Compensation Computation to Physician. Except as provided in subsection vii.b. below, to the extent that the Amount Paid is greater than the Compensation Computation as reflected on a Reconciliation Statement, Physician will repay such excess (the “Reconciliation Reduction”) to Employer as follows: the Reconciliation Reduction shall be withheld from the salary of Physician, in equal amounts, over three (3) subsequent consecutive pay periods.

Expiration or Termination of Agreement. In the event that this Agreement expires or is terminated prior to the end of a calendar quarter, Employer shall determine the Compensation Computation based upon data available for the period commencing on the first day of the applicable calendar quarter and ending on the date of expiration or termination of this Agreement (the “Short Period”); and, within thirty (30) days after the expiration or termination of this Agreement, shall deliver a copy of such Compensation Computation to Physician, together with a comparison of the Amount Paid during the Short Period to such Compensation Computation. To the extent that the Compensation Computation for the Short Period is greater than the Amount Paid during the Short Period, Employer will pay to Physician an amount equal to such excess amount within ten (10) days after delivery of the Compensation Computation to Physician. To the extent that the Amount Paid during the Short Period is greater than the Compensation Computation for the Short Period, Physician will pay to Employer an amount equal to such Reconciliation Reduction amount within ten (10) days after Physician’s receipt of the Compensation Computation. Additionally, in the event that this Agreement expires or is terminated and any Reconciliation Reduction remains unapplied, Physician will pay to Employer the aggregate amount of such unapplied Reconciliation Reduction within ten (10) days after the expiration or termination of this Agreement.

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6. Reimbursement of expenses

Sample “Reimbursement of Expenses”

The Physician shall be entitled to reimbursement by the Employer for reasonable and necessary expenses incurred in the performance of the services hereunder, including travel expense for hospital visits during working hours, provided that, for all expense reimbursements, Physician furnishes Employer with records in compliance with Internal Revenue Code §274.

Additionally, Employer shall reimburse Physician the following:

- a. Continuing medical education (CME) costs, [all] Employer-approved costs of CME tuition/enrollment (including reasonable travel, food and lodging) [up to \$_____ / year].
- b. Subscriptions to journals, costs of books [and cost of online services] [or a percentage of such costs] [up to \$_____ /year].
- c. Up to \$_____ per month for all legitimately deductible professional entertainment and promotional expenses. Prior written approval is necessary for reimbursement of any costs in excess of \$_____.
- d. Cell phone and pager expenses necessary in the Physician’s medical practice.

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7. Employer-Paid Benefits and Time Off

Sample “Insurance” Provision

Physician [and his or her dependents] shall be entitled to participate in Employer’s [health, dental, vision, life and disability] and other insurance benefits to the same level as other employees of Employer. Employer shall pay [all monthly premiums or up to \$_____ per month per employee toward the cost of the premiums]. [Participation in the insurance programs is subject to Physician’s meeting the eligibility requirements of the insurer.]

Sample “Qualified Pension or Profit Sharing Plan” Provision

During the term of this Agreement and for any extensions thereof, Physician shall be entitled to participate in Employer’s qualified defined [benefits or contribution] plan. Employer reserves the right to modify, suspend or discontinue any plan without recourse by Physician so long as such action is done lawfully.

Sample “Professional Liability Coverage” Provision

A. Patient care services performed within the scope of Physician’s employment by Employer shall be covered by professional liability insurance with a policy limit of at least \$_____ per claim, with an aggregate limit of at least \$_____ at the expense of Employer. Physician shall be added as an additional named insured on the Employer’s professional liability policies and Employer shall furnish written proof of same within sixty (60) days of the Starting Date. Physician may review a copy of the policy upon reasonable request. [Employer or Physician] shall pay any deductibles before termination of this Agreement [and thereafter].

B. In the event that Physician knows of a professional liability incident involving Physician or receives notice of a claim or of an intended claim that alleges that Physician or any other of Employer’s employees is or may be liable for a professional act or omission, Physician shall immediately notify Employer of such fact.

Sample “Claims Made Tail Purchased by Employer” Provision

If professional liability insurance is on a “claims made” basis, Employer shall purchase extended reporting endorsement coverage (“tail” coverage) for a period no less than _____ years after termination of Physician’s employment. Physician shall have the right to review the policy on a periodic basis. Employer shall pay deductibles, as necessary, before and after termination of this Agreement.

Sample “Claims Made Tail Purchased by Employee/Employer” Provision

In the event that either (i) Physician terminates his employment without cause or (ii) Employer terminates Physician’s employment for cause and the Employer’s professional liability coverage is on a claims made basis, the Physician shall obtain professional liability tail coverage insurance for acts or omissions of Employee

during employment, for a period of no less than _____ years after termination of Physician's employment, the Employer may obtain such tail insurance and deduct the cost of such coverage from any amount owed hereunder to Physician. In the event that employment is terminated for any reason other than those stated herein, the Employer shall obtain the stated tail insurance at its expense.

Sample "Insurance for Licensure and Administrative Proceedings" Provision

Employer shall provide the maximum available coverage for Physician for legal defense in administrative and disciplinary proceedings.

Sample "General Liability Coverage" Provision

Physician shall also be named as an additional named insured on Employer's general liability policy, including coverage of Physician's business use of his or her automobile, and Employer shall provide proof thereof within _____ days of the Effective Date of this Agreement. If permitted by the applicable state law, Employer shall maintain in effect liability coverage for intentional torts, fraud, liability in the workplace (harassment, discrimination, wrongful termination, etc.) and punitive damages, and if necessary obtain riders to cover areas excluded by the general liability policy.

Sample "Dues and License Fees" Provision

Physician shall maintain membership in the American Medical Association, the (state) Medical Association, the _____ County Medical Society and the state and national specialty societies, and Employer shall pay the dues and assessments to maintain such memberships. Physician must also maintain active licenses and U.S. Drug Enforcement Administration numbers in the following states: _____, _____ and _____. Employer shall pay all licensing fees in those states. Physician may maintain active or inactive licenses and DEA numbers in other states at Employer's expense.

Sample “Moving and Interim Expenses” Provision

1. Employer shall pay Physician [an amount not to exceed \$ _____] for the relocation expenses incurred by Physician in moving from his or her present residence to a residence near Employer’s practice. Employer will reimburse:

a. The usual and customary expenses of selling Physician’s home (broker’s commission, however, shall not exceed ___%)

b. The reasonable costs of moving Physician’s belongings to his or her new residence (but Physician shall select the carrier in coordination with Employer having obtained three estimates)

c. Insurance at replacement value in Physician’s goods

d. Reasonable house-hunting expenses for Physician [and spouse] up to \$ _____

e. Reasonable and customary closing costs on Physician’s new home up to \$ _____

f. Incidental expenses up to \$ _____

2. It is anticipated that Physician may not move his or her residence right away, so Employer shall reimburse Physician for living expenses for the first _____ days of this Agreement, upon Physician’s periodic presentation of an itemized list of such expenses. Reimbursed expenses shall include:

a. Up to \$ _____ per month for lodging

b. \$ _____ per day for meals

c. Transportation costs for two round trips per month to the former place of residence, but costs of local transportation shall not be provided

3. [If the Agreement is terminated during the probationary period, living costs will not be provided beyond the date of termination.]

4. All relocation expenses shall be paid to Physician within ___ days of Physician’s presentation of adequate documentation of the expenditure.

Sample “Housing Allowance/Mortgage Assistance” Provision

Employer shall provide Physician housing allowance of \$ _____ per month and a second mortgage loan of up to \$ _____ at _____% interest to purchase housing within _____ minutes of the [practice or _____ Hospital]. The terms of said mortgage shall be set forth in a separate deed of trust and mortgage to be signed by the parties when Physician’s purchase of residence is made.

Sample “Student Loans” Provision

Physician has \$ _____ outstanding in student loans, which are identified as [provide specific description]. On the first anniversary of the Effective Date of this Agreement and on each anniversary date thereafter that this Agreement stays in effect, Employer shall pay to the lender _____% of the outstanding balance on the student loans. Vesting of this benefit does not accrue pro rata. Payment is made annually only if the Physician is still employed by Employer on the anniversary date.

Sample “Vacation, CME and Time Off” Provision

The Physician shall be entitled on a [non]cumulative basis to [_____ weeks or _____ working days] of time off per year which shall be used as vacation or CME time as Physician may determine. [Alternate: So long as Physician regularly collects at least \$ _____ per month in uninterrupted cash flow, Physician may take up to _____ weeks of vacation per year.] Physician must provide at least _____ days notice prior to taking one week or more away from the practice. Time off shall accrue at the rate of _____ days per pay period. Vacation/CME time not taken in the calendar year can be carried over to the following year.

Sample “Sick Leave” Provision

Physician shall be entitled to paid time off for sick days of [_____ weeks or _____ working days] per year. Sick leave shall accrue at the rate of _____ days per pay period and may accrue from year to year up to a total of ninety (90) working days. Unused sick leave is not compensable upon termination.

Sample “Holidays” Provision

[Subject to the call schedule,] Physician shall be entitled to _____ paid holidays per year, specifically: New Year’s Day, Martin Luther King Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. [Other religious holidays may be traded for the paid holidays listed above.]

Sample “Midweek Time Off” Provision

In consideration of call and other professional demands on Physician’s time, Physician shall not be scheduled to see patients one half-day per week [in order to take care of administrative duties and paper work within the office, or and shall have no other duties during that time].

Sample “Family/Medical Leave” Provision

Employee will be entitled to _____ [weeks or days] of leave within any 12-month period for illness or family matters.

Sample “Leave of Absence” Provision

Employer acknowledges and agrees that Physician may request unpaid leaves of absence up to _____ days a year, which may be granted at the sole discretion of Employer. Any unused vacation time will first be applied to any leave of absence; thereafter, whether the leave of absence is paid or unpaid shall be at the sole discretion of the Employer. If the leave of absence is requested for medical reasons, sick leave shall be applied first, then vacation, if any has accrued.

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8. Loyalty and Confidentiality Covenants

Sample “Physician’s Unfettered Right to Exercise Personal and Professional Judgment”

Physician shall have the unfettered right to exercise his/her personal and professional judgment in voting, speaking, and advocating on any matter regarding (i) patient care interests, (ii) the profession, (iii) health care in the community, (iv) medical staff matters, and (v) the independent exercise of medical judgment. This shall

include the unrestricted right to refer patients to other physicians and facilities as per the professional judgment of Physician. Also, Physician shall not be deemed in breach of his/her employment agreement, nor shall Physician be subject to employer retaliation, including but not limited to, termination of this employment agreement, commencement of any disciplinary action, or any other adverse action, based on Physician's exercise of the foregoing rights.

Sample "Duty of Loyalty" Provision

Physician shall loyally devote Physician's full-time professional efforts to the performance of Physician's duties under this Agreement. During the Agreement Term, Physician shall not, at any time or place whatsoever, either directly or indirectly, without the prior written consent of Employer, engage in the practice of medicine or surgery to any extent whatsoever, except under and pursuant to this Agreement.

Sample "Covenant Not to Compete During Term of Agreement/Anti-Moonlighting" Provision

Physician shall not, without the express prior written consent of Employer, directly or indirectly during the term of this Agreement, render services of a professional nature to or for any person or firm for compensation, or engage in any activity competitive with or adverse to employer's business or practice, whether alone, as a partner, or as an officer, director, associate or shareholder of any other corporation, or as a trustee, fiduciary or other representative of any other entity, to the extent that rendering such services would interfere with the provision of Physician's services hereunder. Nothing herein is intended to preclude the physician from medical-legal consulting, teaching, writing, or providing services at clinics providing care to the uninsured as long as rendering such services would not interfere with the provision of Physician's services hereunder. This clause is limited to activities within a 25-mile radius and extends so long as this agreement is in force to provide medical services. This clause shall not be construed to limit Physician's right to teach, lecture or research, but any remuneration for Physician's professional activities shall be remitted to Employer. The parties agree that damages for breach of this covenant would be difficult to calculate and, therefore, agree to the amount of \$_____ as the amount of liquidated damages (not as a penalty) to be paid by Physician to Employer in the event of breach on this covenant.

Sample “Covenant Not to Compete After Termination of Employment” Provision

A. *Acknowledgement.*

Physician acknowledges:

i. Employer has expended a great deal of effort and resources (financial and otherwise) in developing Employer’s medical practice, including establishing substantial positive name recognition, goodwill, and relationships with patients, referral sources, hospital administrators, third party payors, health insurers, and employees, which all give Employer a significant competitive advantage.

ii. Employer, in connection with its business, has developed and will develop certain designs, contracts, procedures, protocols, processes, records, and files respecting any patient or services provided to any patient, provider lists, fee schedules, compensation data, vendor price lists, third-party payor payment rates, outside provider information, provider contracting information, documentation relating to the provision of services hereunder, and other copyrighted, patented, trademarked, and other legally protectable information, including trade secrets, that are confidential and proprietary to Employer (collectively “Confidential Information”).

iii. Employer shall provide Physician access to and the direct benefits of Employer’s Confidential Information, positive name recognition, goodwill, relationships with patients, referral sources, hospital administrators, third party payors, health insurers, and employees.

iv. From the commencement of employment, and throughout such employment, Employer shall provide, and Physician shall continuously receive, Confidential Information, contacts, relationships, sources and goodwill, and Physician will benefit and profit significantly from Employer’s acceptance of Physician into its medical practice and from Employer’s expenditures of time, effort, and resources, including its substantial positive name recognition, goodwill, and relationships, which will permit Physician’s practice to develop at a much faster pace.

v. This Agreement and the restrictive covenants contained in this Section are supported by valuable consideration, monetary and otherwise.

B. *Non-compete Restriction.*

i. Physician agrees that for a continuous period of one (1) year commencing upon expiration or termination of this Agreement for any reason (collectively referred to as the “Restrictive Time”), Physician shall

not, individually or jointly with others, directly or indirectly, whether for his or her own account or for that of any other person or entity (the following being collectively referred to as the “Non-Competition Covenant”):

(a) own, manage, operate, control, or participate in any manner in the ownership, management, operation or control of, or serve as a partner, principal, agent, consultant or otherwise with, or have any financial interest in or aid or assist any other person or entity in the conduct of any business (other than (a) an ownership interest of less than five percent (5%) of the issued and outstanding stock of a publicly-traded corporation) that competes in any manner whatsoever with the Business of Employer (as defined below) or any inpatient or outpatient health care facility owned by Employer or any of its Affiliates (including, without limitation, all businesses and healthcare facilities owned and/or operated by Hospital and its Affiliates) anywhere within _____ miles of any [insert location] at which Physician provided medical or clinical services during the _____ (___) month period immediately preceding the cessation of Physician’s employment with Employer (the “Restrictive Territory”) within the Restrictive Territory during the Restrictive Time as an officer, director, employee, partner, independent contractor, consultant, principal, agent proprietor, or in any other capacity for, nor lend any assistance (financial, managerial, professional or otherwise) or cooperation to, nor perform any services for, any person, entity, facility or other business at a location within such Restrictive Territory during the Restrictive Time.

(b) have his or her income or expenses guaranteed or sponsored by, or receive any other remuneration or compensation from, any physician group practice, hospital, or affiliated or related organization that provides services that competes with the Business of Employer or any of its Affiliates within the Restricted Territory during the Restrictive Time.

(c) take any steps or actions to prepare to compete with the Business of Employer or any of its Affiliates in a manner prohibited by this Section 8.4.B.

ii. Business of Employer. For purposes of this Agreement, the “Business” of Employer shall include the practice of [insert specialty].

Note: The Hospital also may insert language to prohibit the operation of any ancillary service or facility relating to patient care services on an inpatient or outpatient basis then owned or operated, directly or indirectly, by Employer, its physicians, or any of their respective Affiliates as of the date of expiration or earlier termination of this Agreement. Such language should be deleted.

iii. Buy-Out of Non-Competition Covenant. The parties stipulate and agree that Physician shall have the right to buy-out of the Non-Competition Covenant contained in Section 8.4.B.i by paying to Employer an amount equal to _____ Dollars (\$ _____) (the “Buy-Out Amount”), which amount takes into account, among other things, lost profits, costs of recruitment and administrative costs related to physician’s practice. The Buy-Out Amount shall become payable by Physician to Employer upon commencement of Physician’s practice of medicine within the Restricted Territory. Upon Physician’s payment of the Buy-Out Amount to Employer, Physician will no longer be bound by the Non-Competition Covenant. Physician and Employer each have independently evaluated the Buy-Out Amount and agree that the Buy-Out Amount is reasonable.

Sample “Non-Solicitation” Provision

Physician agrees and covenants that during the Agreement Term and for a period of one (1) year after the termination of this Agreement, Physician shall not, directly or indirectly, on behalf of himself or herself and/or any other person or entity:

i. Solicit, induce, or attempt to induce, in connection with any business competitive with that of Employer, patients of any physician employed by or under contract with Employer to leave the care of such physician (provided that Physician shall have the unrestricted right to refer patients as set forth in paragraph 8.1 above); or

ii. Solicit, induce, or attempt to induce, any employee, consultant, or other persons associated with Employer to leave the employment of, or to discontinue their association with Employer or any Affiliate thereof.

Sample “Injunctive Relief” Provision

The parties acknowledge and agree that (a) the covenants and restrictions contained in this Section are necessary, fundamental, required and specifically designed to protect the legitimate business interests of Employer; (b) such covenants and restrictions relate to matters that are of a special, unique, and extraordinary character; and (c) a breach of any such covenants or restrictions will result in irreparable harm and damages to Employer that cannot be adequately compensated by a monetary award. Accordingly, the parties expressly agree that in the event of an actual or threatened breach by Physician of the restrictive covenants contained in this Section, Employer shall be entitled to a temporary restraining order or an injunction (or both) to specifically

enforce the provisions of this Section. Further, nothing herein shall be construed as prohibiting compensation to Employer for such breach or threatened breach, including (but not necessarily limited to) recovery of damages from Physician and for reasonable attorneys fees.

Sample “Patient Records and Confidentiality” Provision

i. **Patient Records.** Physician acknowledges that all patients seen by Physician pursuant to, and during the Agreement Term, are Employer’s patients. All reports, x-ray films or other imaging materials, slides, medical data, medical records, patient lists, patient credit information and histories, fee books, patient records, files and other documents or copies thereof, pertaining to medical activities to which Physician may have access shall belong to and remain the property of Employer. In addition, Physician further agrees to keep confidential and not to use or to disclose to others, except as required to treat patients or as expressly approved in writing by Employer or required by law, any and all such information. Notwithstanding the foregoing, (a) Physician will not be denied access to any list of Physician’s patients for which he or she has been designated as the “Physician of Record” within Employer’s practice management system and whom Physician has seen or treated within the one (1) year period preceding the effective date of termination of this Agreement, and (b) upon termination of this Agreement, Physician shall return any such records as may be in Physician’s possession to Employer, subject to Physician’s right to copies of records, as follows. Upon termination, Physician is entitled to copies of patient charts and records upon a specific request in writing from a patient. Moreover, upon and after termination, full access to copy patient records will be allowed to Physician [at Physician’s expense] for any reasonable purpose, such as in the event of a malpractice action or administrative investigation proceeding against Physician, for medical research, or to compare a new case with an old one. In connection with the foregoing, any access to a list of patients or to patients’ medical records after termination of this Agreement will be in a format no different than that by which such records are maintained, except by mutual consent of Employer and Physician. In the event that Employer is dissolved or liquidated during such time as this Agreement is in effect, all files, documents, and records relating to each patient shall be delivered to Physician designated in writing by the patient or, in the absence of such designation, to the doctor who had the responsibility for the care of such patient.

Physician shall have the right to inform his or her patients of the fact that he or she is leaving the Employer, and to give his or her patients the opportunity to choose whether to remain with the Employer or remain with the individual physician. The right to notify patients of a new practice extends only to patients who were treated by

the Physician as evidenced by at least one patient encounter as shown by an entry in the patient chart signed or initialed by the Physician. The notification shall use the following language:

Dear [patient name]:

This letter is to inform you that as of [date], I will no longer be an employee of _____. This does not necessarily mean that you will lose me as your physician, as I am joining _____, at the following address: [practice address and phone number].

I am happy to provide your care through my new employment, should you so desire. My new group has contracted with the following plans: [list plans].

If your plan is not listed and you are interested in remaining my patient, please call my new office manager, [name], at [telephone number] to discuss your options. You may also continue your health care through [current employer] and [current employer] will see to it that you are transferred to another fully qualified physician. Please let [current employer, telephone number and address] know at your earliest convenience which of the options outlined above is best for you. If you chose to remain my patient and have any problems in transferring your records, please contact [name of contact person].

Sincerely,

[Dr. _____]

ii. **Confidentiality clause.** Definition: For purposes of this Agreement, the term “Confidential Information” includes all such information that is by law so protected, as well as any and all information that is maintained and designated as such by Employer, or any employee of Employer, including but not limited to the following: (a) information regarding the identity, address, health plan or insurance status, medical history, diagnosis and treatment of Employer’s patients (whether or not treated by Physician); (b) the records and proceedings of quality assurance, peer review or utilization review evaluations; (c) information about the financial operations, business plans, strategy of Employer; (d) information agreed to be held as confidential with entities with whom the Employer has contracted. Physicians shall treat such information as confidential by seeing that it is stored securely and kept under password, if stored on a computer.

Physician shall not, during the term of this Agreement or at any time thereafter, directly or indirectly use, permit others to use or disclose any confidential information except as is necessary: (a) in the course of performing duties as an employee of Employer; (b) as may be required by law or by professional ethics; or (c) as provided

under section 8.6 with respect to patients who wish to continue to see the physician upon employment termination.

iii. **Non-Disclosure.** During the Agreement Term and thereafter, Physician agrees not to (a) use any Confidential Information except in furtherance of Physician's obligations under this Agreement as contemplated herein, without the prior written consent of Employer, or (b) release, disclose, or disseminate any Confidential Information to any other person or entity except as medically necessary or upon the prior written consent of Employer, or as otherwise required by federal or State law. Upon termination of this Agreement, Physician agrees not to use Employer's name, address, or telephone number for any purpose and agrees to promptly return any Confidential Information in Physician's possession or control to Employer. For purposes of this Section 8.C.iii, Confidential Information shall not include (a) information previously known to Physician prior to the Start Date; (b) information acquired by Physician from a third party which was not under any obligation not to disclose such information; or (c) information which becomes publicly available through no breach by Physician of this Agreement.

Sample "Intellectual Property" Provision

The [Employer or Physician] is entitled to any remuneration generated from intellectual property of any kind created by the Physician during the term of this agreement, including but not limited to inventions, patents, copyrights and software. [While Employer owns all intellectual property created by Physician in whole or in any part arising from Physician's employment during the term of this Agreement, Employer will share ___ % of any net profits there from.]

Sample "Peer Review" Provision

The monitoring and evaluation of quality, appropriateness, medical necessity and efficiency of patient care shall be subject to an effective program of peer review, which shall be conducted by the medical staff, independently of and without interference from any human resources function of the Employer. Physician shall execute and deliver authorizations and releases to peer review committees of other entities that will enable the full and timely disclosure to Employer's medical staff peer review committee, to the fullest extent permitted by law, of all medical professional information about Physician.

Sample “Indemnification” Provision

Except as provided in the last sentence of this Section 8.10, Employee shall hold harmless and indemnify Employer, its officers, employees, directors, shareholders, successors, and assigns, from and against any and all claims, with any and all acts and omissions of Employee in violation of this Agreement; provided, however, that to the extent that any such claims, liabilities, costs, damages, and expenses are compensated for by insurance purchased by Employer, Employee shall not be required to reimburse Employer or insure for the same. It is further agreed that Employee shall not be obligated to hold harmless and indemnify Employer, its officers, employees, directors, shareholders, successors and assigns and each of them (the “Employee Indemnified Parties”) as set forth in the preceding sentence to the degree that Employee Indemnified Parties are found to be negligent or jointly negligent.

In the event that either Employer or Employee receives notice of any claim, liability, or cause of action that implicates the obligation of indemnification set forth in either Section __ or ____, then such party shall give prompt notice to the other party of such and provide copies of all relevant documents to the same.

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9. Termination

Sample “Without Cause” Termination Provision

Except as otherwise provided herein, either Party may terminate this Agreement by giving not less than _____ days/months advance written notice to the other Party. Both Parties shall have the right to terminate the Agreement for cause during any without cause notice period.

Sample “For Cause by Employer” Termination Provision

Employer may terminate this Agreement effective immediately upon the occurrence of any of the following:

1. Physician’s license to practice medicine in any state expires or such license is revoked, terminated, limited, conditioned, suspended, restricted in any way, or not renewed.
2. Physician’s license to prescribe or dispense controlled substances is revoked, terminated, limited, conditioned, suspended, restricted in any way or not renewed.

3. Physician's membership on the medical staff of Employer or clinical privileges at Employer are revoked, terminated, limited, conditioned, suspended, restricted in any way, or not renewed, following full due process rights afforded to Physician under the Medical Staff Bylaws.
4. Employer is unable to obtain malpractice insurance covering Physician.
5. Physician is convicted or enters a plea of guilty or no contest for a felony crime or any other act of moral turpitude, such as fraud, theft, embezzlement, or the like.
6. Physician is excluded, terminated, suspended, or declared ineligible to participate in Medicare, Medicaid, or any other governmental program providing compensation for services rendered to patients.
7. Physician fails or refuses to perform or fulfill any of Physician's duties, obligations or covenants under this Agreement or breaches any of his/her representations and warranties contained in Section 3.5 herein, which breach is not cured within ten (10) days of Physician's receipt of notice describing such breach in detail from Employer .
8. Physician is using illegal substances or abusing alcohol or legal substances.
9. Physician's board certification is revoked or restricted, limited, suspended, in any material way.

Note: Employer may not terminate this Agreement for cause with respect to the quality of care, professional competence or conduct of Physician, or other matters that fall within the purview of the medical staff bylaws, and the latter's due process procedures until completion of the medical staff bylaws corrective action process. Corrective action, including termination of membership on the medical staff, under the medical staff bylaws, will be conducted independently of and without interference from any human resource function of Employer.

Sample "For Cause by Physician" Termination Provision

Physician may terminate this Agreement effective immediately upon the occurrence of any of the following:

1. Employer's licensure, certification or accreditation expires or is revoked, terminated, limited, conditioned, suspended, restricted in any way or not renewed.
2. Employer is excluded, terminated, suspended, or declared ineligible to participate in Medicare, Medicaid, or any other governmental program providing compensation for services rendered to patients.

3. Employer fails or refuses to perform or fulfill any of Employer's duties, obligations or covenants under this Agreement, which breach is not cured within ten (10) days of Employer's receipt of notice of such breach from Employee.
4. Employer files for bankruptcy, is adjudicated bankrupt, takes advantage of applicable insolvency laws, make an assignment for the benefit of a creditor, or a receiver or its equivalent has been appointed for Employer's property.

Sample "Mutual Termination" Provision

This Agreement may be terminated at any time by mutual, written agreement of the Parties effective as of the date mutually agreed by the Parties.

Sample "Death or Disability" Termination Provision

This Agreement shall terminate, effective immediately, upon the death Physician or Physician's disability that renders him/her unable to perform the essential functions of his/her employment duties hereunder with reasonable accommodation hereunder for a period in excess of ___ days.

Sample "Effect of Termination" Provision

In the event of any termination of this Agreement by Employer or Physician and except as further provided herein, Employer shall be liable for accrued compensation described herein through the effective date of employment. Upon termination of this Agreement for any reason, Physician shall return to Employer all property of Employer and shall abide by the provisions of Section 10.7 herein with respect to patient records and notification. Upon termination, Physician shall retain full Medical Staff membership and clinical privileges as he or she held during the term of this Agreement and nothing herein shall adversely affect Physician's Medical Staff membership or clinical privileges or require Physician to resign the same, unless an independent action by the Medical Staff has called for the same, and Physician has been afforded full due process under the Medical Staff Bylaws.

Sample “Due Process” Provision

In the event of termination of this Agreement by Employer for any reason [**or, alternatively:** In the event of termination of this Agreement by Employer for cause related, directly or indirectly, to Physician’s professional competence or conduct or for economic reasons (including, but not limited to, quality/performance improvement, patient safety, or other protocols)], Physician shall have the full and un-waivable right to notice and a fair hearing before a hearing body and otherwise afforded meaningful due process protections [in accordance with Employer’s fair hearing plan as proscribed in its Medical Staff Bylaws or related Medical Staff documents, such as the Medical Staff Fair Hearing Plan]. [**Or, alternatively:** Such due process must include the following specific protections that would entitle the Physician to: (1) a written statement of the proposed decision to terminate this Agreement and the basis for that decision and proposed action; (2) adequate notice of the right to a hearing and a reasonable opportunity to prepare for the hearing; (3) discover the evidence and witnesses against him or her, which serve as the basis for the decision/action sufficiently in advance of the hearing to enable preparation of the defense; (4) a fair, objective, and independent hearing; (5) the right to ask questions of the panel members and of any hearing officer, with such questions being designed to reveal bias or prejudice and the right to challenge the impartiality of any member or hearing officer; (6) conduct of the hearing according to established rules of procedure; (7) representation by an attorney or other person of Physician’s choice; (8) an unbiased hearing panel of at least three (3) physicians, who are not Physician’s economic competitors, who have skill and knowledge in the Specialty, and who do not have a contractual relationship with the Employer; (9) the opportunity for the Physician to be present at the hearing and hear all of the evidence; (10) the opportunity for the Physician to present a defense, including, but not limited to, the right to call, examine, and cross-examine witnesses; (11) the Employer bears the burden of proof and persuasion that the decision to terminate the Physician is made in good faith and supported by a preponderance of the evidence; (12) a hearing that protects the interests of the Physician, patients to whom the Physician provides medical services, and the public in the delivery of quality patient care; (13) the hearing panel shall states its findings and the support for its findings clearly and in great detail; (14) within ten (10) days of the hearing panel’s decision, the physician shall receive written notice of and have the right to request an appellate review; and (15) the appellate review body has the right to consider new evidence not available at the time of the hearing and to refer the evidence back to the original panel for its consideration.³]

³ [AMA Policy H-265.998](#) Guidelines for Due Process.

Sample “Effect of Merger, Consolidation, Dissolution” Provision

In the event Employer is acquired by or merges with another entity of the same or larger size, Physician shall have the right to terminate the Agreement and upon such termination shall be entitled to full compensation through the date of termination. In such event, Physician shall receive an amount equal [to _____% of the monthly base salary that Physician would have received for the remainder of the term of the Agreement had Physician continued employment for the full term of the Agreement or _____ times the last _____ months’ compensation]. This additional sum will be paid to Physician in a lump sum within thirty (30) days of his or her date of termination under this paragraph.

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10. Disability or Death

Sample “Compensation for Physician’s Temporary or Permanent Disability” Provision

Employer is responsible for contributing to the state Workers’ Compensation and disability funds on Physician’s behalf. If Physician becomes ill or injured on the job, he or she is entitled to Workers’ Compensation as defined by the Workers’ Compensation law of the state of _____. If Physician becomes disabled for any reason, he or she will become eligible for state disability payments as specified by the state Disability Board.

If the Physician shall become permanently and totally disabled, and retire on account of such disability, the Employer will continue the wages of the Physician for a period of _____ months commencing with the month following the month in which such permanent and total disability first occurs. Notwithstanding the proceeding, no disability payments shall be made after the death of the Physician. The term “permanent and total disability” shall mean that the Physician is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

Sample “Rights of Physician Upon His/Her Temporary Total Disability” Provision

“Temporary total disability” shall mean that Physician is unable to perform his or her obligations under this Agreement for a period of _____ weeks or less. If Physician becomes temporarily and totally disabled, he or

she shall be entitled to a [paid or unpaid] medical leave of _____ weeks, in addition to the sick leave provided for in paragraph 7.9.

Sample “Rights of Physician Upon His/Her Temporary Partial Disability” Provision

“Temporary disability” shall mean that Physician has become disabled for a period of _____ weeks or less. Temporary disability is partial when the Physician is able to do some work. If Physician becomes temporarily and partially disabled, Employer shall allow him or her to work on a modified schedule for the duration of his or her disability or until this Agreement expires, whichever comes first. This scheduling accommodation is offered pursuant to the terms of paragraph 10.4 below, including but not limited to the condition that the Employer need not offer the accommodation if it would impose an undue hardship on Employer.

Sample “Physician’s Permanent Partial Disability/Accommodations for Disability” Provision

1. If Physician at any time during the term of this Agreement should become partially disabled as defined under the Americans With Disabilities Act (ADA), Employer shall take affirmative steps to make reasonable accommodations so that Physician can continue to work. Such accommodations may include, but are not limited to, making facilities readily accessible to and usable by Physician, allowing Physician to work on a part-time or modified work schedule, modifying equipment, and placing the Physician in an existing vacant position that he or she is qualified for and able to perform. This provision shall not be construed to require Employer to make an accommodation that would impose an undue hardship on the operation of Employer’s business.
2. If Physician at any time during the term of this Agreement should become unable to perform the duties required by this Agreement because of any condition or cause that does not render Physician a qualified worker with a disability for purposes of ADA, Employer may in its sole discretion assign Physician to other duties, and the compensation to be paid thereafter to Physician shall be determined by Employer in its sole discretion. If Physician is unwilling to accept the modification in duties and compensation made by Employer, this contract shall terminate [immediately or within (specify time period) thereafter].

Sample “Termination for Physician’s Permanent Total Disability or Death” Provision

If Physician becomes permanently and totally disabled, Employer or Physician may terminate Physician’s employment. Either the Physician or the Employer shall have given the other party _____ days written notice of his or her intention to terminate this Agreement because of such disability. “Permanent disability” shall mean that Physician has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illnesses) of properly performing the services required of him or her under this Agreement and that such incapacity shall exist or be reasonably expected to exist for more than ____ consecutive weeks in the aggregate during any one (1) year period. Total disability shall mean that Physician’s disability has been rated 100% by the Employer’s group disability insurer. If Physician’s employment terminates by reason of his or her death or disability, Employer shall only be obligated to pay any unpaid and accrued salary and bonuses due at the Physician’s last date of employment.

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11. Remedies

Sample “Dispute Resolution” Provision

In the event of any dispute between the Parties under this Agreement, the Parties shall first negotiate the matter between themselves in good faith. If direct negotiations do not resolve the matter, either Party may demand, in writing, that it be submitted to mediation. After delivery of the notice of mediation, the Parties may select a mediator who will render a recommended resolution to the dispute. If the Parties cannot agree upon a mediator, the Parties shall each select a mediator and the two mediators selected by the Parties will select a third mediator. The Parties will share the expense of the mediator, if one mediator is selected and, if three mediators are selected, shall each pay the cost of the mediator they selected and will share equally the cost of the third mediator. If mediation does not resolve the dispute within ninety (90) days after the written notice of mediation is delivered or the Parties are unable to resolve the dispute through negotiation or mediation, either Party may require by written notice that the matter be submitted to arbitration, under the American Health Lawyers Association/American Arbitration Association. Arbitration will be by a single arbitrator acceptable to both parties, who is knowledgeable in health care matters. If the Parties cannot agree upon an arbitrator, the Parties shall each select an arbitrator and the two arbitrators selected by the Parties will select a third arbitrator. The Parties will share the expense of the arbitrator, if one arbitrator is selected and, if three arbitrators are selected, shall each pay the cost of the arbitrator they selected and will share equally the cost of the third arbitrator. The

arbitrator's decision shall be binding, and either party may petition a court of appropriate jurisdiction for the award of the arbitrator to be enforced by the court. The arbitrator may award attorney's fees and costs to the prevailing Party, but neither Party shall be allowed punitive damages.

In the event any attorney is employed by any Party to this Agreement with regard to any legal action, arbitration, or other proceeding brought by any Party to this Agreement for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, then the prevailing Party, whether at arbitration, trial or upon appeal, and in addition to any other relief to which the prevailing Party may be granted, at the judge's or arbitrator's discretion, may be entitled to recover from the losing Party all costs, expenses, and a reasonable sum for attorney fees incurred by the prevailing Party in bringing or defending such action, arbitration, or proceeding, and in enforcing any judgment granted therein, all of which costs, expenses, and attorneys fees shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

At the arbitrator's or judge's discretion, any judgment or order entered in such matter may contain a specific provision providing for the recovery by the prevailing Party of attorney fees, costs, and expenses incurred in enforcing such judgment. For purposes of this Section, attorneys fees shall include, without limitation, fees incurred in the following: post judgment motions; contempt proceedings; garnishment, levy and debtor and third-party examinations; discovery and bankruptcy litigation.

_____ Physician's Initials

_____ Employer's Initials

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12. Miscellaneous

Sample "Amendment" Provision

This Agreement may be amended or modified only by a written document signed by both parties hereto.

Sample “Notices” Provision

All notices required by this Agreement shall be sufficient if delivered in writing either personally to the party to be notified or deposited in the United States mail, postage prepaid and return receipt requested, addressed to the party at the addresses set forth below:

_____	_____
_____	_____
_____	_____

Employer

Physician

Sample “Entire Agreement” Provision

This Agreement constitutes the entire agreement between Employer and Physician with respect to matters relating to Physician’s employment, and it supersedes all previous oral or written communications, representations or agreements between the parties. Notwithstanding the foregoing, nothing herein is intended to alter the relationship between Physician and the Employer’s Medical Staff as governed by the Medical Staff Bylaws except as stated to the contrary herein.

Sample “Assignment/Merger or Acquisition” Provision

Nothing contained in this Agreement shall be construed to permit the assignment or delegation by Employer or Physician of any obligations or rights hereunder, without the prior written consent of the other party.

Sample “Partial Invalidity” Provision

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Sample “Governing Law” Provision

This Agreement will be governed by and construed in accordance with the laws of the State of _____.

Sample “Independent Counsel/Legal Fees” Provision

Both Parties acknowledge and agree that they have had the opportunity to consult an attorney regarding the terms of this Agreement prior to signing the same.

Sample “Counterparts” Provision

This Agreement may be executed in separate counterparts, each of which is deemed to be an original, and all of which taken together constitute one and the same Agreement.

Sample “Authority of Signatory to Bind Principal” Provision

Each signatory represents that [he or she] is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party on whose behalf the signature is proffered.

Sample “Venue” Provision

Venue for all actions hereunder shall be in _____ County, _____.

Sample “Signature” Provision

IN WITNESS HEREOF, the parties hereby execute this Agreement.

Employer:

Physician:

By:

By:

Address:

Address:

Date:

Date:

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