

SAMPLE PHYSICIAN EMPLOYMENT AGREEMENT – DO NOT USE AS FINAL

SAMPLE PHYSICIAN EMPLOYMENT AGREEMENT

This **PHYSICIAN EMPLOYMENT AGREEMENT** (the “Agreement”) is made and entered into effective as of EFFECTIVE DATE (notwithstanding the date of actual execution), by and between PHYSICIAN’S NAME, M.D. (the “Physician”) and UFPC, a corporation incorporated under Section 1412 of the New York Not-for-Profit Corporation Law (the “Corporation”).

RECITALS

WHEREAS, the Corporation requires the services of physicians specializing in PRACTICE AREA to fulfill its mission of supporting the educational mission of State University of New York at Buffalo, School of Medicine and Biomedical Sciences (“UB School of Medicine”), by providing clinical instruction and supervision of students, interns, residents and fellows and, incident thereto, rendering professional medical and medico-administrative services; and

WHEREAS, pursuant to Section 355 of the New York Education Law, regulations promulgated thereunder (8 N.Y.C.R.R. 340 *et seq.*) and Article XVI of the Policies of the Board of Trustees of the State University of New York, the Corporation and physicians of the UB School of Medicine are required to comply with the UB School of Medicine plan for the management of clinical practice income (“FPMP”), as now existing and as amended from time to time; and

WHEREAS, the Corporation provides professional medical services to patients (the “Practice Patients”) of the Corporation’s practice (the “Practice”) conducted at health care facilities affiliated with the UB School of Medicine (the “Practice Sites”); and

WHEREAS, the Corporation is a party to certain professional and services agreements, and shall, from time to time, enter into additional professional and service agreements, pursuant to which the Corporation is and may be engaged as an independent contractor to furnish physicians and related professionals to perform administrative and professional services at health care facilities affiliated with the UB School of Medicine; and

WHEREAS, Physician received a letter from the UB School of Medicine, a copy of which is attached hereto as Exhibit A-1 and a letter from the Corporation, a copy of which is attached hereto as Exhibit A-2 (hereinafter referred to collectively as the “Conditions of Employment Letter”) and a maximum compensation letter, a copy of which is attached hereto as Exhibit B, pursuant to which Physician has or will have a faculty appointment in the UB School of Medicine, Department of DEPARTMENT NAME; and

WHEREAS, Physician is a duly licensed and registered physician under the laws of the State of New York or who, as a condition precedent of being employed hereunder, shall become a duly licensed physician under the laws of the State of New York not later than EFFECTIVE DATE; and

WHEREAS, the Corporation desires to employ Physician to provide clinical instruction and supervision of students, interns, residents and fellows and, incident thereto, render professional medical services, and Physician desires to accept such employment as of the effective date of this Agreement, upon all the terms and conditions set forth in this Agreement and the attachments hereto.

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NOW, THEREFORE, in consideration of the mutual agreements, covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. EMPLOYMENT OF PHYSICIAN

- A. Effective as of the effective date, the Corporation hereby employs Physician, and Physician hereby accepts such employment to provide clinical instruction and supervision of UB School of Medicine students, interns, residents and fellows and, incident thereto, render professional medical and medico-administrative services upon the terms and conditions set forth in this Agreement and the attachments hereto.
- B. During the term of this Agreement, Physician shall devote his/her best efforts to the Practice and the affairs of Corporation and shall perform in a professional, competent and cooperative manner such duties as Corporation may reasonably assign to Physician consistent with Physician's training, experience and expertise.
- C. During the term of this Agreement, Physician shall not perform professional medical services on individuals other than Practice Patients without the prior written consent to such activity by the Corporation, the Chairperson of the Department of DEPARTMENT NAME, the Dean of the UB School of Medicine and the UB Vice President for Health Affairs.

2. PHYSICIAN'S REPRESENTATIONS AND WARRANTIES

Physician represents and warrants at the time of signing this Agreement, and at all times during the term of this Agreement Physician shall assure that:

- (i) Physician is duly licensed, registered and in good standing, or will become duly licensed, registered and in good standing, not later than EFFECTIVE DATE under the laws of the State of New York, to engage in the practice of medicine, and that said license and registration have not been suspended, revoked, or restricted in any manner;
- (ii) Physician is qualified for and has applied for, or will apply for within a reasonable time after the signing of this Agreement, and has obtained, or will obtain within a reasonable time after the signing of this Agreement, membership (including appropriate clinical privileges) in good standing on the Medical Staff of each institution that is a Practice Site;
- (iii) Physician has current controlled substances registration issued by the United States Drug Enforcement Administration, which registration have not been surrendered, suspended, revoked, or restricted in any manner;
- (iv) Physician has disclosed and will at all times during the term of this Agreement promptly disclose to the Corporation: (a) the existence and basis of any legal, regulatory, professional or other proceeding against Physician instituted by any person, organization, governmental agency, health care facility, peer review organization, or professional society which involves any allegation of substandard care or professional misconduct raised against Physician and (b) any allegation of substandard care or professional misconduct raised against Physician by any person, organization, governmental agency, health care facility, peer review organization or professional society;
- (v) Physician is board certified or board qualified in PRACTICE AREA or possesses knowledge and skill in PRACTICE AREA comparable to other physicians practicing PRACTICE AREA in the Corporation's service area;
- (vi) Physician shall at all times render services to Practice Patients in a competent, professional, and ethical manner, in accordance with prevailing standards of medical care and practice, and all applicable statutes, regulations, rules, orders, and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction;

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- (vii) In connection with the provision of PRACTICE AREA services to Practice Patients, Physician shall use the equipment, instruments, and supplies of the Practice Site for the purposes for which they are intended and in a manner consistent with sound medical practice;
 - (viii) Physician shall complete and maintain, in a timely manner, adequate, legible and proper medical records, claims and correspondence with respect to all services rendered to Practice Patients;
 - (ix) Physician shall participate in Medicare, Medicaid, Civilian Health and Medical Program of the Uniformed Services (“CHAMPUS”), other federal and state reimbursement programs, commercial insurance reimbursement programs, health maintenance organization, preferred provider organizations, self-insured employer reimbursement programs and any other health benefit program with which the Corporation may contract for the provision of professional medical and medico-administrative services;
 - (x) Physician shall abide by the Medical Staff Bylaws, rules, regulations, and policies of any institution that is a Practice Site;
 - (xi) Physician shall be a member of the Corporation;
 - (xii) Physician shall abide by the Bylaws, rules, regulations and policies of the FPMP; the State University of New York Board of Trustees Policies, including, but not limited to, “Article XVI Plan for the Management of Clinical Practice Income”; the Bylaws, rules, regulations and policies of the Corporation; the agreement among State University of New York at Buffalo, UB School of Medicine, UB Associates, Inc., the Governing Board of the FPMP and the Corporation (the “UBA Agreement”); and all the terms and conditions of the Corporation’s contracts and agreements to provide professional medical and medico-administrative services;
 - (xiii) Physician shall participate in continuing medical education and training programs required to maintain skills comparable with the standards of care in PRACTICE AREA in the service areas of the Practice Sites;
 - (xiv) Physician shall satisfy all qualifications of insurability for professional liability policy or policies required, maintained or reimbursed by the Corporation at standard industry rates for PRACTICE AREA;
 - (xv) Physician shall be in good standing with the requirements of the Physician’s faculty appointment with the UB School of Medicine; and
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- (xvi) Physician shall deliver to the Corporation promptly upon request copies of all certificates, registrations, certificates of insurance and other evidence of Physician’s compliance with the foregoing as reasonably requested by the Corporation.

3. RESPONSIBILITIES OF PHYSICIAN

A. Professional Duties.

- (1) Physician’s clinical practice duties shall include providing clinical instruction and supervision of students, interns, residents and fellows and, incident thereto, rendering professional medical and medico-administrative services which are within Physician’s specialty or area of training, experience, and expertise.
- (2) In conjunction with other Corporation Physicians, Physician shall be responsible for the full-time professional coverage of Practice Patients who present themselves at the Practice Sites. Physician shall perform such clinical practice duties in accordance with the Corporation’s assignment, coverage and on call schedules. Assignment, coverage and on call schedules shall be assigned to assure that all of the Practice Patients’ and the Corporation’s needs are met in a competent, timely and responsive manner on a continuous basis, twenty-four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year. Without limiting the generality of the foregoing, Physician shall be present at the Practice Site(s) assigned to Physician by the Corporation for professional duties for an amount of time sufficient to provide clinical instruction and supervision of UB Medical School students, interns, residents and fellows and professional services to the

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Practice Patients assigned to Physician. Physician shall devote at least () hours per contract year to the Corporation. Physician shall maintain a practice at institutions that are Practice Sites consistent with the requirements necessary to maintain Active Staff membership on the Medical Staff of institutions that are Practice Sites.

(3) In respect to Physician's performance of Physician's professional duties, the Corporation shall neither have nor exercise control or direction over the specific methods by which Physician performs Physician's professional clinical duties. The Corporation's sole interest shall be to ensure that such duties are rendered in a competent, efficient, and satisfactory manner.

(4) Physician shall submit to the Corporation such time records as the Corporation may require from time to time showing the nature of the services performed by Physician and the time actually spent performing those services.

B. Medico-Administrative Duties.

(1) General Obligations. Physician shall perform the medico-administrative duties determined by the Corporation to be reasonable and necessary to ensure the proper and efficient operation of the Practice at the Practice Sites. In performing Physician's medico-administrative duties hereunder, Physician shall be responsible to the Corporation's President ("President") or President's designee.

(2) Specific Medico-Administrative Duties. Physician's medico-administrative duties shall include, but shall not be limited to, the following:

(a) Health Care Mission. Physician shall actively support the health care mission, goals and objectives of the Corporation and of UB School of Medicine, as the same may be amended from time to time.

(b) Patient Care Protocols. Physician shall assist the Corporation in the development and upgrading of patient care protocols and outcome improvement measurements for the Practice.

(c) Reports. Physician shall prepare and submit written reports reasonably requested by the Corporation in connection with the provision of professional and administrative services in the Practice.

(d) Quality Improvement. Physician shall participate, as reasonably requested by the Corporation, in the establishment and implementation of procedures and policies to preserve and enhance the consistency and quality of all services provided at the Practice Sites.

(e) Medical Records. Physician shall participate, as reasonably requested by the Corporation, in developing and maintaining standards and procedures for the filing and retention of medical records for the Practice. In addition, when reasonably requested by the Corporation, the Physician shall supervise allied health professionals, medical students, residents and fellows with respect to such standards and procedures.

(f) Forms. Physician shall utilize the forms developed by the Corporation. In addition, Physician shall assist the Corporation, as required, in the design and development of new patient information forms, medical record forms, and consent forms for use in the Practice.

(g) Supervision of Non-Physician Personnel. Physician shall, as requested by the Corporation, assist the Corporation in the selection, training and supervision of the non-Physician employees of the Practice and shall assist in the evaluation of their job performance.

(h) Managed Care. Physician shall, as requested by the Corporation, assist the Corporation in the establishment and implementation of quality assurance and utilization review protocols, programs and procedures as necessary or appropriate to facilitate and enhance the Practice's participation in managed care programs.

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(i) Medical Staff Commitments. Physician shall serve on such committees of the Corporation, and the institutions that are Practice Sites as may be reasonably requested by the Corporation.

(j) Teaching and Program Responsibilities. Physician shall provide clinical instruction and supervision of UB School of Medicine students, interns, residents and fellows, and shall advise and assist the Corporation, as may be reasonably requested by the Corporation, in the development of clinical instruction programs and courses for students, interns, residents and fellows.

(k) Strategic Planning. Physician shall, as reasonably requested by the Corporation, advise and consult the Corporation on the Practice's strategic planning for personnel recruitment, equipment acquisition, renovation, and construction.

(l) Utilization Review Services. Physician shall, as requested by the Corporation, advise and assist in the organization and implementation of an effective utilization review program for the Practice and perform utilization review services.

C. Application of Standards.

Physician shall perform Physician's duties under this Agreement in conformity with and shall comply with all applicable standards, rulings, regulations, and requirements of the United States Department of Health and Human Services, the New York Department of Public Health, the Joint Commission on Accreditation of Healthcare Organizations (the "JCAHO") and any federal, state, or local government agency, third party payor, or accrediting body having jurisdiction over or providing reimbursement for the Practice and any programs and services offered at Practice Sites. Physician shall, when requested by the Corporation, acquire and maintain the authority to provide medical services on behalf of all governmental and private insurers, health maintenance organizations, preferred provider organizations, self-insured employers and any other organizations with which the Corporation contracts to provide health care services. Physician shall provide services to all patients insured under such plans in accordance with the requirements of each such plan.

D. Practice Patients. Physician acknowledges that all patients treated by Physician during the term of this Agreement shall be and remain Practice Patients. Physician shall render medically necessary treatment to all Practice Patients without regard to their ability to pay for such treatment. Physician shall not use the Practice Sites to treat patients other than Practice Patients.

E. Billing. Physician hereby assigns all rights to bill Practice Patients to the Corporation. Physician shall bill for all Practice Patient care related services through the Corporation's billing entity and billing software, or such other billing and collection arrangements as may be specified in the Corporation's contracts or agreements. Physician may not independently bill any Practice Patients for services performed by Physician under this Agreement. The Corporation shall establish the charges for Physician's professional services in conformance with applicable statutes and regulations.

F. Assignment of Right to Payments. Physician hereby assigns to the Corporation all of Physician's rights to receive payment for medical services and medico-administration services provided by or under the supervision of Physician and agrees to take any action required for the Corporation to: (i) bill Practice Patients for medical services provided by Physician; (ii) collect accounts receivable generated by such billings; (iii) receive payments from Practice Patients, the Corporation's contracts and agreements, and from all third party payors; and (iv) take possession of and have endorsed any notes, checks, money orders, insurance payments, and any other instruments received in payment of the accounts receivable generated by such billings.

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G. Collection. Physician hereby authorizes and appoints the Corporation's billing and collection entities as true and lawful agent for Physician, authorized to collect, demand and accept on behalf of Physician all amounts which become due, owing or payable to Physician from any organization, entity or individual for Practice Patients' care related services rendered by or under the supervision of Physician, and to effect receipts, releases and discharges for such amounts and collection of such amounts.

H. Accounts Receivable.

(1) Physician's Compensation Not Directly Dependent on Physician's Collections. Physicians hereby agrees that at all times during the term of this Agreement and prior to any expiration or earlier termination thereof, in the event that Physician's compensation is not directly dependent upon Physician's collections for clinical activity, any of Physician's accounts receivable attributable to clinical activity shall be and remain the property of the Corporation and Physician is not entitled to any termination payment based on such accounts receivable.

(2) Physician's Compensation Directly Dependent on Physician's Collections. Physician hereby agrees that at all times during the term of this Agreement and prior to any expiration or earlier termination thereof, in the event that Physician's compensation is directly dependent upon Physician's collections for clinical activity, any of Physician's accounts receivable attributable to clinical activity (including Physician's withholds from a third party payor attributable to such clinical activity) shall be and remain the property of Physician for one hundred eighty (180) days after the expiration or earlier termination of this Agreement (except that withholds from a third party payors shall be and remain the property of Physician without any time limitation), less (i) the assessment of the chief administrative officer (as that term is defined in the State University of New York Board of Trustees Policies), (ii) other standard assessments and cost of practice expenses for Physician's clinical activity, and (iii) the remainder of any compensation advances or loans to Physician by the Corporation.

I. Individual Contracts and Agreements.

Physician shall not enter into any contract or agreement with any organization, entity or individual other than the Corporation for the provision of patient care related or medico-administrative services without the prior written authorization of the Chairperson of the Department of DEPARTMENT NAME, the Dean of the UB School of Medicine, and the UB Vice President for Health Affairs. Physician shall submit all such proposed contracts and agreements to the Department Chairperson, the Office of the Dean of the UB School of Medicine, and the UB Vice President for Health Affairs for review and prior written authorization.

J. Patient Records.

Physician acknowledges that all Practice Patient records, x-rays, and related medical records of the Practice, and all copies thereof, are and shall remain the property of the Corporation. Upon the expiration or earlier termination of Physician's employment with the Corporation, Physician shall return to the Corporation all records in Physician's possession.

K. Authority of Physician.

Unless expressly authorized by the Corporation, Physician shall have no authority under this Agreement, or otherwise, to enter into contracts or agreements on behalf of the Corporation.

L. Conflicts in Financial Relationships.

Physician shall exercise the utmost good faith to ensure that none of Physician's financial relationships outside the Corporation and UB School of Medicine, including but not limited to the financial relationships of Physician's immediate family members, lead to

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Physician's personal gain, profit, or other pecuniary advantage to the detriment of the Corporation.

M. Outside Activities.

(1) Conflicts of Interest. Physician hereby agrees that Physician shall exercise the utmost good faith to ensure that Physician does not (a) have any interest, financial or otherwise, direct or indirect, (b) engage in any business or transaction, (c) incur any obligation of any nature, or (d) render directive, managerial, consultative, or professional medical or medico-administration service which is in substantial conflict with the Physician's duties to the Corporation or UB School of Medicine.

(2) Non-Clinical Practice Income. Physician hereby agrees to abide by the Department of DEPARTMENT NAME policy on non-clinical practice income as shown on Exhibit C attached hereto, as amended from time to time. The Corporation hereby represents and warrants that the Department's policy on non-clinical practice income as shown on Exhibit C attached hereto, as amended from time to time, complies with the terms of the UBA Agreement relative to the regulations.

N. Professional Liability Insurance.

(1) Insurability. During the term of this Agreement, Physician shall fulfill all requirements and conditions necessary to be and remain insurable for professional liability insurance purposes to practice. Physician's specialty at the usual and customary premium rates for such specialty, as determined by the insurance industry.

(2) Application, Policy and Certificate. Physician shall deliver to the Corporation promptly upon request copies of Physician's application for professional liability insurance, policy and certificate thereof.

(3) Risk Management. Physician shall, as requested by the Corporation, cooperate with respect to any reasonable risk prevention or risk management activities and shall participate in any risk management discount program for which Physician may qualify.

(4) Indemnification. Physician shall hold harmless and indemnify the Corporation, its successors and assigns, from and against any and all claims, actions, causes of action, liabilities, costs, damages, expenses, court costs and attorney fees resulting from or attributable to any and all acts or omissions of Physician.

(5) Occurrence Form. Physician agrees to obtain and maintain in full force and effect at all times during the term of this Agreement, an occurrence form of professional liability insurance policy with minimum limits of One Million Three Hundred Thousand Dollars (\$1,300,000) per incident and Three Million Nine Hundred Thousand Dollars (\$3,900,000) in the aggregate, or such higher limits as the Corporation's contracts and agreements may require from time to time for Physicians. Physician shall cause the Corporation to be named as an additional named insured on Physician's professional liability insurance policy and shall, at the Corporation's request, provide a Certificate of Insurance to the Corporation evidencing same.

[ALTERNATIVE: Claims Made Form; Tail Coverage. Physician agrees to obtain and maintain in full force and effect at all times during the term of this Agreement, a professional liability insurance policy with coverage on a "claims made" basis and minimum limits of One Million Three Hundred Thousand Dollars (\$1,300,000) per incident and Three Million Nine Hundred Thousand Dollars (\$3,900,000) in the aggregate, or such higher limits as the Corporation's contracts and agreements may require from time to time for Physicians. Physician shall cause the Corporation to be named as an additional named insured on Physician's professional liability insurance policy and shall, at the Corporation's request, provide a Certificate of Insurance to the Corporation evidencing same. Physician, shall obtain an extended reporting endorsement to the claims made policy (i.e., "tail coverage") following the expiration or earlier termination of this Agreement, the cost and expense of which shall be borne as stated in the Department's policy on expense for tail coverage, attached hereto and made a party hereof as Exhibit D, as amended from time to time.]

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(6) Professional Liability Insurance Premiums. Physician shall arrange with the professional liability insurance carrier for a copy of any invoice for insurance premiums to be provided to the Corporation. Corporation shall deduct from Physician's clinical practice income, from time to time, any amounts due and owing for professional liability insurance premiums and shall pay same to the insurance carrier.

(7) New York General Municipal Law. In the event that the Corporation is engaged by Erie County Medical Center, a public general hospital owned and operated by the County of Erie, State of New York ("ECMC"), and the Corporation assigns Physician to ECMC, Physician hereby waives and Physician hereby authorizes the Corporation to waive on the Physician's behalf, the protection guaranteed by Section 50-d of the New York State General Municipal Law of indemnification from Erie County for all sums for legal defense and payment of claims, awards or judgments up to the limits of Physician's primary professional liability insurance policy and any applicable excess professional liability insurance policy.

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4. DUTIES OF CORPORATION

A. Practice Facilities. The Corporation shall, or through its contracts and agreements shall require contract vendors to, provide and make available for the use of Physician the space and facilities to be occupied by the Practice at the Practice Sites, or such other suitable facilities as the Corporation may determine, and any future additions, modifications, or expansions thereof. The Corporation may from time to time request Physician to provide professional coverage at Practice Sites other than Physician's primary Practice Site. The Corporation shall make reasonable efforts to consult with Physician prior to making such a relocation request.

B. Equipment. The Corporation shall, or through its contracts and agreements shall require contract vendors to, provide and make available for the use of Physician all of the furniture, fixtures, equipment, instruments, supplies, and disposables which the Corporation in its sole discretion determines to be reasonably necessary for the proper and efficient operation and conduct of the Practice Sites. In addition, the Corporation shall, or through its contracts and agreements shall require contract vendors to, keep and maintain the furniture, fixtures, and equipment in good repair and working condition as necessary or appropriate for the proper and efficient operation of the Practice Sites. The Corporation shall also ensure that all such items provided by contract vendors and their maintenance meet the appropriate standards of the medical community in which the Practice Site is located.

C. Services. The Corporation shall, or through its contracts and agreements shall require contract vendors to, furnish the Practice with all janitorial, messenger, laundry, gas, water, heat, telephone, electrical, data processing, and computer services which the Corporation in its sole discretion determines to be reasonably necessary based on relevant community standards for the proper and efficient operation and conduct of the Practice Sites. In addition, the Corporation shall, or through its contracts and agreements shall require contract vendors to, provide all administrative services, including personnel, administration, accounting, purchasing and medical records management which the Corporation in its sole discretion determines to be reasonably necessary for the proper and efficient operation and conduct of the Practice Sites. The Corporation shall ensure that all such services provided by contract vendors meet the appropriate standards of the medical community in which the Practice Site is located.

D. Personnel. The Corporation shall, or through its contracts and agreements shall require contract vendors to, employ and/or provide all professional and non-professional personnel, including nursing, allied health, secretarial, reception, and administrative, which the Corporation in its sole discretion determines to be reasonably necessary for the proper and efficient operation and conduct of the Practice Sites.

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E. Indemnification. The Corporation shall hold harmless and indemnify the Physician from and against any and all claims, actions, causes of action, liabilities, costs, damages, expenses, court costs and attorney fees resulting from or attributable to any and all acts or omissions of the Corporation.

5. COMPENSATION AND BENEFITS.

A. Compensation and Benefits.

(1) Physician acknowledges that in consideration of Physician's services hereunder, the Corporation shall pay Physician the clinical income specified in or determined in accordance with the Conditions of Employment Letter and the maximum compensation letter, which are attached hereto as Exhibit A and B, respectively.

(2) In addition to the clinical income paid to Physician under this Section 5.A.(1), the Corporation agrees to provide to Physician the benefits set forth in the Conditions of Employment Letter.

[CAUTION: TO THE EXTENT THERE ARE ANY COMPENSATION ADVANCES, LOANS, OR RECRUITMENT INCENTIVES (AS THAT TERM IS INTERPRETED BY THE IRS) INVOLVED, ADDITIONAL AGREEMENTS MUST BE PREPARED AND SIGNED BY THE PARTIES.]

B. Withholdings. The Corporation shall withhold sums from the compensation paid to Physician pursuant to this Agreement for income tax, Social Security, workers compensation or any other withholding pursuant to any law or requirement of any governmental body.

C. Vacation. Physician acknowledges that fringe benefits, including, but not limited to, vacation is governed by and set forth in the Conditions of Employment Letter. During the term of this Agreement, Physician shall be entitled to a paid annual vacation as set forth in the Conditions of Employment Letter.

D. Leave of Absence; Sabbatical. Upon the written request of Physician, the Corporation may, in the Corporation's sole discretion, consent to a leave of absence by Physician. No leave of absence shall be taken by a Physician unless the Corporation's consent to Physician's leave of absence is in writing and sets forth the terms of the leave of absence, including, but not limited to, the suspension or continuation of salary, health insurance coverage and other fringe benefits. Notwithstanding anything to the contrary herein, the Corporation and Physician shall comply with the requirements of the Conditions of Employment Letter and nothing in this Section 5.D shall be interpreted to contradict the law.

6. TERM AND TERMINATION

A. Term. This Agreement shall commence and be effective on EFFECTIVE DATE (the "Effective Date"), and shall continue as long as stated in the Conditions of Employment Letter, unless terminated earlier pursuant to this Section 6, or amended in a writing, signed by both parties. The termination of this Agreement shall not affect the rights and obligations of the parties that accrued prior to the effective date of termination, nor shall it release the parties from their rights and obligations that survive this Agreement as provided herein.

B. Termination by the Corporation. The Corporation shall have the right to terminate this Agreement immediately in the event of any of the following circumstances:

- (1) Physician's breach of any material term of this Agreement, which breach is not corrected by Physician within thirty (30) days of the earlier of (a) the occurrence of such breach or the events or circumstances causing such breach, or (b) written notice thereof given to Physician by the Corporation;

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- (2) Physician's conviction of a felony, or Physician's plea of guilty or no contest with respect to a felony charge;
- (3) Physician's resignation from the Medical Staff of an institution that is a Practice Site, unless (a) the Corporation approves Physician's resignation, (b) Physician's resignation is voluntary, and (c) within sixty (60) days after Physician's voluntary resignation, Physician applies for and becomes a member of the Medical Staff of another institution that is a Practice Site to which the Physician is assigned by the Corporation;
- (4) The suspension, termination, or non-renewal of Physician's membership in good standing on the Medical Staff of an institution that is a Practice Site, following either waiver or exhaustion of all of Physician's due process and fair hearing rights under the Medical Staff's Bylaws;
- (5) The limitation, suspension, or revocation of Physician's clinical privileges at an institution that is a Practice Site, following either waiver or exhaustion of all of Physician's due process and fair hearing rights under the Medical Staff's Bylaws;
- (6) Physician's death, disability or incapacity. For the purposes of this Agreement, and until such time as the Corporation through amendment of this Agreement or adoption of a standard supersedes this definition, disability or incapacity shall mean the Physician's absence from or inability to substantially perform Physician's obligations at Physician's Practice Sites for a consecutive period of sixty (60) days;
- (7) The limitation, suspension, or revocation of Physician's license to practice medicine in the New York State;
- (8) The limitation, suspension, or revocation of Physician's right to prescribe controlled substances;
- (9) Physician's failure to remain a participant of the FPMP (whether voluntarily or otherwise) or professional misconduct or gross or culpable professional negligence;
- (10) Physician's neglect of duty under or violation of the Bylaws, rules and regulations, and policies and procedures of the Corporation and/or the Department of DEPARTMENT NAME;
- (11) Physician's failure to remain a participant in the FPMP (whether voluntarily or otherwise) or neglect of duty under or violation of the Bylaws, rules and regulations, and policies and procedures of the FPMP;
- (12) Physician's neglect of duty under or violation of the Bylaws, rules and regulations, and policies and procedures of the UB School of Medicine and/or the State University of New York Board of Trustees Policies, including, but not limited to, "Article XVI Plan for the Management of Clinical Practice Income";
- (13) Physician's neglect of duty or violation of the Bylaws, rules and regulations, and policies and procedures of the Corporation, an institution that is a Practice Site, or the Medical Staff of an institution that is a Practice Site, which is not corrected by Physician within thirty (30) days after written notice thereof is given to Physician by the Corporation, Practice Site or Medical Staff, respectively;
- (14) Physician's inability to practice medicine with reasonable skill and safety by reason of Physician's use of alcohol, drugs, chemicals, or any other type of material; or
- (15) Physician's inability to work with and relate to others, including, but not limited to, Practice Patients and ancillary staff, in a respectful, cooperative and professional manner.

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C. Retirement of Physician. Physician will provide Corporation 30 days advance notice of actual retirement date unless the state sponsored retirement incentives necessitate a shorter length of the time for plan members to respond.

D. Termination With or Without Cause. The Corporation may terminate this Agreement, for any reason or no reason upon _____ (___) days written notice to the Physician. Physician may terminate this Agreement, for any reason or no reason upon _____ (___) days written notice to the Corporation, the Chairperson of the Department of DEPARTMENT NAME, the Dean of the UB School of Medicine, and the UB Vice President for Health Affairs.

E. Termination or Amendment as the Result of Government Regulation. The Corporation shall have the right to terminate or unilaterally amend this Agreement, without liability, if on the advice of its counsel, it determines in its reasonable judgment that the terms of this Agreement more likely than not may be interpreted to violate any present or future enacted law or promulgated regulation applicable to it, which, if violated, would jeopardize the status of the Corporation as a recipient of governmental or private funds for the provision of health care services. Notwithstanding the Corporation's right to terminate, the Corporation shall first use its reasonable efforts to amend this Agreement only to the extent necessary to conform the potentially violative terms to the applicable law or regulation, and will only terminate this Agreement pursuant to this Section 6.E. if it determines, in its reasonable judgment, that an amendment will not result in compliance. If the Corporation is able to fashion an amendment which will cause the potentially violative terms to comply with the applicable law or regulation, but the amendment is unacceptable to Physician, Physician may elect to terminate this Agreement without liability if the amendment would result in a material change to this Agreement.

F. Effect of Expiration or Earlier Termination; Accounts Receivable. Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligations hereunder except for (i) obligations accruing prior to the date of expiration or termination and (ii) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement, including the non-competition covenant contained in Section 7.A., the confidentiality covenant contained in Section 7.B., the nonsolicitation covenant contained in Section 7.C., and the noninterference covenant contained in Section 7.D., all of which shall survive the expiration or earlier termination of this Agreement. Notwithstanding anything to the contrary herein, at the expiration or earlier termination of this Agreement, the Corporation's assets, accounts receivable, records, documents, instruments, patient records and information (whether in writing, electronic format or otherwise) relating to the Practice, any Practice Patient, any Practice Site and/or the Corporation, shall be and remain the property of the Corporation, except as provided in Section 3.H. hereof, and Physician hereby agrees that Physician is not entitled to copies of, possession of or access to any such documents, records or information or to any payment based on the Practice, any Practice Patient, any Practice Site or any property of the Corporation, except as provided in Section 3.H. hereof.

G. Termination Remedy Not Exclusive. The termination provisions in this Section 6 are not exclusive, but rather are in addition to any other rights and remedies that the parties may have at law or in equity.

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7. NONCOMPETITION, CONFIDENTIALITY, AND NONSOLICITATION COVENANTS
[CHOOSE APPROPRIATE PARAGRAPH 7.A. —STRIKE THROUGH THE PARAGRAPH THAT DOES NOT APPLY.]

A. Covenant Not to Compete. (This applies to any Physician who relocates from outside the area and to any Physician who is local but does not have an established practice). Physician acknowledges that the Corporation will introduce Physician to and have made available to Physician all of the Corporation's contracts, ongoing patient flow, general hospital sources, business and professional relationships and the like. Physician also acknowledges that termination of this Agreement for any reason, no reason, or in any manner followed by Physician's practice of PRACTICE AREA in the same area served by any Practice Site at which Physician practiced would cause Physician to take many of the sources of Corporation's success to the Corporation's detriment by reason of the Corporation placing Physician in a position to be a strong competitor for the Corporation's current and potential Practice sources. Physician therefore agrees that during the term of this Agreement and for a period of two (2) years immediately following the expiration or earlier termination of the term of this Agreement, Physician shall not, directly or indirectly, within a NUMBER () mile radius of Physician's Primary Practice Site shown on Exhibit E attached hereto, (i) engage in the practice of medicine or (ii) become employed by, or serve as an officer, director, shareholder, partner, fiduciary for another, health care consultant or medical director of, any health care provider or managed care organization that provides patient care directly or indirectly. The obligations hereunder shall survive the termination of this Agreement; provided, however, Physician shall be released from this covenant not to compete if the Corporation terminates this Agreement pursuant to Section 6.E. hereof.

[ALTERNATIVE: A. Covenant Not to Compete Not Required (This applies to any Physician who is local and already has an established practice). The parties acknowledge that Physician has an established practice in the area and as such, Physician's practice will not be greatly enhanced by the Corporation's contracts, ongoing patient flow, general hospital sources, business and professional relationships and the like, as would be the case if the Physician did not already have an established practice in the local area. The parties therefore agree that the Corporation's standard Covenant Not to Compete shall not apply to this Physician.]

B. Confidentiality Covenant. Physician acknowledges that in connection with Physician's employment by the Corporation, Physician will acquire and make use of confidential information and trade secrets (the "Confidential Information") of the Corporation related to the Practice, including, but not limited to, business plans, methods of operation, pricing policies, marketing strategies, records, financial statements, financial projections, cost summaries, internal memoranda, reports, patient lists, research, experimental work, contracts and other materials or records of a proprietary nature. In order to protect the Confidential Information, Physician agrees that Physician shall not, during the Term of this Agreement, or for so long as any such Confidential Information may remain confidential, secret, not readily available to the general public or otherwise wholly or partially protectable, use such information except in connection with Physician's employment by the Corporation or divulge the Confidential Information to any third party, unless the Corporation consents in writing to such use or divulgence or Physician is ordered or directed by a court or administrative body having jurisdiction over the Physician to make such use or divulgence and Physician informs the Corporation of such order or direction. Provided, however, notwithstanding anything to the contrary in this Section 7.B., Physician shall be permitted to disclose Confidential Information to Physician's attorney and/or accountant in connection with their provision of professional services to Physician if disclosure of such Confidential Information to Physician's attorney and/or accountant is required to permit such person to provide professional services to Physician and if such person is informed of the confidential nature of the Confidential Information and the restrictions contained herein, and agree to be bound by the same. The obligations hereunder shall survive the termination of this Agreement.

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C. Nonsolicitation Covenant. During the Term of this Agreement, and for a two (2) year period immediately following the expiration or earlier termination of the term of this Agreement, Physician shall not directly or indirectly solicit any Practice Patient who has received professional medical services from any employee or independent contractor of the Corporation at any time during Physician's employment with the Corporation, to become a patient of Physician's medical practice or the medical practice of any person with whom or entity with which Physician has become or plans to become associated with as a practicing physician or as an officer, director, shareholder, partner, fiduciary for another, health care consultant or medical director.

The prohibition against solicitation contained in Section 7.C. shall prohibit conduct directly or indirectly designed to solicit, entice, approach or otherwise recommend to Practice Patients to become patients of Physician's medical practice or the medical practice of any person with whom or entity with which Physician has become or plans to become professionally associated with as a practicing physician or serve as an officer, director, shareholder, partner, fiduciary for another, health care consultant or medical director. Conduct prohibited hereunder shall include, but not be limited to: (i) prior to Physician's termination of employment with the Corporation, (a) distributing to Practice Patients new business cards (or other forms of announcement) announcing the opening or location of Physician's new medical practice; (b) copying the medical or other records of Practice Patients for use by Physician in Physician's new medical practice; (c) instructing the Corporation's personnel to schedule medical appointments between Physician and Practice Patients subsequent to the termination date of Physician's employment; and (d) assembling or creating from the Corporation records, patient lists containing patient data, including patient names, addresses and/or telephone numbers of Practice Patients; and (ii) after Physician's termination of employment with the Corporation, contacting Practice Patients, directly or indirectly, by means of telephone calls, written correspondence or similar means to both inform them that Physician has left the Practice and to suggest that they contact Physician at Physician's new practice location. Conduct not prohibited hereunder shall include general announcements published in local newspapers of general circulation or broadcasted on radio and television informing the general public of Physician's new practice location and circumstances, provided said publication or broadcast occurs after Physician's termination of employment with the Corporation. Notwithstanding anything to the contrary herein, nothing in this Section 7.C. shall be interpreted to prohibit Physician from engaging in conduct required by law. The obligations hereunder shall survive the termination of this Agreement.

D. No Interference with Corporation Personnel. During the term of this Agreement and for a two (2) year period immediately following the expiration or earlier termination of this Agreement, Physician shall not, whether for Physician's medical practice or for any health care provider or managed care organization at which Physician has become employed, or serves as an officer, director, shareholder, partner, fiduciary for another, health care consultant, medical director, or otherwise, intentionally solicit, endeavor to entice away from the Corporation, or otherwise interfere with the relationship of the Corporation with, any person who is employed by or otherwise engaged to perform services for the Corporation, whether as professional or non-professional personnel (including, but not limited to, any physician, nurse, nurse practitioner, other allied health professional, administrator, or receptionist).

E. Reasonableness. The parties agree that the restrictions contained in Sections 7.A., 7.B., 7.C., and 7.D., including, but not limited to, the time span, the scope, and the area, are reasonable and necessary to protect the Physician and the Corporation from competing efforts. If, however, it shall be judicially determined that any provision of Section 7.A., 7.B., 7.C., or 7.D. is unreasonably broad in one or more respects, such provision shall not be declared invalid but rather shall be modified to the greatest extent that is determined to be reasonable. The existence of any claim or cause of action of Physician against the Corporation, whether predicated upon this Agreement or otherwise,

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shall not constitute a defense to the enforcement by the Corporation of the provisions of Sections 7.A., 7.B., 7.C., and/or 7.D.

F. Remedies. Physician acknowledges that a breach of Section 7.A., 7.B., 7.C., and/or 7.D. would result in irreparable, material and adverse effects upon the Corporation and that damages to the Corporation arising from any such breach or violation may be difficult to ascertain. Without limiting any other remedy at law or equity available to the Corporation for a breach of Section 7.A, 7.B, 7.C and/or 7.D., in the event of a breach or violation of the covenants contained Sections 7.A., 7.B., 7.C. and/or 7.D., Physician agrees that the Corporation may enforce Physician's breach or violation of such covenant or covenants by temporary restraining order, temporary injunction, and permanent injunction restraining violation thereof, pending or following trial on the merits without the necessity of posting any bond in cash or otherwise. Physician hereby waives the claim or defense that an adequate remedy at law for such breach exists or that irreparable injury will not occur. If the Corporation obtains such an injunction, the remaining portion of the restricted time period which did not run when the covenant was first violated shall begin to run from the date the injunction is granted. The Corporation or Physician shall have the right to receive from the other its reasonable attorney's fees, costs and expenses in the event any litigation or judicial proceeding is necessary in connection with the provisions of this Section 7. The aforesaid reasonable attorney's fees, costs and expenses shall be paid to the party who prevails in said litigation, as determined by a court of competent jurisdiction. Every right and remedy of the Corporation shall be cumulative and the Corporation, in its sole discretion, may exercise any and all rights or remedies stated in this Agreement or otherwise available at law or equity and its failure to exercise any such right or remedy shall not constitute a waiver of any such right or remedy, or any other remedy.

8. RECOVERY OF START-UP EXPENSES.

Physician hereby acknowledges that the Corporation incurred certain expenses ("Start-up Expenses") in connection with the initial employment of Physician, including, but not limited to, travel, moving, meals, lodging, recruiting company fees, office furniture, fixtures and equipment, and medical equipment, that will not be recouped by the Corporation, unless Physician remains employed with the Corporation for at least ____ (-) years. If, prior to the expiration of YEARS (__) from the Effective Date of this Agreement, Physician's employment is terminated by either party, except by death or disability, the Corporation shall be entitled to payment of the Corporation's Start-up Expenses. The Corporation and Physician hereby agree that the Corporation's Start-up Expenses for Physician are DOLLARS (\$_____). See Exhibit F for additional detail, if applicable. Physician hereby agrees that the Start-up Expenses may be deducted from any net income from wages or expense reimbursements due to Physician from the Corporation at the time of Physician's termination and Physician shall promptly reimburse the Corporation any deficit after applying such net income to said dollar cost.

9. MISCELLANEOUS.

A. Receipt of Copy of Certain Documents Referred to in this Agreement. Physician hereby acknowledges receipt of a copy of the State University of New York Board of Trustees Policies; the FPMP's Bylaws, rules, regulations and policies; the Corporation's Bylaws, rules, regulations and policies, including, but not limited to, the Corporation's Compliance Plan; and any UBA Agreement then in effect. [NOTE: LIST ANY OTHER DOCUMENTS DEPARTMENT MUST PROVIDE AT EMPLOYMENT]

B. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be (i) delivered by hand, (ii) telexed, telecopied or made by facsimile transmission, (iii) sent by overnight courier or (iv) sent by certified or registered mail, return receipt requested, postage prepaid.

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If to Corporation:

UFPC
Attention: President
Address

If to Physician:

PHYSICIAN'S NAME & ADDRESS

With a copy to:

Dean
School of Medicine and Biomedical Sciences
155 Biomedical Education Building
3435 Main Street
Buffalo, NY 14214-3013

Vice President for Health Affairs
155 Biomedical Education Building
3435 Main Street
Buffalo, NY 14214-3013

All notices, requests, consents and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if telexed, telecopied, or made by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next day following the day such mailing is made (or in the case that such mailing is made on Saturday, on the immediately following Monday) or (iv) if sent by certified or registered mail, on the third day following the time of such mailing thereof to such address (or in the case that such third day is a Sunday, on the immediately following Monday).

C. Amendments. Except as provided in Section 6.E., this Agreement may not be amended in whole or in part at any time except by a written instrument setting forth such changes and executed by the parties hereto.

D. Assignment. The Corporation shall have the right to assign this Agreement or delegate any of its responsibilities hereunder without the prior written consent of Physician.

E. Headings. The headings contained in this Agreement are for reference only, are not a part of this Agreement, and shall have no substantive meaning.

F. Governing Law. This Agreement shall be governed by the laws of the State of New York, without regard to its principles of conflicts of laws, and any action brought with respect to this Agreement shall be venued in Erie County.

G. Entire Agreement. This Agreement, together with the Exhibits attached hereto, set forth the entire understanding between the parties relating to the transactions described herein, there being no terms or conditions other than those contained herein, and all prior agreements or understandings, whether written or unwritten, are superseded by this Agreement.

H. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

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I. Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, that at the request of either party, the other party shall execute such additional instruments and take such additional acts as are necessary or useful to effectuate this Agreement.

J. Severability. If any portion or portions of this Agreement shall be, for any reason, invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intention of the parties hereto.

K. Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

L. References. All references to "Sections" and "Exhibits" in this Agreement are to Sections and Exhibits of this Agreement unless otherwise specifically provided.

M. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, executors, administrators, and respective successors and permitted assigns.

N. Access of the Government to Records. Physician and the Corporation hereby agree to comply with Section 1861(v)(1)(I) of the Social Security Act, as amended, (42 U.S.C. Section 1395x(v)(1)(I)) and the regulations promulgated thereunder. Accordingly, during the term of this Agreement and for a period of four years following the termination of this Agreement, Physician shall make available, upon written request by the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States or any of their duly authorized representatives, all contracts, books, documents, and other records of Physician which are necessary to verify the nature and extent of the costs of Physician's services hereunder. Physician shall notify the Corporation within ten (10) days from receipt of such a request to Physician.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first above written.

THE CORPORATION
UFPC

THE PHYSICIAN

By: _____
Name: _____
Title: President

PHYSICIAN'S NAME, M.D.