

Sample Three: Physician and Hospital Contract

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made as of MONTH, DAY, YEAR, by and between , NAME OF HOSPITAL a STATE professional corporation ("Hospital"), and PHYSICIAN NAME, an individual who is licensed to practice medicine ("Physician").

RECITALS

The Hospital seeks to employ the Physician in order to insure that adequate medical services within the category identified in Attachment A (the "Specialty") are available to respond to the health care needs of its community. The Hospital desires to employ Physician on the terms and conditions set forth in this Agreement as a duly licensed physician. Physician is willing to be employed by the Hospital on the terms and conditions set forth in this Agreement.

STATEMENT OF AGREEMENT

NOW THEREFORE, the parties agree as follows:

SECTION 1. RESPONSIBILITIES OF PHYSICIAN. The responsibilities of Physician under this Agreement are as follows:

(a) Full-Time Employment. The Hospital agrees to employ Physician and Physician agrees to be employed by the Hospital as a physician practicing within the Specialty identified in Attachment A. Physician shall be required to devote his/her full-time and attention to the practice of medicine under the terms of this Agreement.

(b) Duties.

(1) General. Physician shall devote the utmost knowledge and best skill to the care of such patients as entrusted to Physician. Physician shall maintain a medical practice at medical offices of NAME in CITY, STATE. Hospital will sign a separate Shared Practice Agreement with Specialty Care Medicine for provisions of practice support services. Physician shall perform such duties as are customarily performed by a physician practicing within the Specialty in private practice, including supervision of office staff. Physician shall be clinically responsible, and report directly, to the Vice President of Medical Affairs of HOSPITAL NAME (the "Medical Director"). Physician shall perform such other duties, as may be mutually agreed to, with the Medical Director.

(2) Time Commitment. The Medical Director and Physician shall agree upon a schedule for professional services to be provided pursuant to this Agreement. Physician shall spend at least the number of hours per week indicated in Attachment A hereto providing direct patient contact and various academic and administrative services, as shall be as mutually agreed to by the Physician and the Medical Director. For purposes of this Agreement, the term "direct patient contact" shall mean and include time spent on office visits, in-office

procedures, care of patients as appropriate at the Hospitals, hospital rounds, dictation of charts, telephone consultation and related patient services performed by Physician. Physician will maintain a medical office open for patient visits in accordance with Attachment A. Physician shall be available to, and on call as agreed to by the appropriate group for, the patients of Physician's medical practice on an equal basis as other full-time physicians employed by Hospital in such medical practice. Physician shall notify, and obtain approval from, the Medical Director at least 4 weeks in advance of any (i) departures from scheduled coverage previously agreed upon, (ii) vacations and (iii) educational leaves. Physician or his/her office shall maintain, and provide the Hospital upon request, office appointments schedules, or other written records evidencing the amount of time Physician devotes to the performance of the obligations and duties under this Agreement.

(3) Affiliations. During the term of this Agreement, Physician shall not engage in the practice of medicine for any other provider of health care services, except with the prior written consent of Hospital, which shall not be unreasonably withheld or delayed. During the term of this Agreement, Physician agrees, upon request by the Hospital, to maintain membership in the Hospitals' physician-hospital organization; to participate in Hospitals' electronic Medical Information System network for office-based and hospital-based practices; and to make available to Hospitals through such network office-based visit/procedural information for purposes of clinical resource management/outcome measurement criteria development. During the term of this Agreement, Physician also agrees, upon request by the Hospital, to use best efforts to become a participant in other specified insurance, third party payor, or other managed care health plans, at the expense of the Hospital.

(c) Qualifications. At all times during the term of this Agreement:

(1) Physician shall be duly licensed to practice medicine in the State of STATE;

(2) Physician shall maintain, or obtain within 3 years of hire, Board certification, and keep current as appropriate for his/her specialty;

(3) Physician shall have and maintain all necessary narcotics and controlled substances permit numbers (any revocation or suspension of such a permit number shall be treated as a failure to maintain such permit number);

(4) Physician shall have (or will diligently pursue) and maintain a provider number for Medicare issued by the United States Department of Health and Human Services, and a provider number for Medicaid issued by the state of STATE NAME (any rejection, revocation or suspension of either such provider number shall be treated as a failure to maintain such provider number);

(5) Physician shall maintain membership in and, as appropriate, maintain active, provisionally active or affiliate staff privileges on, the medical

staff of one of the Hospitals in accordance with the Medical Staff Bylaws, Rules and Regulations of the Hospitals; except that active or affiliate staff privileges need not have been granted prior to the Effective Date if, on the Effective Date, (i) Physician has obtained temporary staff privileges, and (ii) provisionally active or affiliate staff privileges are obtained within 4 months after the Effective Date; and

(6) Physician shall comply with the HOSPITAL NAME'S Bylaws.

(d) Additional Obligations. During the term of this agreement, Physician shall:

(1) Nondiscrimination. Render services to all patients without discrimination as to race, sex, religion, handicap, national origin, age or ability to pay.

(2) Continuing Medical Education. Undertake such continuing medical education, including attending educational seminars, becoming, and maintaining status as, a member in professional organizations, subscribing to and reading professional journals, and similar activities, as are necessary for Physician to remain current as to the standards of practice for a physician practicing within the Specialty.

(3) Patient Billings. Keep and maintain appropriate records relating to all professional services rendered by Physician during the term of this Agreement. Physician shall assist the Hospital in providing such information as may be necessary in the collection of all fees for professional services rendered to individual patients by Physician or under Physician's supervision, including, but not limited to, patients seen as inpatients and in emergency rooms, outpatient departments, clinics, and medical offices. The fees for professional services rendered by Physician shall comply with all policies, standards and procedures of the Hospital which may, from time to time, be reasonably promulgated by the Hospital.

4) Corporate Integrity. Cooperate and support the Corporate Integrity (Compliance) Plan. Physician shall demonstrate proper coding and documentation procedures that are in compliance with Medicare and Medicaid regulations through chart audits and participation in educational programs.

(e) Professional Fees. All fees or other income attributable to the professional services rendered by Physician in the course of employment by the Hospital and related activities shall be the income of the Hospital. If it is necessary to use Physician's provider number for billing purposes during the term of this Agreement, Physician shall be serving as the agent of the Hospital for purposes of receiving payment for the professional services. Physician assigns and transfers to the Hospital all fees and other income of any nature received from any source on account of professional services of any kind performed during normal working hours in the course of employment with Hospital, including but not limited to, honoraria, speaking fees, expert witness fees, teaching fees, principal investigator and research monies.

Honoraria, speaking fees and expert witness fees, which are performed during physician vacation time or otherwise outside of normal working hours may be received and retained by the Physician. The parties agree to complete such documents and forms as required by Medicare, Medicaid or other third party payors to allow the Hospital to receive an assignment of any payments due for professional services rendered by Physician pursuant to the terms of this Agreement, to the extent permissible under applicable law. In the event that Physician shall receive any annual information return for payments made directly to Physician, the parties agree to cooperate in filing an appropriate information return with the Internal Revenue Service to report that Physician was a nominee on behalf of the Hospital for the receipt of such payment.

(f) Medical Records. Physician shall prepare in a timely and complete manner reports of all examinations, procedures and other services performed by Physician pursuant to this Agreement, in accordance with the standards and policies of the Hospital, the Hospital and any applicable accrediting, regulating or licensing agencies. Physician shall prepare and file any additional or supplementary reports as the Hospital may reasonably request. All medical and administrative records prepared in furtherance of any responsibilities of this Agreement are the property of the Hospital. The original and/or reproduced records of the Hospital may not be removed from the facilities of the Hospital for any reason without prior approval of the Hospital; provided, however, a copy of a patient's medical record shall be provided to Physician or to the patient's attending physician upon the patient's signed release.

(g) Reporting. At all times during the term of this Agreement, Physician shall immediately advise the Hospital, in writing, if:

(1) Sanctions. Physician (i) is denied membership or reappointment of membership to the medical staff of any hospital, or such membership is otherwise terminated; (ii) has clinical privileges at any hospital suspended, curtailed or revoked; (iii) is denied or terminates participation status with any insurance plan or other provider panel; or (iv) is reprimanded, sanctioned or disciplined by any state or local medical board or society, or by any insurance plan or other provider panel.

(2) Malpractice. A medical malpractice claim or investigation has been made against Physician, or a settlement has been agreed to by Physician or a final judgment has been awarded against Physician in a medical malpractice action.

(3) Investigations. Physician becomes the target of, or defendant in, any civil or criminal investigation or action involving moral turpitude, alleging commission of a felony, or otherwise reflecting upon Physician's fitness to practice medicine.

(h) Hospital Availability. Hospitals offer a comprehensive range of inpatient and outpatient services and other health care and health education services. Therefore, it is understood that patients seen by the Physician pursuant to this Agreement will

receive all inpatient and outpatient services, if not available at Physician's office, at one of the Hospitals unless (i) the required scope or quality of services are not available at the Hospitals, (ii) the patient's health care insurance plan will not cover services rendered at the Hospitals, or (iii) the patient refuses to obtain services at the Hospitals.

SECTION 2. RESPONSIBILITIES OF HOSPITAL. The responsibilities of the Hospital under this Agreement are as follows:

(a) Medical Office. The Hospital shall provide, at its expense, a medical office to be used by Physician to maintain a medical practice. Physician understands that such medical office may be relocated, or there may be multiple offices, but only as mutually agreed by Physician and the Hospital. The Hospital shall pay all of the reasonable expenses related to the operation of the medical office used for Physician's medical practice. Physician understands that the Hospital may provide the space through a Shared Practice Agreement with a non-affiliated medical group.

(b) Support Services. The Hospital shall furnish, at its expense, to Physician the necessary equipment and supplies for Physician's medical practice and for the performance of the duties pursuant to this Agreement. The Hospital shall furnish to Physician the appropriate personnel, as mutually agreed, to operate the medical practice, including trained technicians, nurses and office staff personnel. The Hospital shall pay all of the cost incurred in providing these support services for Physician's medical practice. Physician understands that the Hospital may provide the equipment, supplies and personnel through a Shared Practice Agreement with a non-affiliated medical group.

(c) Malpractice Insurance. The Hospital, at its expense, shall obtain and maintain professional malpractice insurance to cover liabilities of both Physician and the Hospital resulting from the practice of medicine by Physician on behalf of the Hospital. Such coverage shall be for an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. Any change in such coverage will only be made as agreed upon by the Hospital and the Physician. Coverage may be on an occurrence or claims made basis. If coverage is on a claims made basis, then upon termination of this Agreement, the Hospital shall purchase tail coverage, if such coverage is not included as part of Physician's subsequent insurance. Physician agrees that when Physician terminates this Agreement, Physician will use his or her best efforts to secure a claims made professional liability policy with the same insurance carrier as Hospital with the retroactive date the same as the effective date of this Agreement. Physician acknowledges that the requirements under this Section 2(c) are intended to prevent the necessity for "tail" insurance. If, however, due to circumstances beyond Physician's control, "tail" insurance must be purchased, Hospital agrees to reimburse Physician for a portion of the cost of tail coverage, in accordance with the following prorated schedule:

25% if this Agreement is terminated prior to the first anniversary of the Effective Date;

50% if this Agreement is terminated after the first anniversary and prior to the second anniversary of the Effective Date;

75% if this Agreement is terminated after the second anniversary and prior to the third anniversary of the Effective Date; and

100% if this Agreement is terminated after the third anniversary of the Effective Date.

(d) Oversight. The Hospital shall have the right to review and oversee the Physician's medical practice and provide recommendations that allow for cost effective operations of the medical practice. In addition, the Hospital shall exercise direction over and give support to Physician in regard to standards, policies, record keeping, treatment procedures, and fees to be charged; however, such direction and control shall not interfere with the usual physician/patient relationship nor be in violation of acceptable medical ethics or accepted standards of care. At all times during the term of this Agreement, Physician shall be governed by the Hospital's Medical Staff Bylaws, Rules and Regulations and any applicable Hospital policies. The Hospital shall conduct an annual evaluation of Physician's performance.

SECTION 3. COMPENSATION. The compensation to be paid by the Hospital to Physician under this Agreement shall be as follows:

(a) Cash Compensation. During the term of this Agreement, the Hospital shall pay Physician the following cash compensation:

(1) Base Salary.

(A) An annual base salary in the amount set forth in Attachment A.

(B) The base salary shall be payable to Physician in accordance with the then-current payment policies of the Hospital for its employees and shall be subject to all applicable withholdings required for federal, state and local taxes.

(b) Fringe Benefits. In addition to the base salary to be paid under this Agreement, the Hospital shall provide to, or for the benefit of, Physician the following benefits during the term of this Agreement:

(1) Vacation, CME, Sick Leave and Holidays. During the term of this Agreement, Physician shall be entitled to the following leaves of absence each year with full compensation:

(A) Vacation/CME. As indicated in Attachment A.

(B) Sick Leave. As indicated in Attachment A.

(C) Holidays. Holidays as established by the Hospital.

(2) Continuing Medical Education/Business Expenses.

Reimbursement for up to a maximum aggregate amount indicated in Attachment A during each calendar year (pro-rated for partial calendar years during the term of this Agreement) for all expenses reasonably incurred by Physician with respect to continuing medical education activities attended by Physician on behalf of the Hospital, and legitimate business expenses, including without limitation dues related to the maintenance of membership in local, state and national professional associations, and fees associated with board certification, incurred by Physician on behalf of the Hospital pursuant to the written policies of the Hospital. Reimbursement for such expenses shall be in accordance with Attachment A. Fees associated with participation in specified plans, as contemplated by Section 1(b)(3) above, will not be applied toward this maximum reimbursement amount.

(3) Benefit Plans. Participation in the retirement and welfare benefit plans made available to the employees of the Hospital on the same terms as such other employees participate.

(4) Insurance Plans. Participation in the health, disability and other insurance plans made available to the employees of the Hospital on the same terms as such other employees participate.

Physician shall submit to the Hospital, in writing, an itemized request for any reimbursement requested under Section 3(b)(2), which request shall include a description of the nature, purpose, amount and date of the expense for which the reimbursement is sought.

SECTION 4. TERM. This Agreement shall be effective for a period of two (2) years beginning on the date set forth in Attachment A, or such later time at which Physician has obtained temporary staff privileges, ("Effective Date").

SECTION 5. TERMINATION. Notwithstanding Section 4, this Agreement may be terminated by the parties as follows:

(a) Early Termination. At any time during the term of this Agreement, this Agreement may be terminated by:

(1) Without Cause. Either party may terminate this Agreement without penalty or cause upon 90 days written notice to the other party.

(2) With Cause. The Hospital may, in its discretion, terminate the employment of Physician upon written notice to Physician effective immediately, without prior notice, for cause. For purpose of this Agreement, the term "cause" shall mean the failure of Physician to meet the qualifications set forth in section 1(c) or any act that demonstrates a disregard on Physician's part for the reputation or legitimate business interests of the Hospital or welfare of patients, as determined in the reasonable discretion of the Medical Director. In addition,

“cause” shall mean any finding by a court, medical association or professional panel that Physician has engaged in any act involving moral turpitude, or has committed a felony, or which otherwise adversely reflects upon Physician’s fitness to practice medicine.

(3) For Breach. In the event that either party materially fails to perform its duties as required under this Agreement, the non-breaching party may give written notice to the breaching party of such material failure to perform and demand performance. If the breaching party fails to cure such material non-performance within thirty (30) days of such written notice, the non-breaching party may terminate this Agreement without waiver of any rights that such party may have against the breaching party for such failure to perform.

(b) Termination for Death or Disability. This Agreement shall be terminated effective immediately upon the death or permanent disability of Physician. For the purpose of this Agreement, the term "permanent disability" shall have the same meaning as set forth in the Hospital's existing long term disability insurance.

SECTION 6. EFFECT OF TERMINATION. Upon the end of the term of this Agreement or in the event of termination of this Agreement pursuant to section 5, all rights, duties and obligations of both parties shall cease effective with the date of termination. Notwithstanding such termination Physician shall continue to be bound by the restrictions set forth in sections 7 and 8 and, in the event of an early termination, shall be entitled to all compensation accrued through the effective date of termination under section 3. Furthermore, Physician must cooperate with the Hospital in arranging for the orderly transition of the care and treatment of Physician's patients, as may be medically necessary or proper under the circumstances, to other physicians designated by the Hospital.

SECTION 7. COVENANT NOT TO COMPETE. During the term of this Agreement, and for 12 months thereafter, Physician shall not, without the written consent of the Hospital, directly or indirectly own, operate, invest in, be employed by, or serve as consultant or independent contractor to, any other hospital or hospital subsidiary within a geographic radius indicated in Attachment A of the primary office in which Physician’s medical practice for the Hospital is conducted. If any provision of this Section 7 is held invalid, illegal or unenforceable, the remaining provisions will continue in full force and effect. If any provision is for any reason held to be excessively broad as to time, duration, geographic scope, activity or subject, it will be construed, by limiting and reducing it, so as to be enforceable to the extent permitted by applicable law.

SECTION 8. CONFIDENTIALITY. During the term of this Agreement or at any time thereafter, without the prior written consent of the Hospital, Physician shall not, other than in the performance of the duties under this Agreement, disclose, copy or use any confidential information relating to the Hospital or its patients. For purposes of this Agreement, the term "confidential information" means any business or financial information not generally known to the public regarding the business and operations of the Hospital or its patients, unless such information becomes, through no action of

Physician or any person associated with Physician, disseminated or otherwise made available to the public.

SECTION 9. NOTICES. Any and all notices required to be given under this Agreement shall be given by, and be deemed given when, (i) delivered by personal delivery; (ii) deposited in U. S. first-class mails, postage prepaid; or (iii) sent by telecopy with confirmation of receipt, addressed as follows:

(a) If to the Hospital:

HOSPITAL NAME
ADDRESS

(b) If to Physician:

or to such other address as the party may designate in writing to the other party from time to time.

SECTION 10. ARBITRATION. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in COUNTY, STATE, or such other mutually agreed upon site. In accordance with the commercial rules of the American Arbitration Association (which may be accessed at <http://www.adr.org>), the judgment upon the award rendered by the arbitrators or arbitrator may be entered in any court having jurisdiction thereof.

SECTION 11. MISCELLANEOUS. This Agreement constitutes the entire understanding between the parties in respect of the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous understandings or agreements between the parties in respect to the subject matter of this Agreement. This Agreement may be amended only by a written instrument executed by each party. This Agreement cannot be assigned by either party without the prior written consent of the other party, except that the Hospital may assign this Agreement to an affiliate of the Hospital (any entity controlling, controlled by, or under common control with the Hospital) upon written notice to Physician. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. Should any provision or portion of this Agreement be held unenforceable or invalid for any reason, the remaining provisions or portion of this Agreement shall continue in full force and effect. This Agreement shall be governed by, and construed in accordance with, the laws of the State of STATE NAME.

SECTION 12. COMPLIANCE WITH LAW. In the event that one or more provisions of this Agreement are in conflict with or contrary to Title XVIII (Medicare) and XIX (Medicaid) of the Social Security Act and/or regulations promulgated thereunder, such provision or provisions shall be deemed deleted from this Agreement, having no further

force or effect, whereupon either party may request modification of this Agreement by written notice. In addition, either Hospital or Physician may request modification of this Agreement by written notice in the event of a change in or binding interpretation of law, regulation or administrative policy by any governmental entity that materially affects the terms of this Agreement or adversely affects the Hospital's status as a tax-exempt organization or Medicare or Medicaid provider.

In the event that the parties are unable to agree upon an acceptable modification, then either party shall have the right to terminate this Agreement upon the expiration of thirty (30) days from the initial written notice. Hospital shall be entitled to terminate this Agreement immediately upon notice to Physician and recover from Physician any payment that is determined by a court or government agency to be illegal or inconsistent with the Hospital's tax-exempt status.

SECTION 13. ACCESS TO RECORDS. Until the expiration of seven (7) years after the furnishing of services pursuant to this Agreement, Physician agrees to make available, upon written request to the Secretary to Health and Human Services, or upon request to the Comptroller General of the United States, or to any of their duly authorized representatives, this Agreement, and books, documents and records of Physician that are necessary to certify the extent of any costs of Hospital arising from this Agreement. Further, if Physician carries out any of the duties arising from this Agreement, through a subcontract, with a value or cost of \$10,000 or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of seven (7) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

SIGNATURES

The parties have executed this Agreement as of the date set forth above.

ALLIANCE PHYSICIANS

PHYSICIAN

By _____

Print Name _____

Title _____

By _____

Print Name _____

Title _____

Attachment A to Employment Agreement

1. Physician has been retained to practice Internal Medicine/Endocrinology (the "Specialty").
2. Physician will spend at least 40 hours per week, exclusive of vacation/continuing medical education/sick leave, providing direct patient contact and various academic and administrative services, as shall be as mutually agreed to by the Physician and the Medical Director, and will maintain a medical office open for patient visits with a mutually agreed upon schedule.
3. The initial annual base salary will be \$_____. In addition, Hospital will pay Physician a transition payment of \$_____, payable on the effective date of this Agreement and a second transition payment of \$_____ on the date the Agreement is terminated provided the Physician continues to maintain a full-time practice in his specialty in the community.
4. Physician shall be entitled to up to 25 working days (prorated based on FTE level and partial calendar year) of combined vacation and continuing medical education ("CME") leave, at such times as the Hospital and Physician shall mutually agree. Physician may carry over up to 25 days of vacation and CME to the following year. There shall be no pay-out of unused vacation and CME on termination of this Agreement.
5. Sick Leave/Short-Term Disability shall accrue at the rate of 8 hours (pro-rated per full-time-equivalent and partial calendar year) per month, on the first day of each month, in accordance with the Hospital's Physician Short-Term Disability Policy. After the 7th consecutive business day of sick time taken, Physician must provide written verification from a physician other than himself/herself that he/she has an injury, sickness, or pregnancy that requires him/her to be under the regular care and attendance of a doctor, and which prevents him/her from performing at least one of the material duties of his/her regular occupation. One of the material duties is to be able to work his/her regular schedule. At this point, Short-Term Disability may be activated. Physician may accumulate up to 65 days (pro-rated per full-time-equivalent) of Short-Term Disability. There shall be no pay-out of unused Sick Leave/Short-Term Disability on termination of this Agreement.
6. The maximum annual reimbursement for continuing medical education and legitimate business expenses is \$6,000 (prorated based on FTE level and partial calendar year).
7. MONTH, DAY, YEAR, shall be the "Effective Date."
8. The geographic radius of the non-compete covenant is 20 miles.
9. Hospital will reimburse the Physician for the cost of relocation to the CITY area on submission of documentation of such costs.