

**SOUTH BROWARD HOSPITAL DISTRICT
FELLOW TRAINING AGREEMENT**

DRAFT

AGREEMENT SUMMARY SECTION

- **Fellow Name:** _____
- **PGY Level:** (Section 3.7) _____
- **Fellowship Program:** (Section 3.9) _____
- **Term:** (Section 3.11) _____, subject to prior termination as provided herein.
- **Annual Salary** (Section 5.1): Compensation paid to Fellow under this Agreement shall not exceed \$ _____
- **Commencement Date:** (Section 6.1) _____
- **Addresses for Notice** (Section 9.12): _____

South Broward Hospital District:
Office of Academic Affairs
South Broward Hospital District
Attention: Designated Institutional Official
3111 Stirling Road
Hollywood, Florida 33312

Copy to:
South Broward Hospital District
Attn: General Counsel
3111 Stirling Road
Hollywood, Florida 33312

Fellow:
Name: _____
Address: _____
Phone: _____
Employee
Number: _____
Email: _____

**GRADUATE MEDICAL EDUCATION
FELLOW TRAINING AGREEMENT**

THIS Graduate Medical Education Fellow Training Agreement (“Agreement”), is made and executed as of the date set forth in the Agreement Summary Section (which is hereby incorporated by reference and made a part of this Agreement), by and between the SOUTH BROWARD HOSPITAL DISTRICT d/b/a Memorial Healthcare System, a special taxing district of the State of Florida (“**Memorial**”), and the individual identified as the Fellow in the Agreement Summary Section (“**Fellow**”). Memorial and the Fellow may collectively be referred to hereafter as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, Memorial is a multi-facility hospital system consisting of six (6) hospitals and several ancillary centers and facilities located throughout Southern Broward County, Florida (referred to collectively as “**Memorial**” and individually as a “**Memorial Facility**”);

WHEREAS, Fellow has been accepted by the Fellowship Program and is eligible to participate in the Fellowship Program; and

WHEREAS, prior to the Commencement Date of this Agreement, Fellow shall obtain all necessary licenses and certifications required under Florida laws and regulations to participate in the Fellowship Program, and shall maintain such licenses and certifications throughout the Term of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the Parties, intending to be legally bound, agree to the following terms and conditions:

AGREEMENT

1. **Recitals**. The Parties represent, warrant, and covenant that the foregoing recitals are true and correct and are hereby incorporated by reference.
2. **Agreement Summary Section**. The Parties represent, warrant, and covenant that the Agreement Summary Section, which is attached hereto, is true and correct and is hereby incorporated by reference.
3. **Definitions**. Unless the context otherwise requires, the terms defined in this Section 3 shall, for the purposes of this Agreement, have the meanings herein specified.
 - 3.1. “**ACGME Requirements**” means the ACGME Institutional Requirements of the Accreditation Council for Graduate Medical Education (“**ACGME**”), as amended.

- 3.2. **“CPME” Requirements** means the Council on Podiatric Medical Education Institutional Requirements, as amended.
- 3.3. **“Memorial GME Policies”** means Memorial’s policies, procedures, standard practices, rules and regulations prepared by Memorial’s Office of Academic Affairs, as amended from time to time, and made available to each Fellow.
- 3.4. **“Memorial Policies, Procedures, and Standard Practices”** means Memorial’s policies, procedures, and standard practices prepared by Memorial, as amended from time to time, and made available to each Memorial employee.
- 3.5. **“Memorial Designated Facilities”** means and refers to those Memorial Facilities where Fellow will participate during the Fellowship Program.
- 3.6. **“Designated Institutional Official”** means the Memorial approved physician who is responsible for overseeing those educational programs taking place at Memorial Designated Facilities.
- 3.7. **“Post-Graduate Year Level”** or **“PGY Level”** means and refers to the Fellow’s experience level within the Fellowship Program, as identified in the Agreement Summary Section.
- 3.8. **“Program Director”** means the individual responsible for the day-to-day operations of the Fellowship Program.
- 3.9. **“Fellowship Program”** means and refers to the graduate medical training program listed in the Agreement Summary Section.
- 3.10. **“Supervising Attending Physician”** means the physician(s) responsible for supervising and evaluating Fellow’s performance and participation in the Fellowship Program at the Memorial Designated Facility(ies).
- 3.11. **“Term”** means and refers to the period of time identified in the Agreement Summary Section that this Agreement will be in effect, subject to prior termination as herein provided.

4. **Parties' Responsibilities During the Fellowship Program.**

- 4.1. **Responsibilities of Fellow.** During the Term of this Agreement, Fellow shall:
 - 4.1.1. Use his/her best efforts to provide safe, effective, and compassionate patient care under supervision at a level commensurate with Fellow’s training and skills. Fellow acknowledges and agrees that Fellow may not initiate or conduct any act relating to the provision of medical services for the benefit

of a patient of Memorial without the consent and authorization of an authorized Memorial physician or Fellow's Supervising Attending Physician.

- 4.1.2. Comply with Florida licensure requirements for physicians in training, which includes holding either a valid unrestricted Florida medical license or being registered with the Florida Board of Medicine or the Florida Board of Osteopathic Medicine, as applicable, before the start date of the Fellowship Program, and maintain all required licenses, permits and certifications throughout the Term of this Agreement.
- 4.1.3. Comply with accepted and recognized professional and ethical standards of care while Fellow is participating in the Fellowship Program. Additionally, Fellow shall comply with the standards and guidelines set forth by all applicable educational accrediting bodies, including but not limited to, the ACGME and CPME, as well as The Joint Commission and any other entity providing accreditation or certification for any Memorial Designated Facility . Fellow shall comply with all relevant state and federal laws and regulations, including but not limited to, the Health Insurance Portability and Accountability Act of 1996, as amended, and those state and federal regulations applicable to Fellow's particular Fellowship Program.
- 4.1.4. Maintain standards of professional competence relative to Fellow's PGY Level and training as consistent with the Fellowship Program curriculum.
- 4.1.5. Act in a professional, collegial, and ethical manner at all times, including when treating patients of any Memorial Designated Facility.
- 4.1.6. Comply with all of the requirements of the Fellowship Program as determined by Memorial, including but not limited to abiding by Memorial's Medical Staff Bylaws, Memorial Policies, Procedures and Standard Practices, Memorial GME Policies, and any and all other rules and regulations of Memorial and the Memorial Facilities applicable to Fellow.
- 4.1.7. Engage in only those activities that are approved by the Designated Institutional Official of Medical Education, the Program Director and the Memorial Office of Academic Affairs.
- 4.1.8. Refrain from engaging or participating in any activity that would interfere with or threaten Fellow's effective performance with respect to the Fellowship Program or this Agreement.

- 4.1.9. Properly prepare and complete on time all patient records, including but not limited to dictation of a discharge summary. Records not completed within the time set forth in the applicable Memorial guidelines will be deemed delinquent. The ownership and right of control of all reports, records, medical records and supporting documents prepared by Fellow shall rest exclusively in Memorial.
- 4.1.10. Report to Risk Management any adverse occurrence(s) which may reasonably be identified as a potential professional liability claim.
- 4.1.11. Work in a cooperative and harmonious manner with professional, technical, and administrative personnel of Memorial. Fellow shall work in a cooperative manner to promote the best interests of the Memorial and the patients treated by Fellow. Fellow agrees not to engage in any conduct that would be considered harassment or discrimination in any manner under applicable law or Memorial Policies, Procedures and Standard Practices, including, without limitation, racial, sexual, gender, sexual orientation, handicap or national origin.
- 4.1.12. Adhere to all applicable Medicare and Medicaid laws and regulations, third party payor regulations and Florida laws and regulations with regard to billing and coding practices and maintain current knowledge of billing and coding requirements as they apply to Medical Education Services performed by the Fellow, as required to adhere to the foregoing obligations.
- 4.2. **Responsibilities of Memorial**. During the Term of this Agreement, Memorial shall:
 - 4.2.1. Provide appropriate training and education to Fellow commensurate with the Fellowship Program standards, Fellow's PGY Level and the ACGME or CPME Requirements, and any other educational accrediting agencies' standards and guidelines, as applicable, and other applicable state and federal laws.
 - 4.2.2. Clearly define the duties of the Fellow with respect to Fellow's role and responsibilities in the Fellowship Program.
 - 4.2.3. Make available to Fellow the most current copy of Memorial GME policies and procedures applicable to Memorial Fellows and interns, including but not limited to: (1) evaluation of Fellow's performance in the Fellowship Program, including but not limited to provisions for promotion, demotion, reappointment, retention and dismissal; (2) work hour limits for clinical activity; (3)

moonlighting; (4) the grievance mechanism which grants Fellow reasonable due process rights; (5) Fellow's participation in professional activities outside of the Fellowship Program; (6) disability insurance; (7) timely notice of the effect of leave(s) on the ability to satisfy requirements for Fellowship Program completion; (8) information regarding eligibility for specialty board examinations; (9) Memorial Facility closure; and (10) Memorial training programs and procedures for increasing or reducing approved intern/Fellow positions within the Memorial Facilities.

- 4.2.4. Make available to Fellow the most current copy of the Memorial Policies, Procedures and Standard Practices, which addresses issues and rights with respect to Memorial employees, including but not limited to: (1) impairment and substance abuse; (2) sexual harassment; and (3) counseling, medical, psychological and any other support services offered by Memorial.
- 4.2.5. Employ Fellow in accordance with the terms and conditions of this Agreement. Memorial shall provide Fellow with those benefits listed on Exhibit A of this Agreement and pay Fellow's Annual Salary in accordance with Article 4 of this Agreement.
- 4.2.6. Present, or cause to be presented, to Fellow a Fellowship certificate upon satisfactory completion of the Fellowship Program, as determined by the Designated Institutional Official and the Program Director.

5. **Compensation; Benefits.**

- 5.1. **Compensation.** Beginning on the Commencement Date and for the duration of the Term, Memorial shall compensate Fellow for participating in the Fellowship Program and providing the professional medical services described above. Memorial shall, in accordance with Memorial Policies, Procedures and Standard Practices, pay to Fellow the Annual Salary described and set forth in the Agreement Summary Section, subject to customary withholding taxes and other employment taxes as required with respect to compensation paid by an employer to an employee. Memorial and Fellow represent and warrant that their negotiation of the compensation provisions occurred at arm's length and reflects their respective, good faith efforts to compensate Fellow, as a bona fide employee, for his or her services to Memorial in a manner that is commercially reasonable and consistent with fair market value without taking into account the volume or value of referrals or other business generated between the parties or any of their affiliates.
- 5.2. **Benefits.** In addition to payment of the Annual Salary, Memorial shall provide Fellow with those benefits listed on Exhibit A of this Agreement.

6. **Term; Termination.**

6.1 **Commencement Date; Term.**

Fellow's employment pursuant to the terms of this Agreement will commence upon the occurrence of the last to occur of all the following conditions, which the Parties anticipate will be on the Commencement Date set forth in the Agreement Summary Section:

- A. Obtain Florida Physician-in-Training Medical Licensure;
- B. Satisfactory completion of the pre-employment process;
- C. Execution of the Agreement by all Parties;
- D. Actual commencement of employment at such time and location as Memorial may direct.

Fellow acknowledges and agrees that should any of the above-listed conditions not occur on or before the anticipated Commencement Date set forth in the Agreement Summary Section, Memorial shall have the right, in its sole discretion, to consider this Agreement void ab initio in which event Fellow shall have no actions, causes of action, claims, charges, demands, damages, expenses or costs of whatever nature against Memorial pursuant to this Agreement.

This Agreement will remain in full force and effect until the expiration of the Term or the earlier termination of this Agreement. No guarantee of a subsequent agreement(s) is expressed or implied even though the Fellow may be participating in a multi-year fellowship program.

6.2. **Termination Prior to Commencement Date.** This Agreement may be terminated by Memorial prior to the Commencement Date upon the occurrence of one of the following events:

- 6.2.1. Memorial reasonably determines that Fellow will not have obtained all necessary licenses and certifications required under Florida laws and regulations to participate in the Fellowship Program prior to the Commencement Date; or
- 6.2.2. Fellow fails to pass or satisfy any Memorial human resource screening, testing or other examination required to be satisfied by every Memorial employee and Fellow; or, if applicable,
- 6.2.3. For graduates of a foreign medical school: Fellow fails to successfully obtain any required work authorization, including but not limited to a J-1 training visa, and/or complete any other required work documents prior to the Commencement Date.

6.3. **Termination by Mutual Agreement.**

6.3.1. This Agreement may be terminated by mutual written agreement of Memorial and Fellow at any time during the Term.

6.3.2. If Fellow's Fellowship Program is subject to the ACGME or CPME Requirements, then upon termination of this Agreement Memorial shall, in its sole discretion, determine the amount of credit, if any, to award Fellow, which credit will go towards satisfying Fellow's ACGME or CPME Fellowship education requirements.

6.4. **Termination by Memorial**

Memorial may terminate this Agreement upon:

6.4.1 Fellow's failure to make satisfactory progress in the educational Fellowship program, and/or in his/her development as a competent physician as determined by the Designated Institutional Official. The decision-maker's academic determination under this section shall be entitled to deference.

6.4.2 Fellow's failure to perform duties and responsibilities and/or to otherwise conduct him/herself in a professional manner, including: professional negligence; the suspension or revocation of any license, permit, or certification held by Fellow to participate in the Program or to practice medicine in Florida or any other state; a determination that Fellow is an impaired physician; any conviction, plea of nolo contendere, or withhold of adjudication as to any felony or crime; unapproved absence from Program; and any other professional misconduct, whether or not it causes danger to patients or affects the licensure or accreditation status of the Fellowship program.

6.4.3 Fellow's violation of, or failure to comply with, any of the provisions of this Agreement or the policies, procedures, rules, regulations and protocols.

6.4.4 If Memorial terminates this Agreement pursuant to this Section 6.4 and Fellow's Fellowship Program is subject to the ACGME or CMPE Requirements, Fellow will be entitled to any due process procedure(s) permitted under AGME or CPME and Memorial policies.

6.5. **Death or Disability of Fellow.** This Agreement will terminate immediately upon the death of Fellow. Memorial may terminate this Agreement in compliance with the Americans with Disabilities Act, as amended, in the event the Fellow is unable to perform the essential functions of his/her duties, with or without a reasonable accommodation.

- 6.6. **Probation; Termination Following Probation.** If Memorial determines, in its sole discretion, that Fellow has failed to satisfactorily comply with the requirements and duties of the Fellowship Program, Memorial, or its authorized representative, will provide Fellow with written notice (“**Probation Notice**”) informing Fellow that he or she will be placed on probationary status for a period of thirty (30) days (the “**Probationary Period**”). The Probation Notice shall set forth the beginning date of the Probationary Period and the deficiencies which must be corrected. If the deficiencies identified in the Probation Notice are not corrected prior to the end of the Probationary Period to Memorial’s satisfaction, Memorial may terminate its relationship with Fellow upon the expiration of the Probationary Period.
- 6.7. **Termination by Fellow for Loss of ACGME or CPME Certification.** If Fellow’s Fellowship Program is subject to the ACGME or CPME Requirements and a Memorial’s Designated Facility loses its ACGME or CPME Fellow training certification during the Term, Fellow may request to be released from this Agreement. Fellow will be granted credit for the time spent participating in the Fellowship Program and will be allowed to immediately enter into another ACGME or CPME certified Fellowship program.
- 6.8. **Notice to ACGME/CPME and Appropriate Accrediting Body.** If Fellow’s Fellowship Program is subject to the ACGME or CPME Requirements, in the event of a termination of this Agreement for any reason, Memorial shall provide written notice to the Council on Postdoctoral Training of the ACGME or CPME and any other appropriate accrediting body specifying the reason(s) for the termination of the Agreement. In the event this Agreement is terminated by mutual release pursuant to Section 6.3.1, Memorial shall deliver a signed copy of said mutual release to the Council of Postdoctoral Training of the ACGME, CPME and/or any applicable specialty board.
- 6.9. **Effect of Expiration or Termination.** Except as otherwise set forth in this Article 6 and except for those obligations that expressly survive the Term of this Agreement, the parties shall have no further obligations upon the expiration or termination of the Term hereunder.
- 6.10. **Return of Materials.** Upon the expiration of the Term, or in the event that this Agreement is terminated or not renewed, Fellow will promptly return to Memorial all records of any kind and any and all other documents or equipment that belong to Memorial or that contain information related in any way to the business of Memorial. Fellow acknowledges that all such materials are now and will always remain the exclusive property of Memorial. The covenants and obligations contained in this Section 6.10 shall survive the termination or expiration of this Agreement.

6.11. **Confidentiality.** Fellow will have access to and become acquainted with various trade secrets and/or confidential and proprietary information of Memorial, including but not limited to patient lists, patient records, patient information, protocols, procedures, policies, business and strategic plans, business accounts, financial information, third-party payer contracts, peer review, risk management and quality assurance information, and other records of Memorial, which items are owned exclusively by Memorial (the “**Confidential Information**”). Fellow acknowledges that the Confidential Information is secret, confidential and proprietary to Memorial and has been disclosed to and/or obtained by Fellow in confidence and trust for the sole purpose of using the same for the sole benefit of Memorial. Fellow agrees that at all times during and subsequent to participation in the Program, Fellow shall not, directly or indirectly, use, permit use of, disclose, discuss, publish, or disseminate in any manner, any Confidential Information, except as necessary in the performance of Fellow’s duties or without the prior written consent of Memorial, which consent may be withheld by Memorial in its sole discretion. Immediately upon expiration or termination of this Agreement, Fellow shall return to Memorial all Confidential Information and shall not make or retain any copies of such materials without the prior written consent of Memorial. In the event of a breach or threatened breach by Fellow of the provisions of this Section 6, Memorial will be entitled to an injunction restraining Fellow from disclosing, in whole or in part, such confidential and proprietary information or from rendering any services to any person, firm, corporation, association or other entity to which any such confidential and proprietary information, in whole or in part, has been disclosed or is threatened to be disclosed. Nothing herein shall be construed as prohibiting Memorial from pursuing any other remedies available to Memorial for such breach or threatened breach, including the recovery of damages from Fellow. Notwithstanding the requirements regarding non-disclosure described in this Section 6, disclosure by Fellow of confidential and proprietary information shall not be considered a breach or threatened breach of this Section 6 where such disclosure may be required pursuant to a subpoena or valid order of court, or in the Fellow’s defense of a lawsuit, or where such disclosure is made pursuant to a court’s in camera proceeding. The covenants and obligations contained in this Section 6 shall survive the termination or expiration of this Agreement.

7. **Continuation and Promotion in the Fellowship Program; Non-Renewal.**

Continuation and promotion in the Fellowship Program are contingent upon satisfactory academic and professional performance by the Fellow. Fellow will be evaluated in accordance with the rules and procedures set forth in the Memorial GME Policies. In the event that the Fellow’s participation in the Fellowship Program is not going to be renewed, Memorial shall provide Fellow with a written notice of intent not to renew no later than thirty (30) days’ prior to the end of the Term. In the event the primary reason for non-renewal occurs within the thirty (30) days prior to the expiration of the Term, Memorial shall provide Fellow with as much written notice as circumstances will reasonably allow prior to the end of the

contract. Instances of nonrenewal shall be governed by the Memorial GME Renewal and Promotion Policy.

8. **Fellow's Representations and Warranties.** Fellow represents and warrants as follows:

- 8.1. **No Economic Interest in Memorial.** Other than the information disclosed to Memorial in writing, neither Fellow nor any immediate family member of Fellow has a compensation arrangement of any kind with Memorial. For purposes of this subsection, the term "immediate family" shall include a spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, grandparent, grandchild or spouse of a grandparent or grandchild. For purposes of this subsection, "compensation" shall be defined as any type of remuneration directly or indirectly, overtly or covertly, paid in cash or in kind. The CEO or Memorial's Senior Vice President/Chief Financial Officer is authorized, in his or her sole discretion, to waive this requirement upon a showing of good cause and a demonstration that such waiver does not violate any applicable Federal or State statute or regulation.
- 8.2. **No Criminal Offenses or Audit.** Fellow has never been convicted under federal or state law of a criminal offense relating to the provision of healthcare services; neglect or abuse of patients; fraud; theft; embezzlement; making or causing to be made of a false statement or claim; kickback; bribe; or unlawful manufacture, distribution, prescription or dispensing of a controlled substance; or obstruction of justice. Fellow has never been excluded, suspended, debarred or otherwise determined ineligible to participate in a federal or state health care program or any other federal procurement program and is not under investigation or otherwise aware of any circumstances which may result in Fellow being excluded, suspended, debarred or otherwise found ineligible to participate in a federal or state health care program or any other federal procurement program. If such exclusion, suspension, debarment or ineligibility occurs, Fellow will notify Memorial within twenty-four (24) hours and Memorial may immediately remove such individual from providing any Services under this Agreement and terminate the Agreement
- 8.3. **Federal Laws.** Fellow has not entered into, and during the Term, agrees not to enter into, any financial relationships prohibited under the federal Physician Self-Referral Law (Social Security Act 1877; 42 U.S.C. 1395nn) and the regulations promulgated at 42 C.F.R. 411, et seq., or similar state or local statutes or regulations prohibiting certain financial relationships among health care providers, now in existence or as amended from time to time. Fellow has not engaged in, and during the Term agrees not to engage in, any activities prohibited under the federal anti-kickback laws (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7b), including any amendments to such laws, the regulations promulgated pursuant to such federal statutes, related state or local statutes or regulations, or rules of professional conduct.

- 8.4. **No Conflict.** Neither Fellow's execution nor Fellow's performance of any of the duties, obligations and/or responsibilities under this Agreement will violate, conflict with, or constitute a default under any existing contract, agreement, arrangement, or understanding to which Fellow is a party or by which Fellow is bound.

If at any time subsequent to the execution of this Agreement, any of the foregoing representations and warranties changes, Fellow agrees to notify Fellow's Program Director immediately upon the fact of the changed circumstance, but in no event more than 48 hours after the fact of the changed circumstance.

9. **Miscellaneous.**

- 9.1. **Fellowship Training Requirements and Standards.** This Agreement hereby incorporates by reference the ACGME or CPME Requirements. To the extent that the ACGME or CPME Requirements relate to the obligations of the Parties hereto and conflict with the terms or conditions of this Agreement, the provisions of the applicable ACGME or CPME Requirements shall control.
- 9.2. **Waiver.** No failure by any Party to insist upon the strict performance of any covenant, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.
- 9.3. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed as creating or giving rise to any right in any third parties or other persons other than the parties hereto.
- 9.4. **Conflict in Terms.** Except as provided for in Section 9.1, in the event of a conflict between any provision(s) of this Agreement and any provision(s) set forth in the Memorial Policies and Procedures, Memorial GME Policies, or any other policies of Memorial, the provision(s) set forth in this Agreement shall control the obligations and duties of the Parties.
- 9.5. **Assignment.** The Agreement may not be assigned by Fellow except with the prior written consent of Memorial. Memorial may assign the Agreement and its rights hereunder to: (a) a successor legal entity in connection with (1) the transfer, sale or other conveyance of all or substantially all Memorial's assets, or (2) a merger or consolidation (or other similar transaction); and (b) to an Affiliate. "**Affiliate**" means with respect to Memorial, any other legal entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Memorial, where "**control**" means, and shall be deemed to exist if, the

controlling entity owns more than 50% of the equity interests of the controlled entity.

- 9.6. **Successors and Assigns.** This Agreement shall be binding upon the successors, legal representatives or permitted assigns of the Parties hereto.
- 9.7. **Amendment.** This Agreement may be amended at any time by agreement of the Parties, provided that before any amendment shall be operative or valid, it shall have been reduced to writing and signed by all Parties.
- 9.8. **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 9.9. **Governing Law/Venue.** The Parties acknowledge that a substantial portion of negotiations and anticipated performance of the Agreement occurred or shall occur in Broward County, Florida, and that, the provisions of the Agreement and any transaction related thereto shall be governed and interpreted in accordance with the laws of the State of Florida. In addition, each of the Parties irrevocably and unconditionally (i) agrees that any lawsuit, action, or other legal proceeding arising out of or related to the Agreement and any transaction related thereto must be brought in the courts of record of the state of Florida in Broward County or the District Court of the United States, Southern District of Florida, Fort Lauderdale Division; (ii) consents to the jurisdiction of such court in any such lawsuit, action, or proceeding; and (iii) waives any objection that it may have to the laying of venue of any such lawsuit, action, or proceeding in any such court.
- 9.10. **Jury Waiver.** MEMORIAL AND FELLOW HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THESE COVENANTS SHALL SURVIVE THE EXPIRATION OF THE TERM OF THIS AGREEMENT.
- 9.11. **Attorneys' Fees and Costs.** In connection with any litigation, mediation, special proceeding or other proceeding arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees through and including any appeals and post-judgment proceedings. The parties' liability for costs and reasonable attorneys' fees, however, shall not alter, modify or waive Memorial's entitlement to

sovereign immunity, or extend Memorial's liability beyond the limits established in Section 768.28, Florida Statutes, as amended. The parties' obligations under this provision shall survive the expiration or termination of this Agreement.

- 9.12. **Notice**. Any notice required to be given under this Agreement shall be sent to the other Party by traceable overnight delivery by a nationally recognized courier service or by certified mail, return receipt requested and shall be deemed given, in the case of overnight delivery, the day following delivery to the carrier or, in the case of certified mail, three (3) days after the date of postmark (five (5) days for international notices) to the addresses as listed in the Agreement Summary Section. Provided, however, notice of Program changes as to Program Director, or other Memorial designated personnel, and of changes or additions of Program policies and procedures may be made to Fellow at his/her designated email address, provided in the Agreement Summary Section.

Fellow will notify Memorial in writing at the address listed on the Agreement Summary Section within ten (10) calendar days of any change of Fellow's address. This notice requirement shall continue until Fellow has successfully completed all of his/her obligations under this Agreement.

- 9.13. **Entire Agreement**. This Agreement, and all exhibits and attachments to this Agreement, represent the entire understanding and agreement among the Parties with respect to the subject matter hereof and supersedes all other negotiations, understandings, and representations, if any, made by and among the Parties.
- 9.14. **Public Records**. The Parties acknowledge, agree and understand that as a political subdivision, Memorial is subject to the Florida Sunshine Act and Chapter 119 of the Florida Statutes, commonly known as the Public Records Law.
- 9.15. **Provisions Binding**. Except as otherwise expressly provided in this Agreement, all covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, permitted successors and permitted assigns.
- 9.16. **Sovereign Immunity**. The Parties hereto acknowledge and agree that Memorial is a political subdivision of the State of Florida, and as such, Memorial and Fellow, in his or her capacity as a Memorial employee and while performing within the scope of the Fellowship Program at a Memorial Facility, enjoy the benefits of sovereign immunity. Nothing in this Agreement is intended, nor shall be construed or interpreted, to alter, waive or modify Memorial's entitlement to sovereign immunity, or to extend or modify

Memorial's liability beyond the limits established in Section 768.28, Florida Statutes, as amended from time to time, or any successor statute.

- 9.17 **Master Contract List**. Effective July 26, 2004, MHS maintains a master list of its contracts, which is updated centrally and in a manner that will preserve the historical record of the contracts. This master list is a combination of records maintained by MHS's Legal Department, Managed Care Department, Purchasing Department, Accounts Payable Department, Property Management Department, and its departments known as Memorial Integrated Health, which includes, without limitation, MHS's self insured health plan for its employees, its South Broward Community Health Services Program and its Uninsured Patient Program. This master list will include, without limitation, this Agreement.
- 9.18. **Counterparts; Signatures**. The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall be deemed to constitute one agreement. The Parties have agreed to accept electronic signatures pursuant to the United States Electronic Signatures in Global and National Commerce Act and the Florida Uniform Electronic Transaction Act, and any document accepted, executed or agreed to in conformity with such law will be binding on both Parties the same as if it were physically executed. The affixing of the Parties of their actual signatures to this Agreement, and delivery then by facsimile or scanned copy attached to an email, shall constitute sufficient delivery, communication and record of the formation of this transaction.
- 9.19. **Construction and Acknowledgement**. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- 9.20. **Time of Essence**. Time shall be of the essence with respect to this Agreement.
- 9.21. **Authority/Execution**. Each signatory to this Agreement represents and warrants that he/she possesses all necessary capacity and authority to act for, sign and bind the respective entity or person on whose behalf he/she is signing.

[SIGNATURES ON FOLLOWING PAGE.]

In consideration of the foregoing, each party has duly executed this Agreement as of the date set forth in the Agreement Summary Section.

**SOUTH BROWARD HOSPITAL DISTRICT d/b/a MEMORIAL
HEALTHCARE SYSTEM**

Marc Napp, M.D.,
Executive Vice President & Chief Medical Officer

Date

FELLOW

Signature

Printed Name

Date

EXHIBIT A

FELLOW BENEFITS

1. As required by ACGME and/or CPME, all applicable benefits will be provided upon employment. The following benefits and job related expense terms are in effect as of the Commencement Date of the Agreement, but may be modified from time to time by the Memorial in its sole discretion.
 - A. **Medical, Dental, and Related Benefits**. The following benefits, including Section B (below), will be made available to the Fellow under the standard, applicable Memorial benefit program (or any successor program thereto) under which Fellow shall choose Fellow benefit choices, but Memorial shall only pay for the employer's portion of such benefits for the Fellow (consistent with other similarly situated Memorial employees), with Fellow to pay the cost of Fellow benefit choices in excess of the employer's portion:
 - a. Medical
 - b. Dental
 - c. Vision
 - d. Employee Life Insurance/Accidental Death and Dismemberment
 - e. Long Term Disability
 - f. Flexible Spending Account
 - g. Dependent Care Spending Account

The details of the above-referenced plans and benefits provided thereto are set forth in the Benefits Guide applicable during each calendar year.
 - B. **Time off**: Each Fellow will receive twenty-five (25) days annually. The Fellow shall be entitled to this leave in accordance with applicable Memorial Policies and Procedures and in which the Fellow's compensation will be paid in full. All aspects of paid leave time accumulation, maintenance, and entitlement will be governed by the Memorial Policies and Procedures.
 - C. **Leave of Absence; Sick Leave; Personal Leave**. Fellow's rights with respect to leaves of absence, sick leave and personal leave are set forth in and governed by the Memorial GME Policies.
2. **Additional Fellow Benefits**. During the Term, Memorial shall provide Fellow with the following additional benefits:
 - i. **Professional Liability Insurance**. MHS shall self-insure, pursuant to Ch. 768.28, Fla. Stat., for its liability for tort claims associated with the acts or omissions of the Fellow. Fellow acknowledges that Memorial will not purchase any commercial insurance to supplement its self-insurance program.

- ii. **Sovereign Immunity Protection.** As an employee of Memorial, Fellow will be entitled to the protection of sovereign immunity pursuant to Section 768.28, Florida Statutes, from claims filed during or after Fellow's completion of the Fellowship Program, but only if the alleged acts or omissions of Fellow are within the course and scope of Fellow's duties during the Term. Nothing in this provision may be deemed or interpreted to protect Fellow for any activities of Fellow outside the course or scope of the Fellowship Program.

- iii. **Indemnification.** Memorial will, to the extent of the amount of the limit of tort liability specified under Ch. 768.28, Fla. Stat., indemnify Fellow, for, and defend it against, tort liabilities sought to be imposed upon Fellow solely as a result of the actual or alleged liability for the acts or omissions of Fellow while acting within the scope of his/her duties for Memorial. The duty to defend may be satisfied by providing a defense in kind, or, at Memorial's option, by paying the reasonable attorney's fees and expenses of litigation, and that duty and the duty to indemnify shall terminate and be discharged by the settlement of such claim, or satisfaction of any judgment arising from any such claim, in whole or in part, provided, however, that nothing in this Section requires payment by Memorial in excess of the amount of Memorial's statutorily-limited tort liability under Ch. 768.28, Fla. Stat. Nothing in the Agreement shall be deemed to require indemnification by Memorial of any party for an amount greater than the limitation of liability for tort claims under Ch. 768.28, Fla. Stat., or otherwise operate to increase Memorial's limitations of liability for tort claims under Ch. 768.28, Fla. Stat., or waive any immunity under applicable law, or to create liability or responsibility on the part of Memorial for the acts or omissions of any party other than itself, its agents, and its employees.

- iv. **Limitation of Liability.** Notwithstanding any provision of this Agreement, other than the compensation to be paid to Fellow under said Agreement, Memorial shall not be liable or responsible to Fellow beyond the monetary limits specified in Ch. 768.28, Fla. Stat., regardless of whether said liability be based in tort, contract, indemnity or otherwise; and in no event shall Memorial be liable to Fellow for punitive or exemplary damages or for lost profits or consequential damages.

- v. **Indemnification Limitation.** It is understood and agreed that neither the duty to defend nor to indemnify Fellow shall apply to claims or suits brought by Memorial itself to enforce, terminate, or construe this Agreement, or to claims or suits arising from acts or omissions of Fellow committed in bad faith or with malicious and willful disregard of patient safety or property. The duty to defend and indemnify Fellow

provided for in this Section shall extend solely to Fellow and Fellow's heirs, survivors and estate, but not to or for the benefit of any third-parties whether claiming to be beneficiaries of such duties or not, nor shall said duties to defend and indemnify Fellow constitute or be construed as any waiver of the immunity granted to or enjoyed by Fellow by virtue of Ch. 768.28, Fla. Stat., as now worded or as may be later amended or the payment of any funds necessary for the settlement of any claim.

- b. **Meals.** Memorial shall provide Fellow with meals (breakfast, lunch and dinner) while Fellow is on duty at a Memorial Designated Facility.
- c. **On-Call Rooms.** Fellow will be entitled to utilize the designated on-call rooms provided by Memorial to its Fellows when on-call.
- d. **Laboratory Coats.** Memorial shall provide Fellow with no less than one (1) laboratory coat, which shall be worn by Fellow while Fellow is on duty at a Memorial Designated Facility.