

**CALL COVERAGE AGREEMENT**

**by and among**

**TULARE LOCAL HEALTHCARE DISTRICT, D/B/A  
TULARE REGIONAL MEDICAL CENTER (“HOSPITAL”)**

**and**

**THOMAS R. SCHERER, D.O., INC. (“GROUP”)**

## CALL COVERAGE AGREEMENT

This CALL COVERAGE AGREEMENT (this "**Agreement**") is made and entered into as of the last date signed below (the "**Effective Date**"), by and between TULARE LOCAL HEALTHCARE DISTRICT, a California local healthcare district, d/b/a Tulare Regional Medical Center ("**Hospital**"), and THOMAS R. SCHERER, D.O., INC., a California professional corporation ("**Group**"). Hospital and Group are sometimes referred to in this Agreement as a "**Party**" or, collectively, as the "**Parties**."

### RECITALS

A. Hospital operates a general acute care hospital located in Tulare, California, under The Local Health Care District Law of California (commencing at Health and Safety Code § 32000 et seq.); and operates an emergency department (the "**Department**"), under its acute care license.

B. Group is a professional corporation organized under the laws of the State of California (the "**State**"). As of the date of this Agreement, Group consists of a sole shareholder Thomas R. Scherer, D.O. ("**Group Practitioner**"), duly licensed and qualified to practice medicine in the State. Group Practitioner has experience in the specialty of general surgery (the "**Specialty**").

C. Hospital must arrange for the provision of professional consultation and treatment of patients who present to the Department ("**ED Patients**") in need of emergency medical care or treatment in the Specialty, without regard to any consideration other than medical condition.

D. In order to ensure adequate and continued coverage for the Department as required by applicable federal and state law, and consultations for in-hospital patients, Hospital desires to engage Group to provide or arrange for the provision of call coverage of the Department and in-hospital consultations by certain qualified physicians designated by Group from time to time in accordance with this Agreement (each a "**Group Practitioner**" and, collectively, the "**Group Practitioners**") as part of a panel of physicians engaged by Hospital to provide such services (each, a "**Panel Member**" and, collectively, the "**Panel Members**").

### AGREEMENT

**THE PARTIES AGREE AS FOLLOWS:**

#### **ARTICLE I.** **GROUP'S OBLIGATIONS**

##### **1.1 Services.**

(a) **Coverage Services.** Group shall cause one or more Group Practitioners in the Specialty to be available on an on-call basis to provide Specialty medical care and treatment

to ED Patients, and consults for in-hospital patients, including intensive care unit ("ICU") patients ("**Coverage Services**"), upon the terms and subject to the conditions set forth in this Agreement.

(b) **Professional Services.** Group shall also provide professional services related to the Specialty (the "**Professional Services**") to patients of the Department, to Hospital's employees who are in need of evaluation and/or treatment for employee health (including pre-employment) or work-related injuries during the course of their employment with Hospital ("**Hospital Employees**") and patients for which Hospital has indicated in writing that Hospital will pay for the services ("**Hospital Payment Patients**"), upon the terms and subject to the conditions set forth in this Agreement. If there is no third party payor for the services and Hospital indicates in writing that Hospital will pay for the services, Group shall bill Hospital for its professional fees for Professional Services furnished to Hospital Employees and Hospital Payment Patients pursuant to this Agreement within thirty (30) days from the date of service. Such professional fees shall be billed in accordance with a uniform schedule of Group's fees for Professional Services provided under this Agreement, which shall be competitive with customary local fees for comparable services, and in accordance with applicable laws and regulations, customary professional practice, Medicare and Medicaid programs or any other Federal health care program, as defined at 42 U.S.C. Section 1320a-7b(f) (collectively, the "**Federal Health Care Programs**") and other third party payor programs, whether public or private.

## 1.2 **Group Practitioners.**

(a) Group shall ensure that Coverage Services are performed only by Group Practitioners who have been approved and accepted by Hospital, and have not been removed pursuant to Section 6.8 or 6.9 of this Agreement. Prior to providing Coverage Services under this Agreement, each Group Practitioner shall execute, and Group shall deliver to Hospital, a letter acknowledging such Group Practitioner's agreement to be bound by the terms of this Agreement, which letter shall be in the form attached as **Exhibit 1.2(a)**.

(b) Group may from time to time engage additional Group Practitioners to furnish Coverage Services under this Agreement; provided, however, that each additional Group Practitioner satisfies the professional standards and qualifications set forth in Article II of this Agreement and is approved by Hospital. Hospital shall have the right to withhold its approval of any Group Practitioner in its sole discretion and without the need for compliance with any provision set forth in the bylaws, rules, regulations, protocols, guidelines and policies of Hospital and Hospital's medical staff (the "**Medical Staff**"), including the Call Coverage Rules (as defined in Section 1.9) (collectively, the "**Hospital Rules**") or with any other term of this Agreement, except to the extent Hospital reasonably determine that such withholding of approval is reportable to the Medical Board of California pursuant to the reporting requirements of the State (the "**Reporting Requirements**").

(c) Group shall ensure that any and all Group Practitioners furnishing Coverage Services continuously satisfy the professional standards and qualifications set forth in Article II of this Agreement.

(d) Group Practitioners may perform elective surgery while scheduled to provide Coverage Services; provided that Group makes arrangements with one or more alternative Group Practitioners with appropriate Specialty experience to provide back-up coverage, and informs Hospital of such arrangements as soon as reasonably practicable.

### **1.3 Availability and Scheduling.**

(a) Group shall cause Group Practitioners to provide Coverage Services on a fair and equitable basis along with other Panel Members in accordance with the schedule developed by Hospital in consultation with the Panel Members from time to time to ensure coverage for the Department twenty-four (24) hours per day, seven (7) days per week, including all holidays, in accordance with the schedule developed by Hospital in consultation with the Panel Members from time to time.

(b) No fewer than ten (10) days prior to the beginning of each calendar month during the term of this Agreement, Group shall inform Hospital of Group's availability to provide the Coverage Services during such month. Group shall use Group's best efforts to adjust Group's schedule of availability if reasonably requested by Hospital in order to meet the needs of the Department and in-hospital patients for Coverage Services.

(c) If any Group Practitioner is unable or reasonably expected to be unable to provide the Coverage Services for any reason for a period of greater than thirty (30) consecutive days or sixty (60) days in the aggregate over any three (3) month period, Group shall make arrangements with another Group Practitioner or Panel Member experienced in the Specialty to provide Coverage Services on behalf of Group Practitioner, and shall inform Hospital of such arrangements, as soon as reasonably practicable.

(d) Group Practitioner shall not be simultaneously on-call to any other hospital or health care facility while scheduled to provide Coverage Services for the Department, except as otherwise approved in writing by Hospital.

(e) Group Practitioner shall not schedule or perform elective surgery, whether at Hospital or any other hospital or health care facility, while scheduled to provide Coverage Services for the Department, that would prevent the Physician from being physically present at Hospital within thirty (30) minutes of a request by the Department, except as otherwise approved in writing by Hospital.

**1.4 Coordination with Attending Physicians.** Group shall ensure that each Group Practitioner shall promptly report the results of all professional services furnished to an ED Patient to such patient's attending physician(s) and any other physician(s) engaged in specialty consultation or treatment for such patient.

### **1.5 Medical Records and Claims.**

(a) Each Group Practitioner shall prepare complete, timely, accurate and legible medical and other records with respect to the services and treatment furnished by such Group Practitioner to ED Patients and in-hospital consults, in accordance with the Hospital Rules (as defined in Section 2.8), federal and state laws and regulations, and standards and

recommendations of such nationally recognized accrediting organization as Hospital designates from time to time. All such information and records relating to any ED Patient and in-hospital consults shall be: (i) prepared on forms developed, provided or approved by Hospital; (ii) the sole property of Hospital; and (iii) maintained at Hospital in accordance with the terms of this Agreement and for so long as is required by applicable laws and regulations.

(b) Group and each Group Practitioner shall maintain and upon request provide to ED Patients, Hospital, and state and federal agencies, all financial books and records and medical records and charts as may be necessary for Group and/or Hospital to comply with applicable state, federal, and local laws and regulations and with contracts between Hospital and third party payors. Group and the Group Practitioners shall cooperate with Hospital in completing such claim forms for ED Patients as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors. Group shall retain all such records and information for at least ten (10) years following the expiration or termination of this Agreement. This Section 1.5(b) shall survive the expiration or termination of this Agreement.

**1.6 Records Available to Group.** Both during and after the term of this Agreement, Hospital shall permit Group and its agents to inspect and/or duplicate, at Group's sole cost and expense, any medical chart and record to the extent necessary to meet Group's professional responsibilities to patients, to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, and/or to fulfill requirements pursuant to provider contracts to provide patient information; provided, however, such inspection or duplication is permitted and conducted in accordance with applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Group shall be solely responsible for maintaining patient confidentiality with respect to any information which it obtains pursuant to this Section.

**1.7 Notification of Certain Events.** Group shall notify Hospital in writing within twenty-four (24) hours after Group or any Group Practitioner becomes aware of any of the following:

(a) Group or any Group Practitioner becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by: any Federal Health Care Program or state equivalent, any state's medical board, any agency responsible for professional licensing, standards or behavior, or any medical staff;

(b) Group or any Group Practitioner becomes the subject of any action or proceeding arising out of the provision of Coverage Services or professional medical services;

(c) any event that materially interrupts or affects Group's or any Group Practitioners' ability to provide scheduled Coverage Services;

(d) any termination, non-renewal, cancellation or reduction in coverage of any insurance policy required under Article IV; or

(e) any event listed in Section 6.2.

**1.8 Representations and Warranties by Group.** Group represents and warrants that, except as set forth in **Exhibit 1.8**: (a) no Group Practitioner's license to practice medicine in any state has ever been suspended, revoked or restricted; (b) neither Group nor any Group Practitioner has ever been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board; (c) neither Group nor any Group Practitioner has ever been debarred, excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program or state equivalent; (d) no Group Practitioner has ever been denied membership and/or reappointment to the medical staff of any hospital or health care facility; (e) no Group Practitioner's medical staff membership or clinical privileges at any hospital has ever been suspended, limited or revoked for a medical disciplinary cause or reason; and (f) no Group Practitioner has ever been charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of medical services or the practice of medicine.

**1.9 Performance Standards.** Group and each Group Physician shall, as applicable:

(a) comply with all bylaws, policies, rules and regulations of Hospital, the Department, and the Medical Staff, including the Call Coverage Rules as set forth in **Exhibit 1.9(a)** (the "Call Coverage Rules"), which may be amended from time to time;

(b) participate in continuing education as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community and as otherwise required by the medical profession;

(c) comply with all applicable standards and recommendations of such nationally recognized accrediting organization as Hospital designate from time to time, Title 22 of the California Code of Regulations ("Title 22") and other accreditation and regulatory bodies;

(d) comply with all Hospital policies, protocols, operating procedures, scheduling guidelines, and guidelines related to response times; and

(e) comply with customary professional practice and standard of care.

**1.10 Compliance with HIPAA.**

(a) **Covered Entity.** Group and Group Practitioners acknowledge that each are a separate "Covered Entity" as such term is defined under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d *et. seq.*), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all rules and regulations promulgated thereunder (collectively, "HIPAA"). As a Covered Entity separate from Hospital, Group and Group Practitioners shall implement all necessary policies, procedures, and training to comply with HIPAA and other laws applicable to the creation, receipt, maintenance, transmittal, use, and disclosure of patient-related information.

(b) **Organized Health Care Arrangement.** If requested by Hospital during the term of this Agreement, Group and Group Practitioners shall participate in an Organized Health Care Arrangement ("OHCA"), as such term is defined under HIPAA, and comply with Hospital's OHCA-related policies, procedures, and notice of privacy practices.

**ARTICLE II.**  
**PROFESSIONAL STANDARDS AND QUALIFICATIONS**

**2.1 Licensure.** Group shall ensure that each Group Practitioner performing Coverage Services has and maintains an unrestricted license to practice medicine in the State.

**2.2 DEA Registration.** Group shall ensure that each Group Practitioner performing Coverage Services have and maintain a valid and unrestricted United States Drug Enforcement Administration (“DEA”) registration.

**2.3 Certification and Professional Qualifications.** Each Group Practitioner shall be certified in the Specialty by the applicable medical specialty board approved by the American Board of Medical Specialties (the “Board”). If Group Practitioner is not board certified in the Specialty by the Board as of the Execution Date, Group Practitioner shall have a reasonable amount of time to obtain such board certification, provided that Group Practitioner diligently pursues such board certification and exercises his or her best efforts to complete this process and become board certified by the Board at the earliest date reasonably possible.

**2.4 Medical Staff Membership.** Group shall ensure that each Group Practitioner providing Coverage Services is a member in good standing in the “active staff” category of Hospital’s medical staff (the “Medical Staff”), and maintains all clinical privileges necessary to practice medicine in the Specialty at Hospital. If a Group Practitioner is not a member in good standing in the “active staff” category of the Medical Staff, or has not obtained all clinical privileges necessary to practice medicine in the Specialty at Hospital, as of the date such Group Practitioner begins providing Coverage Services, such Group Practitioner shall have a reasonable amount of time to obtain such membership and/or clinical privileges, provided that such Group Practitioner diligently pursues such membership and/or clinical privileges and exercises his or her best efforts to complete this process in accordance with the normal procedures set forth in the Hospital Rules. Any Group Practitioner may also obtain and maintain medical staff membership and clinical privileges at any other hospital or health care facility. Group shall ensure that each Group Practitioner actively participates in the Medical Staff department or section encompassing the Specialty and on all Medical Staff committees to which such Group Practitioner may be appointed by the Medical Staff from time to time.

**2.5 Participation in Governmental Programs.** Group and each Group Practitioner providing Coverage Services shall: be a participating provider in the Federal Health Care Programs, which programs include, but are not limited to, Medicare and Medicaid; accept and perform professional services for Federal Health Care Program patients at a level that is commensurate with the community need as determined by Hospital; and participate in any Medicare and/or Medicaid managed care efforts and programs of Hospital, as reasonably requested by Hospital from time to time.

**2.6 Continuing Education.** Group shall ensure that each Group Practitioner providing Coverage Services participates in continuing medical education, as necessary to maintain his or her licensure, professional competence and skills, commensurate with the standards of the medical community in such Group Practitioner’s Specialty.

**2.7 Review of Office of the Inspector General (“OIG”) Medicare Compliance Bulletins.** The OIG from time to time issues Medicare compliance alert bulletins. To the extent applicable to Group’s performance under this Agreement, Group and each Group Practitioner shall undertake to review, be familiar with and comply with all applicable requirements of such OIG compliance bulletins.

**2.8 Compliance with Hospital Rules and Medical Staff Bylaws.** Each Group Practitioner shall comply with the bylaws, rules, regulations, guidelines and policies and procedures of Hospital and the Medical Staff (collectively, the “**Hospital Rules**”) applicable to Group Practitioner, the Coverage Services, or the obligations of Group Practitioner under this Agreement, including, without limitation, such Hospital Rules regarding response time, transfers, consults, follow-up care and relationships to Department physicians.

**2.9 Cooperation with Hospital Compliance Obligations.** Group and each Group Practitioner shall cooperate fully with Hospital’s efforts to satisfy all requirements imposed by applicable federal, state, and local laws and regulations, and shall assist Hospital, as reasonably requested by Hospital, in Hospital’s compliance with applicable laws and the standards, requirements, guidelines and recommendations of such nationally recognized accrediting organization as Hospital designates from time to time and any other governing or advisory body having authority to set standards governing the operation of Hospital or the Department.

**2.10 Code of Conduct.** Group hereby acknowledges receipt of Hospital’s Code of Conduct, attached to this Agreement as **Exhibit 2.10** (the “**Code**”), and agrees that each Group Practitioner has been given ample time to read, review and understand the Code of Conduct. With respect to their business dealings with Hospital and their performance of duties under this Agreement, Group and the Group Practitioners shall not act, or fail to act, in any manner which conflicts with or violates the Code, and shall not cause another person to act, or fail to act, in any manner which conflicts with or violates the Code. Group and the Group Practitioners shall comply with the Code as it relates to their business relationships with Hospital or any Affiliates (as defined in Section 6.4(d)), subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind.

**2.11 Quality Assurance and Peer Review.** Group shall comply and cooperate with, and shall ensure that each Group Practitioner complies and cooperates with, Hospital’s utilization management, quality assurance, risk management, peer review and credentialing committees, programs and procedures, as amended from time to time by Hospital.

**2.12 Confidentiality of Committee Records.** The Parties agree that the records and proceedings of the committees referred to in this Article are subject to the immunities and privileges required by the laws of the State. The Parties shall conduct all of their activities with respect to this Agreement, and specifically with respect to the proceedings and records of the committees referred to in this Article, to affirm and ensure the applicability of such laws to their activities.



**ARTICLE III.**  
**BILLING AND COMPENSATION**

**3.1 Compensation Amount and Timing.** Hospital shall pay to Group, within ten (10) days after receipt by Hospital of the Monthly Report (as defined below) for each month during the term of this Agreement, the amount determined in accordance with **Exhibit 3.1.**

**3.2 Monthly Report.** Hospital's obligation to pay Group shall be contingent upon Group's submission to Hospital, not more than ten (10) days following the end of each month during the term of this Agreement, of a monthly report, in the form attached as **Exhibit 3.2** (the "**Monthly Report**"), that provides a true and accurate accounting of, and details to Hospital's satisfaction, Coverage Services performed by Group Practitioners during the immediately preceding month.

**3.3 Professional Coverage Services Billing and Collection.**

(a) **Group Billing.** Group shall be solely responsible for billing and collecting any and all fees for professional services furnished by Group to ED Patients. Group shall accept assignment with respect to services provided to Federal Health Care Program beneficiaries, to the extent permissible under applicable rules and regulations.

(b) **Billing Compliance.** Group shall ensure that all billing and coding for professional services furnished by Group to ED Patients is in compliance with applicable laws and regulations, customary professional practice, the Federal Health Care Programs, and other third party payor programs, whether public or private. Group shall adopt and maintain billing and coding compliance policies and procedures to ensure Group's compliance with applicable laws and regulations, including laws and regulations under the Federal Health Care Programs. Hospital shall have reasonable access to Group's records in order to ensure Group's compliance with this Agreement. Group shall promptly correct any billing errors documented by Hospital.

(c) **Patient Information.** Hospital shall take all necessary and reasonable steps to provide Group sufficient patient information to facilitate Group's billing and collecting for professional services furnished by Group Practitioners to ED Patients.

(d) **Separate Billing.** Each Party shall separately bill all patients for its respective fees and charges, and neither Group nor Hospital shall bill for, guarantee the ability to collect, or have any claim or interest in or to the amounts billed or collected by the other Party.

(e) **Collection Agencies.** Hospital shall have the right to disapprove Group's use of any collection agency which engages in conduct which results in the unreasonable annoyance or harassment of ED Patients. Group shall either cure this problem or discharge the collection agency within thirty (30) days following written notice of disapproval by Hospital. If this problem occurs a second time, Group shall discharge the collection agency within thirty (30) days following written notice of disapproval by Hospital.

### 3.4 Expense Reimbursement.

(a) **Reasonable Expenses.** Hospital shall reimburse Group for reasonable and necessary business expenses incurred by Group in connection with the performance of the Coverage Services; provided, however, that (i) Group has obtained prior written approval of Hospital to incur such expenses, (ii) the expenses are directly related to the performance of the Coverage Services, (iii) the expenses meet the requirements for reimbursement under the Hospital Rules, and (iv) Group submits receipts to Hospital within sixty (60) days of incurring the expenses.

(b) **Program Attendance.** Hospital shall reimburse or pay for the reasonable costs of the Group Practitioner's attendance at one or more leadership, administrative, performance improvement and/or quality programs for the benefit of Hospital, including tuition, travel, room and board; provided, however, that (i) Hospital has requested that Group Practitioner attend such program or Group has obtained prior written approval of Hospital to attend such programs, (ii) the expenses are approved in advance by Hospital, (iii) such programs and expenses meet the requirements for reimbursement or payment under applicable Hospital Rules, and (iv) Group submits receipts to Hospital within sixty (60) days of attending any such programs.

3.5 **IRS Form W-9.** To ensure that compensation is reported as paid to Group, attached hereto as **Exhibit 3.5** is a completed and executed copy of IRS Form W-9 which identifies Group's taxpayer identification number.

## **ARTICLE IV. INSURANCE AND INDEMNITY**

4.1 **Malpractice Liability Insurance.** Group shall, at its sole cost and expense, maintain Continuous Coverage (as defined below) of policies of professional malpractice liability insurance coverage. The insurance policies shall: (i) in the case of the professional malpractice liability insurance policy, provide coverage for negligent acts or omissions of Group and each Group Practitioner in the performance of professional services; (ii) name Group as named insured and Hospital as an additional insured party (if permitted by the insurance carrier); (iii) be issued by an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State and acceptable to Hospital; and (iv) provide for minimum coverage limits consistent with the Medical Staff bylaws, but in no event less than One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the annual aggregate for each Group Practitioner. Such coverage shall provide for a date of placement preceding or coinciding with the Effective Date (as defined in Section 6.1) of this Agreement.

4.2 **Continuous Coverage.** For purposes of this Agreement, the term "**Continuous Coverage**" means the maintenance of required insurance from the Effective Date, continuing during the entire term of this Agreement and expiring not less than three (3) years following the expiration or earlier termination of this Agreement (the "**Insurance Period**"). If for any reason any insurance policy maintained by Group pursuant to this Section is terminated, reduced below the minimum coverage requirements set forth in this Article, not renewed or cancelled (whether

by action of the insurance company or Group) prior to the expiration of the Insurance Period, Group shall: (i) cause a replacement insurance policy meeting the requirements of this Article to be in effect as of the effective date of the termination, reduction, non-renewal or cancellation of the prior insurance policy; and (ii) purchase either extended reporting coverage (i.e., "tail" coverage) or prior acts coverage (i.e., "nose" coverage) as necessary to meet the requirements of this Section. "Tail" coverage must provide for either an unlimited discovery/reporting period or a discovery/reporting period that would extend through the end of the Insurance Period, and "nose" coverage must provide for a retroactive discovery/reporting period at least as of the start of the Insurance Period.

**4.3 Certificate of Insurance.** On or before the Effective Date, Group shall provide Hospital with certificates of insurance or other written evidence of the insurance policies required by this Article, in a form satisfactory to Hospital, prior to the Effective Date, on each annual renewal of such insurance policies during the Insurance Period, and as requested by Hospital on behalf of each Group Practitioner. Group shall provide Hospital with no less than thirty (30) calendar days' prior written notice of cancellation or any material change in such professional malpractice liability insurance coverage.

**4.4 Replacement Insurance.** In the event Group fails to procure, maintain or pay for any insurance policy required under this Article, Hospital shall have the right, but not the obligation, to procure, maintain or pay for such insurance policy. In such event, Group shall reimburse Hospital for the cost thereof not more than ten (10) days after Hospital's written request to Group.

**4.5 Indemnification.**

(a) **Indemnification by Group.** Group and Group Practitioners shall indemnify, defend and hold harmless Hospital, its Affiliates and their respective directors, officers, employees or agents, from and against any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, awards or costs, including reasonable attorneys' fees and costs, arising out of, resulting from, or relating to: (i) Group's failure to comply with the terms of this Agreement; (ii) the negligent operations, acts, or omissions of Group or Group's employees or agents; or (iii) wages, salaries, employee benefits, income taxes, FICA, FUTA, SDI and all other payroll, employment or other taxes, withholdings and charges payable by Hospital or any of its Affiliates to, or on behalf of, Group or any other person employed by or contracted with Group.

(b) **Indemnification by Hospital.** Hospital shall indemnify, defend and hold harmless Group and Group Practitioners from and against any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, awards or costs, including reasonable attorneys' fees and costs, arising out of, resulting from, or relating to: (i) Hospital's failure to comply with the terms of this Agreement or (ii) the negligent acts or omissions of Hospital or any employee or agent of Hospital in the performance of Hospital's obligations under this Agreement.

**4.6 Survival of Obligations.** The Parties' obligations under this Article IV shall survive the expiration or termination for any reason of this Agreement.

**ARTICLE V.**  
**RELATIONSHIP BETWEEN THE PARTIES**

**5.1 Independent Contractor.**

(a) Group and each Group Practitioner shall at all times be independent contractors with respect to Hospital in the performance of Group's and Group Practitioner's obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, partnership, lease or landlord/tenant relationship between Hospital and Group or Hospital and Group Practitioners. No Group Practitioner shall not hold himself or herself out as an officer, agent or employee of Hospital, and shall not incur any contractual or financial obligation on behalf of Hospital without Hospital's prior written consent.

(b) In the event any governmental entity, including the Internal Revenue Service, should question or challenge Group or Group Practitioners regarding the independent contractor status of Group or Group Practitioners with respect to Hospital and the Coverage Services rendered under this Agreement, Group and Group Practitioners shall immediately notify Hospital and Hospital shall have the right to participate in any discussions or negotiations occurring with such governmental entity, regardless of who initiated such discussions or negotiations.

**5.2 Limitation on Control.** Hospital shall neither have nor exercise any control or direction over Group's or any Group Practitioner's professional medical judgment or the methods by which Group or any Group Practitioner performs professional medical services; provided, however, that Group and each Group Practitioner providing Coverage Services shall be subject to and shall at all times comply with the Hospital Rules.

**5.3 Practice of Medicine.** Group and Hospital acknowledge that Hospital is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent that any act or service required of, or reserved to, Hospital in this Agreement is construed or deemed to constitute the practice of medicine, the performance of such act or service by Hospital shall be deemed waived or unenforceable, unless this Agreement can be amended to comply with the law, in which case the Parties shall make such amendment.

**5.4 No Benefit Contributions.** Hospital shall have no obligation under this Agreement to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to or on behalf of, Group, any Group Practitioner or any other person employed or retained by Group. Notwithstanding the foregoing, if Hospital determine or are advised that it is required by law to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to or on behalf of, Group, any Group Practitioner or any other person employed or retained by Group, Group shall reimburse Hospital for any such expenditure within thirty (30) calendar days after being notified of such expenditure.

**5.5 Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither Group nor any Group Practitioner shall solicit for employment or actually employ any employee of Hospital, or interfere with any relationship, contractual or otherwise, between Hospital and any of their employees.

**5.6 Referrals.** Group and each Group Practitioner shall be entitled to refer patients to any hospital or other health care facility or provider deemed by Group or such Group Practitioner best qualified to deliver medical services to any particular patient; provided, however, that neither Group nor any Group Practitioner shall refer any Hospital patient to any provider of health care services which either Group or such Group Practitioner knows or should have known is excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program or state equivalent. Nothing in this Agreement or in any other written or oral agreement between Hospital and Group, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Hospital or any Affiliate. In the event that any governmental agency, any court or any other judicial body of competent jurisdiction, as applicable, issues an opinion, ruling or decision that any payment, fee or consideration provided for hereunder is made or given in return for patient referrals, either Party may at its option terminate this Agreement with three (3) days notice to the other Party. Group's rights under this Agreement shall not be dependent in any way on the referral of patients or business to Hospital or any Affiliate by Group or any person employed or retained by Group.

**5.7 Physician Compensation Arrangements.** Group represents and warrants to Hospital that the compensation paid or to be paid by Group to any physician is and will at all times be fair market value for services and items actually provided by such physician, not taking into account the value or volume of referrals or other business generated by such physician for Hospital or any Affiliate. Group further represents and warrants to Hospital that Group has and will at all times maintain a written agreement with each physician receiving compensation from Group.

**5.8 Cooperation.**

(a) Group: (1) shall interact positively and respectfully with all of Hospital's employees, contractors, medical staff members and patients; (2) shall not in any way disparage or otherwise communicate negative facts, statements or opinions regarding Hospital, their Board members, employees or business; and (3) shall at all times perform the Coverage Services and generally behave in a manner that is in the best interests of Hospital and in the best interests and safety of Hospital's' patients. Group agrees to reasonably cooperate with Hospital in: any pending or future government or payer investigation; any litigation, arbitration or other dispute resolution involving the Hospital; and any internal investigation the Hospital may conduct. Hospital shall reimburse Group for all expenses reasonably incurred by Group in compliance with this Section 5.8(a), except that Hospital shall not pay Group for Group's expenses in any dispute resolution where Group or any Group Practitioner is a co-defendant, a party to the matter, or in any way not serving the best interests of Hospital. Neither Group nor any Group Practitioner shall voluntarily testify against Hospital or any of their employees or contractors, and shall notify Hospital immediately if Group or any Group Practitioner is compelled to provide any statement or pending testimony against Hospital.

(b) The Parties recognize that, during the term of this Agreement and for an undetermined time period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and legal issues, claims, or actions. Such cooperation by Group shall include cooperation to same extent by Group Practitioners.

(c) The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an “**Action**”) arises with a third party wherein both the Parties are included as defendants, each Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each Party shall make every reasonable attempt to include the other Party in any settlement offer or negotiations. In the event the other Party is not included in the settlement, the settling Party shall immediately disclose to the other Party in writing the acceptance of any settlement and terms relating thereto, if allowed by the settlement agreement.

(d) Group shall cooperate with the individual designated by Hospital to have principal responsibility for the administration and operation of the Department. Such cooperation shall include supervision, selection, assignment, and evaluation of personnel; management and direction of equipment maintenance; development of budgets; and oversight of the acquisition of materials, supplies, and equipment.

(e) Group shall assist Hospital, as reasonably requested by Hospital, in Hospital’s compliance with applicable laws and the standards, requirements, guidelines and recommendations of any governing or advisory body having authority to set standards relating to the operation of Hospital, or any nationally recognized accrediting organization that Hospital designates from time to time.

**5.9 Hospital Services.** Hospital shall retain professional and administrative responsibility for the operation of the Department, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Hospital’s retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of Group under this Agreement, including, without limitation, the obligations under the insurance and indemnification provisions set forth in Article IV.

## ARTICLE VI.

### **TERM, TERMINATION AND REMOVAL OF GROUP PRACTITIONERS**

**6.1 Term.** This Agreement shall become effective on the Effective Date, and shall continue until January 31, 2020 (the “**Expiration Date**”), with no automatic renewals, and is subject to the termination provisions of this Agreement.

**6.2 Termination by Hospital.** Upon the occurrence of any one or more of the following events, Hospital may terminate this Agreement by giving written notice of termination to Group, which termination shall be effective as of the date set forth in Hospital's written notice of termination to Group or, if no date is set forth in the notice, the date the notice is delivered to Group:

(a) breach of this Agreement by Group where the breach is not cured within thirty (30) calendar days after Hospital first gives written notice of the breach to Group;

(b) Group breaches any representation or warranty in this Agreement;

(c) Group: (i) utilizes a physician who has not been approved by Hospital to furnish Coverage Services under this Agreement; or (ii) fails to remove a Group Practitioner from furnishing Coverage Services under this Agreement in accordance with Section 6.8 or Section 6.9 of this Agreement;

(d) Group is unable or reasonably expected to be unable to provide the Coverage Services for any reason for a period in excess of thirty (30) consecutive days or sixty (60) days in the aggregate over any three (3) month period;

(e) the performance of Group's obligations pursuant to this Agreement, in Hospital's good faith determination, jeopardizes the mental or physical health, safety or well being of any patient or damages the reputation of Hospital;

(f) Group is the subject of one (1) or more medical malpractice judgments or settlements within any twelve (12) month period;

(g) the: (i) sale, transfer or other disposition of all or substantially all of the assets or the issued and outstanding voting securities of Group; (ii) merger, consolidation or other reorganization of Group if, immediately following such transaction, either Group or its shareholders or other equity holders (as existing immediately preceding such transaction) do not own a majority of all classes of the issued and outstanding voting securities of the surviving, consolidated or reorganized entity; (iii) issuance of any class of voting securities by Group (or its successor) if, immediately following such transaction, Group's shareholders or other equity holders existing immediately preceding such issuance do not own a majority of all classes of the issued and outstanding voting securities of Group; or (iv) dissolution and/or liquidation of Group or the cessation of the active conduct of Group's business activities (or those of its successor), in any case, without the prior written consent of Hospital;

(h) Group makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they mature, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;

(i) the insurance required to be maintained by Group under this Agreement is terminated, reduced below the minimum coverage requirements set forth in this Agreement, not renewed or cancelled (whether by action of the insurance company or Group) for any reason, and

Group has not obtained replacement coverage as required by this Agreement prior to the effective date of such termination, reduction, non-renewal or cancellation;

(j) Group is charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, or moral turpitude, or any crime relevant to the provision of Coverage Services, or Group's or any Group Practitioner's practice of medicine;

(k) Group or any Group Practitioner acts, or causes another person to act, in a manner which conflicts with or violates the Code;

(l) Group or any Group Practitioner is debarred, suspended, excluded or otherwise ineligible to participate in or receive payment from any third-party payor program, including, without limitation, any Federal Health Care Program or state equivalent, any other public or private health and/or hospital care programs, insurance programs, self-funded employer health programs, health care service plans or preferred provider organizations;

(m) upon a sale of all or substantially all assets comprising Hospital acute care hospital facility, any change of control in Hospital organization, or any change in control of their day to day operations, whether through a membership change or by management contract. Hospital shall notify Group in writing of such sale or change of control at least thirty (30) days prior to the closing date of any such sale or the effective date of any such change of control; or

(n) Hospital's compliance review board disapproves the Agreement, or does not approve the Agreement within thirty (30) days from the Execution Date.

**6.3 Termination by Group.** Group shall have the right to terminate this Agreement upon breach of this Agreement by Hospital where the breach is not cured within thirty (30) calendar days after Group gives written notice of the breach to Hospital.

**6.4 Termination or Modification in the Event of Government Action.**

(a) In the event of any Government Action (as defined below), the Parties shall, within ten (10) days after one Party gives written notification of such Government Action to the other Party, meet and confer and negotiate in good faith to attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, after good faith negotiations that shall not exceed thirty (30) days, are unable to mutually agree upon the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, either Party may terminate this Agreement effective ten (10) days after a written notice of termination is given to the other Party.

(c) For the purposes of this Section, "**Government Action**" shall mean any legislation, statute, law, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to either Party, as a result or consequence, in whole or in part, of



the arrangement between the Parties set forth in this Agreement, if or when implemented, could reasonably be expected to result in or present a material risk of any one or more of the following:

- (i) revocation or threat of revocation of the status of any license, certification or accreditation granted to Hospital or any Affiliate;
- (ii) revocation or threat of revocation of the federal, state or local tax-exempt status of Hospital, or any Affiliate, or their respective tax-exempt financial obligations;
- (iii) prohibit or restrict the ability of Hospital or any Affiliate to issue tax-exempt bonds, certificates of participation or other tax-exempt financial obligations;
- (iv) violation of or threat of prosecution under 42 U.S.C. § 1320a-7b(b) (commonly referred to as the Anti-Kickback law), 42 U.S.C. § 1395nn (commonly referred to as the Stark law) or any comparable state law governing kickbacks, bribes, rebates or patient referrals if either Group or any Group Practitioner referred patients to Hospital or any Affiliate;
- (v) violation by a Hospital of, or threat of prosecution of a Hospital under, any law, regulation, rule or procedure applicable to a Hospital or be deemed unethical by any recognized body, agency, or association in the medical or hospital industry;
- (vi) prohibit Group, Hospital or any Affiliate from submitting claims or materially reducing the reimbursement received by Hospital or any Affiliate for services provided to patients referred by Group or any Group Practitioner;
- (vii) subject Hospital, Group, any Group Practitioner, any Affiliate, or any of their respective officers, directors, employees or agents, to civil action or criminal prosecution by any governmental authority or other person or entity or the imposition of any sanction (including any excise tax penalty under Internal Revenue Code § 4958), on the basis of their approval of or participation in this Agreement or performing their respective obligations under this Agreement; or
- (viii) jeopardize a Hospital's full accreditation with any accrediting organization as Hospital designate from time to time.

(d) For the purposes of this Agreement, "Affiliate" shall mean any entity which, directly or indirectly, controls, is controlled by, or is under common control with Hospital.

**6.5 Termination without Cause.** Either Party may terminate this Agreement without cause, expense or penalty, effective thirty (30) days after written notice of termination is given to the other Party.

**6.6 Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement:

(a) All rights and obligations of the Parties shall cease except: (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of

this Agreement; (ii) those rights and obligations which expressly survive termination or expiration of this Agreement; and (iii) Group's obligation to continue to provide services to ED Patients, Transfer Patients and in-hospital consults under Group's care at the time of expiration or termination of this Agreement, until the patient's course of treatment is completed or the patient is transferred to the care of another physician.

(b) Neither Group nor any Group Practitioner shall do anything or cause any other person to do anything that interferes with Hospital's efforts to engage any other person or entity for the provision of Coverage Services, or interfere in any way with any relationship between Hospital and any other person or entity who may be engaged to provide Coverage Services to Hospital.

(c) Neither Group nor any Group Practitioner shall have any right to a "fair hearing" or any other similar rights or procedures under the Medical Staff bylaws or otherwise.

(d) This Section 6.6 shall survive the expiration or termination of this Agreement for any reason.

**6.7 Immediate Removal of Group Practitioners.** Group shall immediately remove any Group Practitioner from furnishing Coverage Services under this Agreement who:

(a) has his or her Medical Staff membership or clinical privileges at Hospital or any other health facility terminated, suspended, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(b) has his or her license to practice medicine in the State, board certification or DEA registration denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) is charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, or moral turpitude, or any crime relevant to Coverage Services or the practice of medicine;

(d) is debarred, suspended, excluded or otherwise ineligible to participate in or receive payment from any third-party payor program, including, without limitation, any Federal Health Care Program or state equivalent, any other public or private health and/or hospital care programs, insurance programs, self-funded employer health programs, health care service plans or preferred provider organizations;

(e) fails to satisfy any of the standards and qualifications set forth in Sections 2.1, 2.2, 2.3, 2.5, 2.6, 2.8 of this Agreement; or

(f) fails to be covered by the professional liability insurance required to be maintained under this Agreement.

**6.8 Removal of Group Practitioners upon Hospital Request.** Upon written request by Hospital, Group shall immediately remove any Group Practitioner from furnishing Coverage Services under this Agreement who:

(a) engages in conduct that, in Hospital's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Hospital;

(b) fails to satisfy any of the standards and qualifications set forth in Section 2.9 or Section 2.10 of this Agreement;

(c) fails to comply with any other material terms or conditions of this Agreement after being given written notice of that failure and a reasonable opportunity to comply;

(d) is disabled such that the Group Practitioner is unable to perform services as required under this Agreement for more than thirty (30) days in the aggregate over any three (3) month period; or

(e) within a twelve (12) month period, has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more proceedings by the Medical Staff regarding the performance of professional medical services.

**6.9 Effect of Removal; Reinstatement of Group Practitioner.**

(a) No Group Practitioner removed from furnishing Coverage Services pursuant to Section 6.8 or Section 6.9 of this Agreement, shall be entitled to any "fair hearing" or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determine that such removal is reportable pursuant to the Reporting Requirements.

(b) Upon the removal of a Group Practitioner pursuant to Section 6.8 or Section 6.9 of this Agreement, Group shall employ, contract with, or otherwise engage, at its cost and expense, a qualified substitute for the removed Group Practitioner, or shall demonstrate to Hospital's satisfaction Group's ability to continuously perform Coverage Services without such a substitute. Failure to take such action shall constitute a material breach of this Agreement, subject to Section 6.2. Nothing herein shall be construed to limit Hospital's rights under Section 6.2 or any other provision of this Agreement.

(c) A Group Practitioner that has been removed from furnishing Coverage Services pursuant to Section 6.8 or Section 6.9 of this Agreement may be reinstated as a Group Practitioner eligible to furnish Coverage Services upon the prior written approval by Hospital. Hospital shall have the right to withhold its approval of any Group Practitioner in its sole discretion and without the need for compliance with any provision of the Medical Staff bylaws or with any other term of this Agreement, except to the extent Hospital reasonably determine that withholding of approval is reportable pursuant to the Reporting Requirements.

**ARTICLE VII.**  
**GENERAL PROVISIONS**

**7.1 Amendment.** This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and explicitly indicate that such writing modifies or amends this Agreement.

**7.2 Assignment.** This Agreement is entered into by Hospital in reliance on the professional and administrative skills of Group. Group shall be solely responsible for providing the Coverage Services and otherwise fulfilling the terms of this Agreement, except as specifically set forth in this Agreement. Group may not assign any of Group's rights, interests, duties, or obligations under this Agreement without Hospital's prior written consent, which consent may be given, conditioned or withheld in Hospital's sole discretion. Any attempted or purported assignment by Group in violation of this Section shall be void. Hospital may, in its sole discretion, assign any or all of its rights, interests, duties, or obligations hereunder to any person or entity without the prior written consent of Group. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, successors, assigns and representatives.

**7.3 Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State.

**7.4 Compliance with Laws and Accreditation.**

(a) Group and each Group Practitioner shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments (collectively, "**Laws**") applicable to Group and Group Practitioners, the provision of the Coverage Services, or the obligations of Group and Group Practitioners under this Agreement, including without limitation laws that require Group or such Group Practitioner to disclose any economic interest or relationship with Hospital, the Emergency Medical Treatment and Active Labor Act and the rules and regulations thereunder ("**EMTALA**"), and California Health and Safety Code Section 1317 and the rules and regulations thereunder ("**Health and Safety Code §1317**"). Group and each Group Practitioner shall perform and handle all patient transfers and reports in accordance with applicable laws, including EMTALA, and Health and Safety Code §1317.

(b) Group shall take actions necessary to ensure that the Department is operated in accordance with: all requirements of a nationally recognized accrediting organization that Hospital designates from time to time, all applicable licensing requirements, and all other relevant requirements promulgated by any federal, state or local agency.

**7.5 Compliance with Medicare Rules.** To the extent required by law or regulation, Group shall make available, upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any duly authorized agent or representative of the foregoing, a copy of this Agreement and Group's books, documents and

records. Group shall preserve and make available such books, documents and records for a period which is the longer of ten (10) years after the end of the term of this Agreement or the length of time required by state or federal law. If Group is requested to disclose books, documents or records pursuant to this Section for any purpose, Group shall notify Hospital of the nature and scope of such request, and Group shall make available, upon written request of Hospital, all such books, documents or records. Group shall indemnify and hold harmless Hospital if any amount of reimbursement is denied or disallowed because of Group's failure to comply with the obligations set forth in this Section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. This Section shall survive the expiration or termination for any reason of this Agreement.

#### **7.6 Confidential Information.**

(a) During the term of this Agreement, Group and Group Practitioners may have access to and become acquainted with Trade Secrets and Confidential Information of Hospital. "**Trade Secrets**" includes information and data relating to payor contracts and accounts, clients, patients, patient groups, patient lists, billing practices and procedures, business techniques and methods, strategic plans, operations and related data. "**Confidential Information**" includes Trade Secrets and any information related to the past, current or proposed operations, business or strategic plans, financial statements or reports, technology or services of Hospital or any Affiliate that Hospital discloses or otherwise makes available in any manner to Group or Group Practitioners, or to which Group or Group Practitioners may gain access in the performance of Coverage Services under this Agreement, or which Group or any Group Practitioner knows or has reason to know is confidential information of Hospital or any Affiliate; whether such information is disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information or data is confidential. By way of example, but not limitation, Confidential Information includes any and all know-how, processes, manuals, confidential reports, procedures and methods of Hospital, any Hospital patient's individually identifiable health information (as defined under HIPAA), and any information, records and proceedings of Hospital and/or Medical Staff committees, peer review bodies, quality committees and other committees or bodies charged with the evaluation and improvement of the quality of care. Confidential Information also includes proprietary or confidential information of any third party that may be in Hospital's or any Affiliate's possession.

(b) Confidential Information shall be and remain the sole property of Hospital, and shall, as applicable, be proprietary information protected under the Uniform Trade Secrets Act. Neither Group nor any Group Practitioner shall use any Confidential Information for any purpose not expressly permitted by this Agreement, or disclose any Confidential Information to any person or entity, without the prior written consent of Hospital. Group and Group Practitioners shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Group and any Group Practitioners protects his, her, or its own confidential or proprietary information of a similar nature and with no less than reasonable care. All documents that Group and Group Practitioners prepare, or Confidential Information that might be given to Group and Group Practitioners in the course of providing Coverage Services under this Agreement, are the exclusive property of Hospital, and, without the prior written consent of Hospital, shall not be removed from Hospital's premises.

(c) Group and Group Practitioners shall return to Hospital all Confidential Information and all copies thereof in Group's and Group Practitioners' possession or control, and permanently erase all electronic copies of such Confidential Information, promptly upon the written request of Hospital, or the termination or expiration of this Agreement. Neither Group nor any Group Practitioner shall copy, duplicate or reproduce any Confidential Information without the prior written consent of Hospital.

(d) This Section shall survive the expiration or termination of this Agreement.

**7.7 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**7.8 Disclosure of Agreement.** Neither Group nor any Group Practitioner shall disclose any of the provisions of this Agreement to any person or entity, other than Group's or any Group Practitioner's respective attorneys or accountants, without the prior written consent of Hospital, unless and only to the extent such disclosure is required by law, subpoena or legal process. Neither Group nor Group Practitioners may disclose the provisions of this Agreement to any person or entity without the prior written consent of Hospital except to the extent such disclosure is requested or required by (a) Group's respective contracts existing as of the date of this Agreement; or (b) fiscal intermediaries, public agencies or commissions with governmental powers and duties related to disclosure of information which have the right to compel disclosure of such information.

**7.9 Disclosure of Interests.** Group shall provide to Hospital, as requested by Hospital from time to time, information sufficient to disclose any ownership, investment or compensation interest or arrangement of Group, or any Group Practitioner's immediate family members, in any entity providing "designated health services" (as such term is defined in the Stark Law (42 U.S.C. Section 1395nn) and its regulations) or any other health care services. This Section shall not impose on Hospital any disclosure or reporting requirements or obligations imposed on Group and Group Practitioners under any governmental program or create an assumption of such disclosure obligations by Hospital. Group and Group Practitioners shall have the sole responsibility to fulfill any such federal and/or state reporting requirements or obligations.

**7.10 Dispute Resolution.** In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or the acts or omissions of the Parties with respect to this Agreement (each, a "Dispute"), the Parties shall resolve such Dispute as follows:

(a) **Meet and Confer.** The Parties shall, as soon as reasonably practicable, but in no case more than ten (10) days after one Party gives written notice of a Dispute to the other Party (the "Dispute Notice"), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the "Meet and Confer"). The obligation to conduct a Meet and Confer pursuant to this Section does not obligate either Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be

considered a settlement negotiation for the purpose of all applicable Laws protecting statements, disclosures or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such Laws.

(b) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall submit such Dispute to arbitration conducted by Judicial Arbitration and Mediation Services, Inc. (“JAMS”), or other arbitration and/or mediation services company as agreed to by the Parties, in accordance with the following rules and procedures:

- (i) Each Party may commence arbitration by giving written notice to the other Party demanding arbitration (the “**Arbitration Notice**”). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of actions alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.
- (ii) The arbitration shall be conducted in the County in which the Hospital is located and in accordance with the commercial arbitration rules and procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) to the extent such rules and procedures are not inconsistent with the provisions set forth in this Section. In the event of a conflict between any rules and/or procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) and the rules and/or procedures set forth in this Section, the rules and/or procedures set forth in this Section shall govern.
- (iii) The arbitration shall be conducted before a single impartial retired member of the JAMS panel of arbitrators (or panel of arbitrators from such other arbitration company as mutually agreed to by the Parties) covering the County in which a Hospital is located (the “**Panel**”). The Parties shall use their good faith efforts to agree upon a mutually acceptable arbitrator within thirty (30) days after delivery of the Arbitration Notice. If the Parties are unable to agree upon a mutually acceptable arbitrator within such time period, then each Party shall select one arbitrator from the Panel, and those arbitrators shall select a single impartial arbitrator from the Panel to serve as arbitrator of the Dispute.
- (iv) The Parties expressly waive any right to any and all discovery in connection with the arbitration; provided, however, that each Party shall have the right to conduct no more than two (2) depositions and submit one set of interrogatories with a maximum of forty (40) questions, including subparts of such questions.

- (v) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator. The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute, and the Evidence Code of the State shall apply to all testimony and documents submitted to the arbitrator. The arbitrator shall have no authority to amend or modify the limitation on the discovery rights of the Parties or any of the other rules and/or procedures set forth in this Section. As soon as reasonably practicable, but not later than thirty (30) days after the arbitration hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the Parties and their respective legal counsel.
- (vi) Any Party may apply to a court of competent jurisdiction for entry and enforcement of judgment based on the arbitration award. The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the Arbitration Act of the State.
- (vii) The fees and costs of JAMS (or other arbitration company as mutually agreed to by the Parties) and the arbitrator, including any costs and expenses incurred by the arbitrator in connection with the arbitration, shall be borne equally by the Parties, unless otherwise agreed to by the Parties.
- (viii) Except as set forth in Section 7.10(b)(vii), each Party shall be responsible for the costs and expenses incurred by such Party in connection with the arbitration, including its own attorneys' fees and costs; provided, however, that the arbitrator shall require one Party to pay the costs and expenses of the prevailing Party, including attorneys' fees and costs and the fees and costs of experts and consultants, incurred in connection with the arbitration if the arbitrator determines that the claims and/or position of a Party were frivolous and without reasonable foundation.

(c) **Waiver of Injunctive or Similar Relief.** The Parties hereby waive the right to seek specific performance or any other form of injunctive or equitable relief or remedy arising out of any Dispute, except that such remedies may be utilized for purposes of enforcing this Section and sections governing Compliance with HIPAA, Confidential Information, Disclosure of Agreement, Compliance with Laws and Accreditation and Compliance with Medicare Rules of this Agreement. Except as expressly provided herein, upon any determination by a court or by an arbitrator that a Party has breached this Agreement or improperly terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief and remedy, to the exclusion of specific performance or any other form of injunctive or equitable relief or remedy.



(d) **Injunctive or Similar Relief.** Notwithstanding anything to the contrary in this Section, the Parties reserve the right to seek specific performance or any other form of injunctive relief or remedy in any state or federal court located within the County in which a Hospital is located for purposes of enforcing this Section and sections governing Compliance with HIPAA, Confidential Information, Disclosure of Agreement, Compliance with Laws and Accreditation and Compliance with Medicare Rules of this Agreement. Group and each Group Practitioner hereby consent to the jurisdiction of any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within the State, and consents to the service of process in any such action or proceeding, in addition to any other manner permitted by applicable Law, by compliance with the notices provision of this Agreement. The non-prevailing Party in any such action or proceeding shall pay to the prevailing Party reasonable fees and costs incurred in such action or proceeding, including attorneys' fees and costs and the fees and costs of experts and consultants. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction), whether or not the action or proceeding proceeds to final judgment or award.

(e) **Survival.** This Section shall survive the expiration or termination of this Agreement.

**7.11 Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties with respect to such subject matter. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**7.12 Exhibits and Attachments.** The attached exhibits and attachments, together with all documents incorporated by reference in the exhibits and attachments, form an integral part of this Agreement and are incorporated by reference into this Agreement.

**7.13 Force Majeure.** Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.

**7.14 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**7.15 Income Tax Ramifications.** The Parties acknowledge that Group may incur federal and state income tax liabilities from certain of the transactions contemplated by this

Agreement, and that Hospital is or may be required to report items of income to Group under relevant income tax laws and regulations. The Parties acknowledge and agree that Hospital has not made any representation to Group with respect to the tax implications of the transactions contemplated by this Agreement, and that statements made by Hospital or its agents, employees, representatives or attorneys shall not be relied upon by Group, and shall not be interpreted or construed as tax advice to Group.

**7.16 Litigation Consultation.** Neither Group nor any Group Practitioner shall accept consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named as a defendant. Neither Group nor any Group Practitioner shall accept similar consulting assignments if (a) the defendants or anticipated defendants include a member of the medical staff of Hospital or any Affiliate, and (b) the matter relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which any Group Practitioner or any employee of Group served as a treating physician.

**7.17 Master List.** The Parties acknowledge and agree that this Agreement, together with any other contracts between Hospital and Group, will be included on the master list of physician contracts maintained by Hospital.

**7.18 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified: (i) "days" shall be considered "calendar days;" (ii) "months" shall be considered "calendar months;" and (iii) "including" means "including, without limitation" in this Agreement and its exhibits and attachments.

**7.19 No Conflicting Obligations.** Group represents and warrants that the execution and delivery of this Agreement and the performance of its obligations hereunder do not and will not: (a) present a conflict of interest or materially interfere with the performance of its or any Group Practitioner's duties under any other agreement or arrangement; or (b) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any other agreement, indebtedness, note, bond, indenture, security or pledge agreement, license, franchise, permit, or other instrument or obligation to which Group or any Group Practitioner is a party or by which Group or any Group Practitioner is bound. Group shall immediately inform Hospital of any other agreements to which Group or any Group Practitioner is a party that may present a conflict of interest or materially interfere with performance of either Group's or a Group Practitioner's duties under this Agreement.

**7.20 Non-Discrimination.** Neither Group nor any Group Practitioner shall differentiate or discriminate in the provision of medical services on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law or regulation, or Hospital Rules, including, without

limitation, the Age Discrimination Act of 1975, the Americans with Disabilities Act and all regulations issued pursuant thereto and as may be amended from time to time. Group, each Group Practitioner and Hospital shall be in full compliance with Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the 1964 Civil Rights Act, and all regulations issued pursuant thereto and as may be amended from time to time.

**7.21 No Third Party Beneficiary Rights.** This Agreement shall not confer or be construed to confer any rights or benefits to any person or entity other than the Parties.

**7.22 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and shall be delivered to the Party to whom notice is to be given either: (a) by personal delivery (in which case such notice shall be deemed given on the date of delivery); (b) by next business day courier service (e.g., Federal Express, UPS or other similar service) (in which case such notice shall be deemed given on the business day following date of deposit with the courier service); or (c) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed given on the third (3<sup>rd</sup>) day following the date of deposit with the United States Postal Service). In each case, notice shall be delivered or sent to the address indicated on the signature page, or such other address as provided by a Party, from time to time, pursuant to this Section.

**7.23 Participation in Federal Health Care Programs.** Group hereby represents that neither Group nor any Group Practitioner is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program.

**7.24 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties' agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.

**7.25 Right of Offset.** Group hereby expressly authorizes Hospital, at Hospital's sole discretion, to the fullest extent allowed by applicable law, at any time and from time to time, to set off and/or withhold from Group's compensation payable pursuant to this Agreement, any sum or sums necessary to satisfy all or any portion of any outstanding and delinquent obligation owed by Group to Hospital from any other financial arrangement Group may have with Hospital, its subsidiaries or Affiliates, or for any other services or space or equipment rental Hospital, its subsidiaries or Affiliates, may provide or have provided to Group. Without limiting the generality of the foregoing, this provision is intended to permit Hospital to apply any compensation payable to Group for services rendered pursuant to this Agreement to any outstanding loan or rental obligations owed by Group to Hospital.

**7.26 Severability.** Subject to Section 6.4, if any provision of this Agreement, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such

provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Agreement, including the remainder of such provision not determined to be illegal, invalid or unenforceable. If Section 6.4 is applicable, this Section shall not be enforced.

**7.27 Statutes and Regulations.** Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

**7.28 Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

The Parties have executed this Agreement as of the last date written below, and signify their agreement with duly authorized signatures.

**HOSPITAL**

TULARE HEALTH CARE DISTRICT, a  
California, and local health care district, d/b/a  
Tulare Regional Medical Center

Date: \_\_\_\_\_

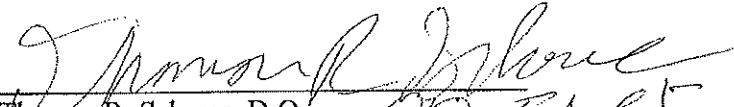
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Hospital Address:  
869 N. Cherry Street  
Tulare, CA 93274

**GROUP**

THOMAS R. SCHERER, D.O., INC.,  
a California professional corporation

Date: Jan 31, 2019

By:   
Its: CEO P.O. FAC5

Group Address:  
17806 Idaho Ave  
Lemoore, CA 93245

Exhibit 1.2(a)

**LETTER OF ACKNOWLEDGEMENT**

Interim Chief Executive Officer  
Tulare Regional Medical Center  
869 N. Cherry Street  
Tulare, CA 93274

Ladies and Gentlemen:

I acknowledge that TULARE LOCAL HEALTHCARE DISTRICT, a California local healthcare district, d/b/a Tulare Regional Medical Center (“**Hospital**”), and Thomas R. Scherer, D.O., INC., a California professional corporation (“**Group**”) have entered into a Call Coverage Agreement (“**Agreement**”) under which Group shall perform Coverage Services (as defined in the Agreement), and that I have been engaged by Group to provide Coverage Services as a “Group Practitioner” (as defined in the Agreement). In consideration of Hospital’s approval of me as a Group Practitioner eligible to furnish Coverage Services, I expressly:

1. acknowledge that I have read the Agreement, and agree to be bound by and comply with all of the requirements of the Agreement applicable to Group Practitioners;
2. acknowledge that I have no employment, independent contractor or other contractual relationship with Hospital, that my right to practice in Hospital as a Group Practitioner is derived solely through my employment or contractual relationship with Group, and that Hospital has approved my acting as a Group Practitioner as provided in the Agreement;
3. acknowledge that Hospital has reserved the right to cause Group to remove me as a Group Practitioner at any time without cause upon written notice to me, and understand that Hospital may do so without compliance with any rules or procedures of the Hospital’s Medical Staff bylaws, except to the extent Hospital reasonably determines that my removal is reportable to the State’s Medical Board pursuant to the reporting requirements set forth in the State (the “Reporting Requirements”);
4. acknowledge that upon the termination or expiration of the Agreement, notwithstanding the fact that such termination or expiration will not have any independent effect on my Medical Staff membership or clinical privileges, my right to continue to provide Coverage Services in the Department will immediately terminate, without any action on the part of Hospital and/or the Medical Staff and without the right to a “fair hearing” or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determines that withholding of approval is reportable pursuant to the Reporting Requirements;
5. acknowledge that upon the termination of my employment or other affiliation with Group, notwithstanding the fact that such termination will not have any independent effect on my Medical Staff membership or clinical privileges, my right to continue to provide Coverage

Services in the Department will immediately terminate, without any action on the part of Hospital and/or the Medical Staff and without the right to a "fair hearing" or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determines that such termination is reportable pursuant to the Reporting Requirements;

6. with regard to all of the foregoing, I expressly waive any right to assert that any termination of my status as a Group Practitioner requires Hospital to comply with any procedures whatsoever under the Medical Staff bylaws, except to the extent Hospital reasonably determines that such termination is reportable pursuant to the Reporting Requirements.

Sincerely,

---

Thomas R. Scherer, D.O.

**Exhibit 1.8**

**EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF GROUP**

**Exhibit 1.9 (a)**

**CALL COVERAGE RULES**

**Definitions:**

1. **Unassigned Patient:** A patient who does not identify a physician in the community and on the Medical Staff who is taking care of their medical needs. If a patient has a continuity relationship with a primary care physician (Internal Medicine, Family Practice, Pediatrics, or Obstetrician/Gynecologist) then they are to be considered "assigned". (Note: For "assigned" patients, the Primary Care Physician should be notified if a patient is admitted to Hospital.)
2. **Consultation:** Providing evaluation and recommendations to either the Emergency Department ("ED") physician or the primary care doctor or another specialist at their request. The ED physician may request a consult by a primary care doctor for a patient in the emergency room. In the ED, a consultant may make recommendations regarding the care of a patient but the ED physician remains responsible for that patient's care unless he has requested that the consultant assume care and the consultant agrees. This hand off of responsibility must be documented in the medical record by both physicians.
3. **Hospitalist:** A physician who is under contract with the Hospital to assume primary care responsibility for unassigned patients presenting to the ED if requested to do so by the ED physician. A Hospitalist may also assume responsibility for the care of a patient that has a primary care physician if asked by the primary care to assume care and if doing so is in accordance with contractual agreements or other agreements to provide coverage.

**Rules:**

1. The Emergency Department physician will be the gatekeeper for all transfers and consultations by specialists and will follow the EMTALA Policies of Hospital.
2. All unassigned patients transferred to our hospital from other hospitals for admission will be admitted to a primary care physician, generally a hospitalist.
3. Specialists who are On Call will provide consultation to the primary care/admitting physician when requested to do so.
4. Response time for consultation, either to the primary care physician or the Emergency Department physician is defined in the Medical Staff Rules and By-Laws, but in no event later than Thirty (30) minutes from request by the Hospital.
5. A physician may not provide Local On Call Services at more than one hospital simultaneously.



6. A Specialist providing On Call Services must be available to provide telephone advice to an Emergency Department physician in a timely manner, but in no event later than Thirty (30) minutes. If the Specialist does not have privileges at the hospital where they are providing telephone advice that conversation is not a formal consultation and does not imply any doctor-patient relationship. The responsibility for providing care to the patient remains with the Emergency Department physician. Such telephone advice is provided in a collegial manner and should be intended to address the treatment of a medical condition in general and not specifically relating to a particular patient.
7. On Call Hours are 7 AM to 7 AM unless specifically stated in the On Call Agreement.
8. An On Call Physician is responsible for making an appropriate hand-off to the next physician who will be on call if a specific treatment plan has not yet been chosen and if further specialty consultation or advice is needed.
9. If a consultation is requested near the end of an on call period, i.e. between 4 AM and 7 AM, the On Call Physician is responsible for completing the care of the patient, unless an agreement has been made between the physician going off call with the physician coming on to call so that the care of the patient will continue and not be interrupted.
10. The Hospital will make arrangements so that a Specialist who is On Call can have preference in scheduling surgical cases for patients that they become responsible for as a result of their on call agreement.

Note: These definitions and rules relating to On Call activities will be incorporated into On Call Agreements as appropriate. It is understood that these conditions of being On Call are dynamic and may require changes over the near and/or long term.

**Exhibit 2.10**

**CODE OF CONDUCT**

**See Attached.**

**Exhibit 3.1**

**COMPENSATION**

**Coverage Stipend.** Hospital shall pay to Group an amount equal to One Thousand Dollars (\$1,000.00) per diem for Coverage Services provided during Practitioner's regular call schedule pursuant to this Agreement (the "**Stipend Compensation**"); provided, however, that Hospital shall have no obligation to pay the Stipend Compensation to Group for Coverage Services provided in any given month if Group fails to submit a Monthly Report in accordance with Section 3.2 of this Agreement within sixty (60) days after the end of such month.

**Exhibit 3.2**

**MONTHLY REPORT**

**Group Practitioner's Name:** \_\_\_\_\_

**Coverage Services Provided:** \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)

|    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|
| 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  |
| 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |    |

Each twenty-four (24) hour period commences at 7:00 a.m. on the indicated day and ends at 7:00 a.m. on the following day.

**THIS IS TO CERTIFY THAT THE ABOVE IS AN ACCURATE REPORT OF THE  
COVERAGE SERVICES PROVIDED BY GROUP PRACTITIONER DURING THE  
PERIOD OF THIS REPORT.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Group Practitioner's Signature

**Exhibit 3.5**

**EXECUTED IRS FORM W-9**

*See Attached.*