

MERCY HOSPITAL FORT SMITH
RESIDENT AGREEMENT

«Department»

THIS RESIDENT AGREEMENT (“Agreement”) is entered into and effective July 1, 20XX (“Effective Date”) by and between Mercy Hospital Fort Smith, an Arkansas nonprofit corporation (“Hospital”), and «First_Name» «Last_Name», «Degree» (“Resident Physician”).

For and in consideration of the promises, covenants, and agreements set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. RESIDENT PROGRAM.

Hospital hereby agrees to accept Resident Physician for participation in a graduate medical education residency training program in «Department» (“Program”). The Program meets the standards of the Essentials of Approved Residencies, prepared by the Council on Medical Education of the American Medical Association and implemented by the Residency Review Committee of the Accreditation Council on Graduate Medical Education (“ACGME”). Further, Hospital agrees to provide a suitable environment for an educational experience in the designated Program in which Resident Physician is participating.

2. DUTIES OF RESIDENT PHYSICIAN.

During the Term of this Agreement, Resident Physician shall, during the hours assigned to Resident Physician by the Program Director (including night float or night call), perform the duties outlined in this Agreement at such locations as Hospital directs for the purpose of educating the Resident Physician, delivering and participating in inpatient care, and complying with the recommendations and policies of the applicable Program Residency Physician Review Committee. Specific work hours may vary but will be delineated by the Program Director in compliance with ACGME and Hospital’s Graduate Medical Education (“GME”) written policies, including but not limited to those policies contained in the Hospital’s Policy and Procedure Guide for GME Programs for Physicians (“GME Guide”). Resident Physician agrees to maintain time records as required by the Program Director to verify compliance with all Hospital and ACGME duty hour regulations. Resident Physician will also, subject to the direction and discretion of Hospital, satisfy the requirements and perform the functions and duties assigned to Resident Physician by Hospital. Such functions and duties shall include, without limitation:

- 2.1 Resident Physician will be authorized to use Hospital’s DEA registration number with the appropriate suffix of code letters as assigned, such use to be limited to permitted administration and prescribing of controlled substances within the scope of Resident Physician’s patient care responsibilities arising out of participation in the Program under this Agreement.

- 2.2 Resident Physician shall hold certifications in Advanced Cardiac Life Support (ACLS) and Basic Life Support (BLS) by the American Heart Association before they may participate in the Program.
- 2.3 Resident Physician shall (a) perform Resident Physician's staff services and other assignments under the direction of respective Department Chairman and/or Program faculty physicians as assigned and scheduled; (b) attend and actively participate in the regular teaching conferences, ward rounds, seminars, research endeavors and assigned clinics as prescribed by the Program Director or Department Chairman; (c) comply with the recommendations of the Residency Review Committee of each department charged with the evaluation of the clinical skills and competency of Resident Physician; (d) participate in education and supervision of residents and medical students; (e) participate on institutional committees to which Resident Physician is appointed; and (f) participate in quality improvement, utilization management, risk management and other Program and/or Hospital activities.
- 2.4 Resident Physician shall conform to the standards of professional scholarship and decorum as prescribed by Hospital's Office of GME and shall comply with the GME policies and procedures and directions of the applicable Department Chairman and/or Program Director.
- 2.5 Resident Physician shall comply with Hospital's policies, rules and regulations dealing with maintenance and completion of medical records and the timely return of books and journals borrowed from Hospital's library. Resident Physician shall discharge all indebtedness to Hospital, such as satisfying any outstanding charges, returning borrowed equipment, loaned library books, and other property of Hospital, prior to the end of the Term of this Agreement.
- 2.6 Resident Physician shall abide by and be subject to all policies and procedures for discipline and redress of grievances including gender or other forms of harassment included in the GME Guide, the rules, regulations and human resources policies and procedures as established and amended by Hospital from time to time. To the extent of any inconsistency in the terms of the GME Guide and Hospital's human resources policies and procedures, the provisions of the GME Guide will apply to the matter in question.
- 2.7 Resident Physician shall (a) not assume attending physician medical practice responsibilities or engage in Resident Physician's own practice of medicine or cover medical practice of another physician; and (b) not engage in other types of employment (e.g., performing physical exams, employment in Hospital, other hospitals, emergency centers, moonlighting etc.). Any deviation from the foregoing policy must be approved in writing by Resident Physician's applicable Program Director and must comply with the GME Guide or other applicable Hospital GME medical policies. If approved, such activities must not interfere with

Resident Physician's obligation to Hospital, impair the effectiveness of the educational program engaged in, or cause detriment to the service and/or interests of the Hospital.

- 2.8 Resident Physician shall keep and maintain (or cause to be kept and maintained) appropriate records relating to all professional services rendered by Resident Physician and relating to all billing reports, claims, and correspondence required in connection with Resident Physician's performance of services rendered under this Agreement.
- 2.9 Resident Physician shall maintain the confidentiality, privacy and security of patient records and information as required by law, regulation and Hospital's policies and procedures, including but not limited to, Hospital's policies and procedures regarding compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the Privacy and Security Standards (45 C.F.R. Parts 160 and 164) and the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) (collectively, the "Standards") promulgated or to be promulgated by the Secretary of Health and Human Services on and after the applicable effective dates specified in the Standards; and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act").
- 2.10 Resident Physician shall comply in all material respects with all laws, rules, regulations, and accreditation standards applicable to Resident Physician or Hospital and with the applicable bylaws, rules, regulations, Code of Conduct, and policies and procedures of Hospital, whether now in force or hereafter adopted or amended. Resident Physician acknowledges that Hospital follows the Ethical and Religious Directives for Catholic Health Care Services (the "Directives"), a copy of which is available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>. Resident Physician shall adhere to the Directives with respect to health care services provided at Hospital pursuant to this Agreement and specifically shall not participate in treatment where the intended, direct, and sole immediate effect is to bring about human death (abortion or euthanasia). This does not preclude Resident Physician from informing a patient of all treatment options.
- 2.11 Resident Physician shall perform in a diligent and timely manner the duties set forth herein. Performance standards will be established by the Program Director. Performance evaluations will be performed by Hospital's faculty and reviewed with the Resident Physician. If at any time Resident Physician's academic performance is not in compliance with such standards, such that it threatens the successful Program matriculation or advancement of Resident Physician within the Program, Resident Physician shall be advised in writing by such Program Director. This written notice shall become part of Resident Physician's Program record. Upon Resident Physician's receipt of such notice regarding academic performance, Resident Physician may be placed on academic probation which shall last at least

three (3) months and not more than six (6) months. In addition, a remedial education program will be developed for the Resident Physician. If after completion of the academic probation and the remedial program Resident Physician fails to correct deficiencies, Resident Physician may be terminated upon written notice.

If at any time Resident Physician's non-academic performance is not in compliance with the performance standards established by the Program Director, Resident Physician shall receive written notice of such failure to comply with such standards. If Resident Physician receives more than two (2) such written notices regarding non-academic performance, and fails to correct such deficiencies, Hospital, in its sole and absolute discretion, may terminate this Agreement. Resident Physician may be immediately terminated in the reasonable discretion of Program Director due to concerns for patient safety or any reason consistent with ACGME standards. The Graduate Medical Education Committee will retain review authority in all cases.

Hospital will provide Resident Physician with the opportunity to address grievances including gender or other forms of harassment and/or appeal any disciplinary action in accordance with provisions set forth in the GME Guide.

3. COMPENSATION AND BENEFITS.

- 3.1 Resident Physician shall be compensated for Resident Physician's duties pursuant to the terms set forth on Exhibit A attached hereto, and such compensation shall be reviewed on an annual basis.
- 3.2 In addition to the compensation set forth on Exhibit A, Resident Physician shall, during the Term of this Agreement, be entitled to the fringe benefit programs afforded to similarly situated Hospital coworkers, including those benefits set forth on Exhibit B, subject in each case to any applicable eligibility requirements and pursuant to and in compliance with all Hospital policies regarding employed resident's benefits, as may be amended or revised in the sole discretion of Hospital from time to time.
- 3.3 Hospital shall provide meals for Resident Physician, at no cost to Resident Physician subject to Hospital's designated per-diem amount, only while Resident Physician is on duty at the Hospital. This per diem allowance may be used at the Hospital's main cafeteria and café(s).

4. TERM & TERMINATION.

- 4.1 As used herein, "Term" shall mean the period commencing on the Effective Date of July 1, 20XX, and ending on June 30, 20XX, unless earlier terminated pursuant to Section 4.2 below. If in the sole discretion of the Hospital, Resident Physician has fulfilled all of the terms and conditions set forth in this Agreement, Resident

Physician will be reappointed for another year unless Resident Physician completes the final year of accredited training applicable to the Program. If Hospital determines that the Resident Physician's Agreement shall not be renewed for an additional period of twelve (12) months, Hospital shall provide Resident Physician with written notice of non-renewal of this Agreement no later than four (4) months prior to the end of the of the Term of this Agreement; provided, however, if the primary reason(s) for the non-renewal occurs within the four (4) months prior to the end of the Term, Hospital shall provide Resident Physician with that amount of written notice of non-renewal of this Agreement as the circumstances will reasonably allow.

In the event of termination or non-renewal, Resident Physician may implement the grievance procedures in accordance with and as set forth in the GME Guide, upon Resident Physician's receipt of written notice of termination or intent not to reappoint or renew this Agreement.

- 4.2 This Agreement shall terminate upon the first to occur of the following:
- (a) termination by Hospital upon the date of death of Resident Physician; or
 - (b) termination by either party by one party providing notice to the other stating the effective date of termination in the event Resident Physician has become Physically Disabled. "Physically Disabled" for the purposes of this Section 4.2(b) shall mean that Resident Physician has suffered from an injury, accident, illness or condition such that in the determination of a physician selected by Hospital and Resident Physician (or Resident Physician's representative), Resident Physician is unable, with or without reasonable accommodation, to perform the essential functions of Resident Physician's position; or
 - (c) termination by Hospital in accordance with Sections 2.11, 7.1, or 7.2; or
 - (d) termination by either party with cause or upon the other party's breach of this Agreement which remains uncorrected for ten (10) days following written notice of said breach to the breaching party, provided, however, that Resident Physician shall be entitled to implement the grievance procedures in accordance with and as set forth in the GME Guide; or
 - (e) termination by either party without cause at the end of any calendar month upon at least sixty (60) days prior written notice to the other stating the effective date of termination, which such date shall not be earlier than sixty (60) days from date of the written notice and shall be effective at the end of the applicable calendar month.
- 4.3 In the event this Agreement is terminated in accordance with Section 4.2, Hospital shall no longer be obligated to make any additional payments hereunder or

otherwise. Any amounts earned hereunder by, but not yet paid to, Resident Physician shall be paid by Hospital to Resident Physician or, in the event of Resident Physician's death such amounts shall be paid to Resident Physician's surviving spouse, if any, or if none, to Resident Physician's estate; and Resident Physician or Resident Physician's surviving spouse or estate, as applicable, shall pay any amount or amounts then owed by Resident Physician to Hospital.

5. INSURANCE AND INDEMNITY.

- 5.1 Hospital hereby agrees to purchase or provide, in Hospital's sole discretion, medical professional liability coverage either through a funded self-coverage program or commercial insurance, in either case, subject to the terms and conditions thereof, covering Resident Physician's participation in the Program in the minimum amounts of \$1,000,000 per claim and a minimum aggregate amount of \$3,000,000, which shall be maintained on either (a) a "claims made" basis, or (b) an "occurrence" basis, both of which shall cover Resident Physician against claims arising out of the rendering of or failure to render the services and obligations that are within the scope of Resident Physician's duties specified in this Agreement. Hospital shall be named as an additional insured under any commercial policy. In the event such medical professional liability coverage, is maintained on other than an occurrence basis, Hospital will procure continuing coverage by obtaining subsequent policies which have a retroactive date of coverage equal to the retroactive date of the insurance policy in effect as of the Effective Date of this Agreement, by obtaining an extended reporting endorsement ("tail"), applicable to the coverage provided to Resident Physician and maintained by Hospital during the Term of this Agreement, or by such other method reasonably acceptable to the Hospital covering Resident Physician against claims arising out of the rendering of or failure to render the services and obligations that are within the scope of Resident Physician's duties specified in this Agreement.
- 5.2 Resident Physician and Hospital understand and agree that Hospital has no obligation to defend and indemnify Resident Physician against any costs that Resident Physician becomes obligated to pay because of injuries arising out of the rendering of, or failure to render professional services, in connection with activities of Resident Physician outside of the scope of Resident Physician's participation in the Program and performance of duties specified in this Agreement, if any. Upon termination of this Agreement for any reason, the insurance coverage provided by Hospital pursuant to Section 5.1 shall terminate except as set forth in Section 5.1.

6. NONDISCLOSURE OF CONFIDENTIAL INFORMATION.

Resident Physician understands and acknowledges that Resident Physician will have access to confidential information concerning Hospital's business (including the information contained in this Agreement) and that Resident Physician has a duty at all times not to use such information in competition with Hospital or to disclose such information or permit such

information to be disclosed to any other person, firm, corporation, or other third party during the Term or at any time thereafter.

7. ADDITIONAL PROVISIONS.

- 7.1 This Agreement is conditioned upon Resident Physician successfully completing all pre-employment requirements in accordance with Hospital policies. If Resident Physician has not complied with or met all requirements of such pre-employment requirements, Hospital, in its sole discretion and upon written notice to Resident Physician, may terminate this Agreement.
- 7.2 Resident Physician represents and warrants to Hospital that Resident Physician is not: excluded from participation in any federal health care program; debarred, suspended, terminated or otherwise excluded from participating in any other federal or state procurement or nonprocurement program or activity; or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Program of Treasury. Resident Physician further represents and warrants to Hospital that to Resident Physician's knowledge, there are no pending or threatened governmental investigations that may lead to such suspension, termination or exclusion. Resident Physician shall notify Hospital in writing upon the commencement of any such exclusion, suspension, termination or investigation within five (5) business days of receiving first notice of such exclusion, suspension, termination or investigation. Hospital shall have the right to terminate this Agreement immediately upon learning of any such investigation or actual exclusion, suspension or termination and shall be kept informed of the status of any such investigation.
- 7.3 The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties, except as may be specifically provided to the contrary, provided, however, at the request of Hospital, Resident Physician shall execute such additional instruments and take such additional acts as Hospital may deem necessary, to effectuate this Agreement.
- 7.4 Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.
- 7.5 In the event that either party elects to incur legal expenses to enforce at cost of party seeking interpretation any provision of this Agreement, the prevailing party will be entitled to recover such legal expenses, including, without limitation, reasonable attorney's fees, costs, and necessary disbursements, in addition to any other relief to which such party shall be entitled.
- 7.6 Whereas Hospital's principal place of business in regard to this Agreement and the location of the final act to effectuate this Agreement are in the City of Fort Smith,

- 7.11 The divisions of this Agreement into articles and sections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.
- 7.12 This Agreement supersedes all previous contracts and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties respecting the subject matter hereof. No party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that in entering into and executing this Agreement, each is relying solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.
- 7.13 All case records, charts and personal files concerning patients of Hospital shall be and shall remain the property of Hospital and as such shall not be removed from Hospital, copied, or disclosed by Resident Physician. Any use or access of such records or information by Resident Physician shall be limited to use and access necessary to perform Resident Physician's duties under this Agreement. Upon termination of this Agreement for any reason, Resident Physician shall not retain, copy, or otherwise use records, charts or information related to any patient without the written consent of Hospital and any such consent granted by Hospital must in accordance with HIPAA, the Standards and the HITECH Act.
- 7.14 Resident Physician shall provide Hospital with time records or other documentation on a regular basis as required by the Medicare program which reflects the time the Resident Physician spends in furnishing Program services to Hospital, including, without limitation, Resident Physician's services to patients and services that are not reimbursable under the Medicare program (such as research). Such records shall be maintained by Hospital for review by the Medicare intermediary, if requested.
- 7.15 The parties agree that if future legislation is enacted or regulations or clarifying legislation are promulgated by a government agency with authority to enforce the legislation or a decision of a court is rendered (a "Change in Law") that, in the opinion of Hospital or Resident Physician's legal counsel, affects or may affect the legality of this Agreement or adversely affect the ability of either party to perform its obligations or receive the benefits intended hereunder, then as soon as reasonably practical following written notice by such counsel to the parties, the parties shall meet to negotiate in good faith an amendment or substitute agreement to implement the original intention of the parties to the extent possible in light of the Change in Law.

7.16 The Hospital policies and procedures affecting Resident Physician, including but not limited to the GME Guide may be revised by Hospital from time to time, in Hospital's sole discretion and such revisions will be made available to Resident Physician.

The parties hereto have caused this Agreement to be executed as of the day and year first above.

MERCY HOSPITAL FORT SMITH

RESIDENT PHYSICIAN

By: _____
Ryan Gehrig
President, Mercy Hospital Fort Smith

Name: «First_Name» «Last_Name»,«Degree»

EXHIBIT A
COMPENSATION

EFFECTIVE JULY 1 , 20XX

POST GRADUATE YEAR

PGY- «PGY_Status»

ANNUAL SALARY

\$X.XX

**EXHIBIT B
BENEFITS**

The following is a brief summary of benefits offered to Resident Physician under this Agreement. Reference should be made to the benefits package supplied by Hospital for a full explanation of each benefit and definitions of certain terms. Each benefit described herein is subject to the terms, qualifications, limitations and conditions of Mercy Hospital Fort Smith benefit programs, as amended from time to time, and benefits may be changed modified, terminated, increased or decreased provided that no benefit accrued at the time of the amendment or modification will be decreased.

Resident Physician shall be entitled to participate in all benefits normally afforded to similarly situated Hospital co-workers to include:

- Health Care Coverage
- Dental Coverage
- Vision Coverage
- Life Insurance and Accidental Death and Dismemberment
- Long Term Disability Insurance
- Medical and Dependent Spending Accounts

Hospital will also provide referrals for counseling and psychological support services for Resident Physician in circumstances, including, but not limited to physician impairment.

Vacation/Sick

Resident Physician is eligible for three (3) weeks (Monday-Sunday) or fifteen (15) days (weekdays) of vacation per year; and one (1) week (Monday-Sunday) or five (5) days (weekdays) of sick leave per year. Vacation time or sick time, which is not utilized in a year, may not be carried over to subsequent years.

Leaves of Absence

Resident Physician is eligible for leaves of absence for medical or personal reasons. When applicable, medical leaves are issued in accordance with the Family and Medical Leave Act. For leaves of absence due to Resident Physician's personal illness, all available sick time will first be paid. Other available benefit hours must then be utilized prior to any unpaid time. In all events, Resident Physician must make-up the training requirements of the Program in accordance with ACGME and/or the Program's Certifying Board requirements at the discretion of the Program Director.

Educational Elective

The purpose of this specially granted elective is to improve knowledge, to learn a technical advancement or to acquire a new technical expertise. An Educational elective is reserved for residents in the final year of training and is granted in the sole discretion of the Chairman of the Department.

Initialed Hospital: _____ Initialed Resident Physician: _____