

# ANESTHESIOLOGY AGREEMENT

This ANESTHESIOLOGY AGREEMENT (“Agreement”), is made and entered into in **<City, State>**, effective \_\_\_\_\_, by and between **<Facility Name>**, a **<State>** Limited Liability Company, and **<Anesthesia Group and Address>** (“Group”).

## RECITALS

- A. The Surgery Center (“Center”) is located at **<Facility Address>** and is duly licensed and qualified to provide outpatient surgical facility services in the State of **<State>**. As part of the Center’s services, Center has wishes to enter into a contractual arrangement with Group to provide anesthesia (“Anesthesia”) services to those patients requiring such services upon admission to the Center.
- B. Group is a professional medical organization duly organized and qualified to practice medicine under the laws of the State of **<State>**, whose physicians, physician employees, and contractors are duly qualified and licensed to practice medicine in the State of **<State>**, and are experienced and specialized in the practice of anesthesiology.
- C. Center and Group desire that Group provide a Medical Director for Anesthesia (“Medical Director”).
- D. Center has determined that entering into an exclusive Agreement with Group is appropriate way to assure satisfaction of the following objectives:
  - 1. Adequate supervision and proper and consistent administration of Anesthesia;
  - 2. Necessary control and standardization of procedures performed by Anesthesia;
  - 3. Appropriateness and consistency of supervision and training of Anesthesia personnel;
  - 4. Enhanced rapport, communication, teamwork, and morale among Anesthesia personnel, the Medical Director, Center nursing and administrative staff, the management company, and physicians providing services in the Center;
  - 5. Appropriate availability of anesthesiology services at the Center;
  - 6. Efficient and full use of Anesthesia equipment;
  - 7. Reduced equipment and supply costs to operate Anesthesia services; and,
  - 8. Enhancement of the overall quality of patient care at the Center.
- E. The parties desire to enter into this Agreement in order to provide a full statement of their respective responsibilities in connection with the rendering of Anesthesia Services during the term hereof.

# ANESTHESIOLOGY AGREEMENT

## AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises herein contained, the parties agree as follows:

### **Section 1: Center's Responsibilities**

- 1.1 Space. Center shall make available for the use by the Group during the term hereof space which Center and Group deem necessary for the proper and efficient rendering of Anesthesia Services.
- 1.2 Furniture, Fixtures, and Equipment.
  - a. Center shall provide for use by the Group such furniture, fixtures, and equipment as are reasonably necessary for the proper and efficient rendering of Anesthesia Services and to ensure that Anesthesia Services are provided consistently within industry and community standards. Group shall not, without the prior approval of Center, obligate or commit Center for the purchase, acquisition, or pilot trial of equipment.
  - b. Center shall maintain Anesthesia equipment in good working order and repair and shall be responsible for the inspection of such equipment. Without detracting from Center's responsibility to inspect the equipment, Medical Director shall advise Center administration if a need for repairs, calibration, or non-routine maintenance is observed. Group shall operate the Anesthesia equipment in a safe and proper manner.
- 1.3 Services and Supplies. Center shall provide Anesthesia Services with ordinary utilities and services, including janitorial, secretarial, clerical, technical support, infectious and hazardous waste disposal, in-house messenger service, electricity, gas, telephone, water, heat and air-conditioning, and the drugs and other expendable supplies that Center and Group deem necessary for the proper and efficient rendering of Anesthesia Services and conduct of said services. The procurement of services and supplies shall be subject to Center's usual purchasing practices, and Group shall not, without the prior approval of Center, order, obligate, or commit Center for the purchase or pilot trial of services or supplies.
- 1.4 Personnel. Except as otherwise provided in Section 2.1 of this Agreement, Center shall employ the nurses and the technical, paramedical, and other non-physician personnel necessary for the proper and efficient operation of the Center. All such personnel shall be employees or independent contractors of Center, and Center shall be solely responsible for any and all salaries, other compensation, employer's payroll taxes, workers' compensation coverage, and other fringe benefits to which such personnel may be entitled as employees or contractors of Center. The selection, retention, and termination of such personnel shall be the sole responsibility of Center. Center may consult with Group concerning the hiring and evaluation of such personnel. Salaries and personnel policies for all such personnel shall be in accordance with Center's salary and personnel policies applicable to all Center employees.

## ANESTHESIOLOGY AGREEMENT

- 1.5 Physician Credentialing. Center shall ensure that all physicians and other medical and dental professionals providing services at the Center are appropriately trained, qualified, and licensed to so practice in the State of **<State>** and are covered by a policy of professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate.

### Section 2: Group's Responsibilities

- 2.1 Medical Services. Group shall provide all medical services as defined in Section 3 hereof, which are reasonably required for patient care and for the appropriate rendering of Anesthesia Services, as determined by Center, its medical staff, and Group without regard to the patient's payer classification or ability to pay. To this end, Group shall provide the professional services of duly licensed physicians, one of whom shall serve as Medical Director (collectively, "Covering Physicians"), and, in the Group's discretion and subject to approval by Center, certified registered nurse anesthetists ("CRNAs") and other allied health personnel, in such numbers as Center and Group may agree are necessary to sufficiently cover Center during the Center's hours of operation. A list of other service expectations is attached hereto as Exhibit "B".

### 2.2 Qualifications of Covering Physicians and CRNAs.

- a. All Covering Physicians shall meet the following qualifications in order to provide services hereunder:
- i. Be duly licensed to practice medicine by the State of **<State>**;
  - ii. Be members in good standing of the medical staff of Center who have been approved for privileges in anesthesiology in accordance with the Medical Staff Bylaws;
  - iii. Maintain the insurance required in Section 7 below; and,
  - iv. Be completely and adequately trained to provide anesthesiology services, and be board certified, board eligible, or accepted and listed in Section 3, Paragraph 3.2 at the time this Agreement is executed.
- b. All CRNAs shall meet the following qualifications in order to provide services hereunder:
- i. Be duly licensed to practice nursing by the State of **<State>**;
  - ii. Be members in good standing of the paraprofessional staff of Center;
  - iii. Be approved in writing by Center to perform services at the Center in advance of providing services (Center shall provide a written statement of reasons if it declines to approve a CRNA to provide services);
  - iv. Maintain the insurance required in Section 7 below; and

## ANESTHESIOLOGY AGREEMENT

- v. Be competently and adequately trained and experienced to provide anesthesia services, and be certified by the American Association of Nurse Anesthetists.
  - c. Group shall annually, and from time to time, upon request, furnish Center and the medical staff appropriate documentation to show compliance with the foregoing qualifications. Medical Director shall notify Center forthwith if he discovers that any Covering Physician or CRNA no longer meets the foregoing requirements, and such person shall immediately cease providing services hereunder.
- 2.3 Compliance. In connection with the operation and conduct of Anesthesia Services and rendition of medical services, Group shall ensure that all Covering Physicians and CRNAs shall comply with the applicable terms of this Agreement and with all applicable federal, state and local laws, rules, and regulations, including requirements for participation in the Medicare Program, all criteria of applicable accreditation agencies, Center's Medical Staff Bylaws and all other reasonable rules and regulations duly established by Center's medical staff applicable to the operation of Anesthesia Services and shall provide an appropriate level and standard of care.
- 2.4 Administrative Duties. Group shall cooperate and comply with the reasonable, duly adopted policies and procedures of Center that are pertinent to patient relations, quality assurance, utilization management, patient safety, scheduling, medical records, billing, collections and other administrative matters, provided that this Agreement shall prevail in the event of a conflict between Center policies and procedures and this Agreement. Group shall cooperate with Center's efforts to bill and collect fees for services rendered to Center's patients. In addition, in carrying out its duties hereunder, Group shall work to improve the overall quality and efficiency of the services rendered at the Center by scheduling its professional staff so as to be responsive to patient demand; and, to the extent within Group's control and consistent with good patient care, working to improve the turnover rate of patient rooms within the Center and the overall efficiency of the Center's operating rooms.
- 2.5 Marketing Support. In coordination with Center and subject to the schedules and availability of individual Covering Physicians and CRNAs, Group shall represent Center in selected community activities and make professional contacts to market the Center to physicians and hospitals as appropriate. Center and Group agree to facilitate the exchange of information on patient care, administration, medical policy, and utilization management.
- 2.6 Medical Director. Throughout the term of this Agreement, Group shall provide the services of one of its Covering Physicians to serve as Medical Director of the Center in accordance with the Center's Medical Staff Bylaws, and Rules and Regulations. In addition to meeting the qualifications of Covering Physicians specified in Section 2.2 above, the selection of the Medical Director shall be subject to the prior written approval by the Managing Board of Center. When the Medical Director is absent for more than his/her normal coverage, Group shall appoint one of its Covering Physicians as Acting Medical Director during the absence. All references in this Agreement to Medical Director shall include the Acting Medical Director while serving as Medical Director.

## ANESTHESIOLOGY AGREEMENT

Medical Director shall be available and personally present during the hours of operation for the Center in order to perform the duties specified herein. In the event the Medical Director shall, for any reason, cease to act as Medical Director, Group shall forthwith provide the services of a Covering Physician to serve as successor Medical Director. The inability of Group to provide a Medical Director acceptable to Center shall constitute grounds for termination of this Agreement under Section 6.3, a., below. Any change desired by Group in the physician designated as Medical Director or Acting Medical Director shall require the prior written approval of Center.

- 2.7 Initial Medical Director. **<Physician Name>**, MD shall be the Medical Director of the Center and mutually agreed upon by the Surgery Center Managing Board.
- 2.8 Duties of Medical Director. During the term hereof, Medical Director shall have the following responsibilities and duties, which is attached hereto as Exhibit "A":
- a. Be responsible for the operation and management of Anesthesia Services, and supervise the quality of the medical care rendered therein, in coordination with appropriate medical staff committees and Center administrative personnel.
  - b. Submit to the administrative person designated by Center the assignment schedules of Covering Physicians and CRNAs;
  - c. Report on the activities of Anesthesia Services to the Center's Administrator at least quarterly, and submit such data, reports, and records as may reasonably be requested or required by Center, regulatory bodies, and accreditation agencies relative to Anesthesia Services.
  - d. As part of Center's budget process, advise Center's Administrator of recommended capital improvements and equipment needs.
  - e. Attend staff conferences when other duties permit;
  - f. Furnish nursing in-service instruction relating to anesthesiology (to be scheduled by Center during regular nursing shifts in coordination with Medical Director's other duties);
  - g. Chair the Center's Clinical Review Committee;
  - h. Actively participate on committees as requested by Center or the medical staff, and be available at reasonable times for consultation;
  - i. Participate in the development and evaluation of Anesthesia Services policies and procedures on an annual basis, and propose changes as necessary in order to assure that these Services meets the requirements of state and federal laws regarding services in anesthesiology, as well as applicable accreditation standards and licensing requirements.

## ANESTHESIOLOGY AGREEMENT

- j. Evaluate and answer, in cooperation with Center's administration, all complaints or inquiries of patients concerning anesthesia services in the Department, and furnish Center with an analysis of all such complaints and with recommendations for correcting any identified deficiencies.
  - k. Use best efforts to assure the maintenance of a standard of quality with regard to Anesthesia Services consistent with patient care in the community, and advise and assist Center in the implementation and maintenance of comprehensive credentialing, quality assurance, and utilization management programs for Anesthesia Services;
  - l. In coordination with Center administration, facilitate the training of all medical and technical methods, procedures, and techniques to be followed by Anesthesia personnel;
  - m. Participate in and develop, as necessary, lines of communication between the Group, the medical staff, and other Center service areas to promote harmonious interaction between the Anesthesia Services and other Center operations;
  - n. Insures that at least one Covering Physician remain in the Center at all times that patients (one or more) are on Center premises **excluding any responsibility related to a 23-hour recovery program**; and
  - o. Carry out other responsibilities, including but not limited to, those delineated in Section 2.4, Paragraph b., Responsibilities, in the Center Medical Staff Bylaws.
- 2.9 Disciplinary Notices. Medical Director shall notify Center forthwith when he receives notice of any final judgments for malpractice that are served against Group or any Covering Physician or CRNA, and of any disciplinary proceedings instituted against any of them at any other hospital or facility or organization.
- 2.10 Medical Records. Group shall ensure that complete, legible, and appropriate medical record entries are made for all services rendered by Covering Physicians and CRNAs within Anesthesia Services, and shall maintain the confidentiality of such records as required by law. All charts and medical records of patients shall belong to Center as part of Center's records and Center shall assure and facilitate Group's access to these records for professional and billing purposes.

### **Section 3: Medical Services--Exclusivity, Staffing, and Scope**

- 3.1 Exclusivity of Medical Services. Except as provided in this Section and in Section 6.5 herein below, Group, through its Covering Physicians and CRNAs, shall have the sole and exclusive right and obligation to conduct and provide all surgical anesthesia services at the Center. Group shall have the exclusive right to provide all surgical anesthesia services for the term of this Agreement.
- 3.2 Staffing of Center. Group agrees to provide the following individuals as the core staff at the Center:

## ANESTHESIOLOGY AGREEMENT

- a. Anesthesiologists: *(List physicians)*

Group shall staff the surgery center on a regular basis with a core staff of (to be determined) anesthesiologists to provide continuity of care, and use the remaining (to be determined) as backup to cover vacations and other absences.

These individuals, upon receipt of Medical Staff privileges, are acceptable to Center and the professional members of the Center.

- b. Scope of Services. In addition to the services defined in this Agreement, Group shall consider using The Surgery Center for pain management procedures when appropriate. Anesthesiologists participating in the provision of pain procedures shall require Medical Staff privileges. The pain services shall not be an exclusive right of Group.

### Section 4: Independent Contractor

- 4.1 Group's Independent Status. In the performance of the work, duties, and obligations of Group under this Agreement, it is mutually understood and agreed that, with respect to Center, Group and the Covering Physicians and CRNAs are at all times acting and performing as independent contractors providing surgical anesthesia and pain management services; that Center shall neither have nor exercise any control or direction over the methods by which Group or any Covering Physician or CRNA shall perform their work and functions, except that they are expected to perform their work and functions at all times in accordance with the currently approved methods and practices of anesthesiology; and that the sole interest of Center is that Group's obligations under this Agreement are performed and rendered in a competent, efficient, and satisfactory manner in accordance with community medical standards. It is expressly agreed by the parties hereto that no work, act, commission, or omission of Group or any Covering Physician or CRNA shall be construed to make or render Group or any Covering physician or CRNA the partner, agent, employee, or servant of Center. Group shall pay or procure all appropriate salary, compensation, benefits, payroll taxes, required insurance, workers' compensation insurance, and similar items (collectively referred to as "Items") to or for all employees and contractors of Group, and shall indemnify and hold Center harmless from and against all such items, liability, and costs (and attorneys' fees and other costs of defending against the same) arising from any claim relating to such items, liability, and costs by or on behalf of any such employee or contractor of any governmental agency.
- 4.2 Center's Independent Status. In the performance of the work, duties, and obligations of Center under this Agreement, it is mutually understood and agreed that Center and its employees and independent contractors are at all times acting and performing as independent contractors with respect to Group; that Group shall neither have nor exercise any control or direction over the methods by which Center or any of its employees or contractors shall perform their work and functions, except that they are expected to perform their work and functions at all times in accordance with the policies and procedures from time to time in effect at the Center, and that the sole interest of Group is that Center's obligations under this Agreement are performed and rendered in

## ANESTHESIOLOGY AGREEMENT

a competent, efficient, and satisfactory manner in accordance with community medical standards. It is expressly agreed by the parties hereto that no work, act, commission, or omission of Center or any of its employees or contractors shall be construed to make or render Center or any of its employees or contractors the partner, agent, employee, or servant of Group. Center shall pay or procure all appropriate salary, compensation, benefits, payroll taxes, required insurance, workers' compensation insurance, and similar items (collectively referred to as "Items") to or for all employees and contractors of Center, and shall indemnify and hold Group harmless from and against all such Items, liability, and costs (and attorneys' fees and other costs of defending against the same) arising, from any claim relating to such Items, liability, and costs by or on behalf of any such employee or contractor or any governmental agency.

### Section 5: Charges for Medical Services

- 5.1 Billing of Center Services. Center shall be responsible for, and solely entitled to, billing and collection of all charges for institutional and other non-professional services rendered to patients in the Center. Center will clearly disclose on its admitting paperwork and patient bills that its charges are for facility and non-professional fees and not for professional fees that patients can expect to be billed for separately.
- 5.2 Billing of Professional Services. Group shall have the sole and exclusive right to charge all patients or their third-party payers fees for professional services rendered by Group or any of its employees or contractors pursuant to this Agreement and to submit and collect bills or such charges and to retain all monies received there from. Patient fees so charged, billed, and collected shall constitute full payment for all services rendered by Group pursuant to this Agreement.
- 5.3 Professional Charges Schedule. Group has prepared a current schedule of its charges for professional medical services rendered at the Center, which is attached hereto as Exhibit "C". Group shall have the right to modify, by way of increase or decrease, the fees charged for professional services from time to time during the term of this Agreement, and shall provide Center with sixty (60) days' prior written notice of any such changes in Group's fee schedule. Group agrees that the fees for anesthesia services shall be consistent with prevailing charges for such services in the region. Group's agreement in this respect shall not, however, be construed to impose on Group any affirmative obligation to discuss prevailing charges for anesthesia services with other anesthesia groups in the region or otherwise to engage in activity which might, in the opinion of its counsel, represent a violation of the antitrust laws.
- 5.4 Information Sharing. Group and Center shall share information with each other as reasonably necessary to facilitate each party's billings and collections with respect to services provided at the Center. Center shall, in the normal course of Center's administration of patient accounts, assist Group in obtaining patient signatures on assignment of insurance benefits and other reasonably appropriate forms provided to Center by Group. Center may, at its sole cost and expense, cause periodic audits of Group's billings and collections, no more frequently than annually, to be performed by an independent firm agreed to by both parties for the purpose of confirming such billings and collections are in accordance with the terms of this Agreement.



## ANESTHESIOLOGY AGREEMENT

On the basis of a test of accounting records pertaining to gross billings, third-party payer allowances, net collections, and such other records as such firm shall consider necessary in the circumstances, such firm shall provide Center with a certification that billings and collections are in conformance with the terms of this Agreement. Center shall not be entitled to detailed information concerning Group's billings, collections, and income. Center agrees to provide appropriate patient information related to services rendered at the Center to facilitate Group billing for their professional services provided at the Center.

- 5.5 Third-Party Payer Contracts. Center and Group shall assist and cooperate with each other in negotiating and developing third-party payer contracts covering medical services provided by Group at the Center and institutional services provided by Center. Group shall comply with all requirements set forth in Group's payer contracts and guidelines for participation in public payment programs in which patients at Center are enrolled. In addition, Group and Center recognize the increasing importance of managed care contracting and therefore agree to consider jointly any future proposals for the establishment of special third-party payer financial arrangements, such as the bundling of facility and professional fees, flat or fixed fees, limited capitation, and/or discounted fee for service, in order to retain and expand the Center's market share. Neither party shall unreasonably withhold its consent to such arrangements nor unreasonably refuse to agree to a reasonable discount for institutional or physician services, provided that Group shall not be obligated to agree to discounts that are greater than those accepted by the Center, nor assume unreasonable levels of financial risk, nor a disproportionate share of financial risk, if Center enters into a creative fee arrangements with third-party payers. Notwithstanding the above, Group agrees to cooperate with Center in securing payer relationships that enhances the success of the Center.

### Section 6: Term

- 6.1 Term. The term of this Agreement shall commence at 12:01 a.m. on the date first written above, and shall continue for a period of three (3) years from and after such date. This Agreement will automatically renew for an additional three (3) year term unless canceled in writing by either party within ninety (90) days of the end of the initial year.
- 6.2 Without Cause Termination. Either party shall have the right to terminate this Agreement without cause upon not less than one hundred eighty (180) days' prior written notice to the other party.
- 6.3 With Cause Termination by Center. Center may, at its option, cancel and terminate this Agreement immediately upon written notice for cause. For purposes of this Section 6.3, "cause" shall consist of a reasonable determination by Center's Managing Board ("Board") that any of the following events has occurred:

## ANESTHESIOLOGY AGREEMENT

- a. Group fails effectively to address a breach by it of any material term or condition of this Agreement, provided that Center serves **thirty (30)** days' prior written notice to Group of such breach that describes the breach in reasonable detail and, in the event Group fails to address such breach effectively, Center provides Group with further written notice of such failure and of Center's decision to terminate this Agreement;
  - b. Group has sold or otherwise transferred all or substantially all of its assets (other than by means of a merger or consolidation with another physician group) or has dissolved;
  - c. Group becomes insolvent or declares bankruptcy;
  - d. The license to practice medicine of any Covering Physician (who is not replaced with a physician meeting the requirements of this Agreement) is revoked or the medical staff membership or privileges of any Covering Physician at the Center are curtailed or terminated, provided that Center may not access this subsection 6.3.d. if Group ceases to use such Covering Physician to provide services at the Center;
  - e. Group fails to provide professional services required by this Agreement in accordance with the service expectations specified in this Agreement, in applicable law, under the Medical Staff Bylaws, or under any standards promulgated by any accreditation or professional body applicable to Center or Group; provided that, in arriving at its determination of Group's failure to provide medical or professional care of the required standards (the "Determination"), the Board or its designee shall, at its sole cost and expense, obtain the review and recommendation of an on-site review team through the Anesthesia Consultation Program of the American Society of Anesthesiologists, which supports the Board's Determination; or
  - f. Group fails to carry the insurance required in Section 7 of this Agreement.
- 6.4 With Cause Termination by Group. Group may, at its option, cancel and terminate this Agreement immediately upon written notice for cause. For purposes of this Section 6.4, "cause" shall include, but not be limited to, a reasonable determination by Group's Managing Board that any of the following events has occurred:
- a. Center fails effectively to address a breach by it of any material term or condition of this Agreement, provided that Group serves **thirty (30)** days' prior written notice to Center of such breach that describes the breach in reasonable detail and, in the event Center fails to address such breach effectively, Group provides Center with further written notice of such failure and of Group's decision to terminate this Agreement;
  - b. Center has sold or otherwise transferred all or substantially all of its assets, has merged with another entity, or has dissolved;

## ANESTHESIOLOGY AGREEMENT

- c. Center becomes insolvent or declares bankruptcy;
- d. The facility license of Center is revoked, suspended, or curtailed;
- e. Center fails to provide services required by this Agreement in accordance with the level of quality of care specified in this Agreement, in applicable law, under the Medical Staff Bylaws, or under any standards promulgated by an accreditation or professional body applicable to Center; or
- f. Center fails to carry the insurance required in Section 7 of this Agreement.

6.5 Effect of Termination. Group shall require Covering Physicians to agree to cease the exercise of their medical staff privileges at Center upon termination of this Agreement. As soon as practical following the expiration or sooner termination of this Agreement, Group and all Covering Physicians shall vacate the Department and surrender all of Center's furniture, fixtures, and equipment therein forthwith upon demand by Center.

### Section 7: Insurance and Indemnity

7.1 Group's Insurance. Group shall, at its sole cost and expense, procure, keep, and maintain throughout the term of this Agreement, insurance coverage in the minimum amount of **One Million Dollars (\$1,000,000)** per occurrence and **Three Million Dollars (\$3,000,000)** annual aggregate, for professional liability. Said professional liability insurance policy shall cover all of Group's professional services hereunder, and shall provide, to the extent the issuer of such policy will comply, for at least **thirty (30)** days' prior written notice to Center for cancellation or diminution in coverage to take effect unless such policy provides for a shorter period of notice reasonably acceptable to Center. If any such policy limits coverage due to deficiencies in record keeping, Group represents and agrees that it shall require that records be kept in a fashion that will avoid any such limitation in coverage to occur in connection with any patient of Center. Group shall provide Center with a certificate evidencing such insurance at the commencement of this Agreement and each time the insurance is renewed or changed. In the event Group procures a "claims made" policy to meet the insurance requirements herein, Group shall either continuously maintain such insurance or shall purchase "tail" coverage, effective upon termination of any such policy or upon termination of this Agreement. In either case, Group shall provide proof of coverage, with notice of cancellation, as stated above.

Furthermore, Group shall require all Covering Physicians and CRNAs to maintain professional liability insurance in the minimum amount identified above for professional liability at all times throughout the term of this Agreement.

7.2 Center's Insurance. Center shall, at its sole cost and expense, procure, keep and maintain throughout the term of this Agreement, insurance coverage for professional liability in the minimum amount of **One Million Dollars (\$1,000,000)** per occurrence and **Three Million Dollars (\$3,000,000)** annual aggregate for the Center, and public liability insurance insuring against liability for personal injury and property damage occurring in

## ANESTHESIOLOGY AGREEMENT

the Center, other than solely by reason of the errors and omissions of Group in the performance of direct patient care, in the same amounts. Center shall provide Group with evidence of such insurance at the commencement of this Agreement and each time the insurance is renewed or changed. In the event Center procures a "claims made" policy to meet the insurance requirements herein, Center shall either continuously maintain such insurance or shall purchase "tail" coverage, effective upon termination of any such policy or upon termination of this Agreement. In either case, Center shall provide proof of coverage.

The parties acknowledge that Group, by reason of this Agreement, has undertaken certain organizational and administrative tasks on behalf of Center, including but not limited to peer review, quality assurance, and administration of the Anesthesia Department and anesthesia services of the Center. It is not the intention of the parties that the contractual statement of these responsibilities alter the immunities that would be available, or the ultimate responsibility that would apply to Center, as if these duties were performed by the Medical Director or other individual appointed pursuant to the Medical Staff Bylaws without a separate written contract. Center shall therefore provide, at its sole cost and expense, liability protection or indemnification for Group, Medical Director, Covering Physicians, and CRNAs for all medical administrative duties performed under this Agreement or pursuant to the Medical Staff Bylaws, covering all claims, costs, or liabilities, including reasonable attorney's fees. The covenants in this Section 7.2 shall survive the termination of this Agreement.

- 7.3 Responsibility for Own Acts. Except as otherwise provided in this Agreement, each party shall be responsible for its own acts and omissions and any and all claims, liabilities, injuries, suits, demands, and expenses of all kinds which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by either party, their employees or representatives, in the performance or omission of any act or responsibility of either party under this Agreement, provided that Group shall not be responsible for the actions or inactions of non-Group physicians practicing at the Center. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. However, both parties shall have the right to take any and all actions they believe necessary to protect their respective interests.

### **Section 8: Verification of Costs**

- 8.1 If and to the extent required by Section 1385x(v)(1) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of this Agreement, Group and Center shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Group under this Agreement. Group and Center further agree that in the event Group or

## ANESTHESIOLOGY AGREEMENT

Center carries out any of its duties under this Agreement through a subcontract with a related organization with a value or cost of **Ten Thousand Dollars (\$10,000.00)** or more over a **twelve (12)** month period, such subcontract shall contain a provision requiring the related organization to make available until the expiration of **four (4)** years after the furnishing of such services pursuant to such subcontract upon written request to the Secretary of the United States Department of Health and Human Services or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

### Section 9: Outside Activities

- 9.1 Non-Competition. Except as may be permitted by the Board in writing, Group agrees that as long as it remains the exclusive provider of anesthesia services at The Surgery Center, Group will not enter into relations that are competitive with the Center.
- a. Group agrees to not, directly or indirectly through an Affiliate or otherwise, own, invest in, or have any other ownership interest in any Person that operates an ambulatory surgical center, including without limitation, an office based general anesthesia room, within a radius of **fifteen (15)** miles of the Company's ambulatory surgery center, excluding, however, (1) an interest in an office-based local anesthesia procedure room, (2) pain management practice, and (3) any hospital-based surgical facilities owned by **<Hospital Name>** or any Affiliate thereof; and
  - b. Group agrees to not, directly or indirectly through an Affiliate or otherwise, either alone or in conjunction with any other Person, manage, consult with, become employed or hired by, or otherwise have a compensation arrangement with, any Person that directly or indirectly provides ambulatory surgical center services within a radius of fifteen (15) miles of the Company's ambulatory surgery center without prior written approval from the Company's Managing Board; excepting, however, any compensation arrangement with any hospital-based surgical facilities owned by **<Hospital Name>** or any Affiliate thereof.

### Section 10. Confidentiality

- 10.1 Information.
- a. Neither Group, nor any Covering Physician or CRNA shall disclose confidential information relating to the business, affairs, or operations of Center to any person without first obtaining written consent from Center's administration.
  - b. Neither Center, nor any of its employees or contractors shall disclose confidential information relating to the business, affairs, or operations of Group to any person without first obtaining written consent from Group.

## **ANESTHESIOLOGY AGREEMENT**

- 10.2 Terms of Agreement. Except as required by law or court order, the parties agree to keep strictly confidential the terms of this Agreement and further agree to so bind their respective officers, employees, and agents, except that any party shall be permitted to disclose such terms to their accountants and legal or financial advisors.
- 10.3 Center Medical Affairs. The personal files of practitioners, as well as all proceedings, files, records, and related information of Group, Center, and Center's medical staff and its committees pertaining to the evaluation and improvement of the quality of patient care in Center, shall be kept strictly confidential by Center and by Group and its Covering Physicians and CRNAs. Neither Group, Covering Physicians, nor CRNAs shall voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to a written authorization by Center. This covenant shall survive the termination of this Agreement.

### **Section 11: Notices**

- 11.1 Whenever, under the terms of this Agreement, written notice is required or permitted to be given by any party to any other party, such notice shall be in writing and shall be deemed to have been sufficiently given if personally delivered, delivered by overnight courier service such as Federal Express, or deposited in the United States Mail, in a properly stamped envelope, certified or registered mail, return-receipt-requested, addressed to the party to whom it is to be given, at the address hereinafter set forth. Either party hereto may change its address by written notice in accordance with this Section.

CENTER:

**<Insert Name and Complete Address>**

GROUP:

**<Insert Name and Complete Address>**

### **Section 12: Entirety, Amendment**

- 12.1 This Agreement contains the sole and entire agreement between the parties and supersedes any and all prior agreements between the parties. The parties acknowledge and agree that neither of them has made any representations with respect to the subject matter of this Agreement, or any representation inducing the execution and delivery hereof, except such representations as are specifically set forth herein, and each of the parties hereto acknowledges that it has relied on its own judgment in entering into the same. This Agreement may not be amended except in writing and signed by both parties.

### **Section 13: Waiver**

- 13.1 No waiver of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties hereto arising out of or affecting this

## **ANESTHESIOLOGY AGREEMENT**

Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The waiver of any covenant, condition, or limitation herein contained, or of the breach thereof, shall not be construed as a waiver of any other covenant, condition, limitation, or breach, or a waiver of the same covenant, condition, limitation, or breach in any other instance.

### **Section 14: Assignment**

14.1 Group shall not have the right or the power to assign this Agreement nor any of the rights or obligations inuring to or imposed upon it herein, and any attempted or purported assignment shall be null and void and of no effect. The issuance or transfer of a controlling interest in the stock of Group shall be deemed an assignment of this Agreement, unless the transferee has been first approved by Center, in writing, as a Covering Physician hereunder.

Center shall not have the right or the power to assign this Agreement nor any of the rights or obligations inuring to or imposed upon it herein, and any attempted or purported assignment shall be null and void and of no effect. The issuance or transfer of a controlling interest in Center shall be deemed an assignment of this Agreement, unless the transferee has been first approved by Group, in writing.

### **Section 15: Counterparts**

15.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

### **Section 16: Governing Law**

16.1 This Agreement shall be governed by the laws of the State of **<State Name>**.

### **Section 17: Exhibits**

17.1 All Exhibits referred to in this Agreement are incorporated herein by reference.

### **Section 18: Severability**

18.1 Should any provision of this Agreement be found by any court to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions hereof, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement, in which case it shall be terminated.

# ANESTHESIOLOGY AGREEMENT

## Section 19: Attorneys' Fees

19.1 In the event either party to this Agreement shall institute any court action or court proceeding to enforce this Agreement or any provision hereof, or for damages or other remedies as a result of any alleged default or breach in the performance of any provision of this Agreement, or for a declaration of rights hereunder, the prevailing party in such action or proceeding, as determined by the court, shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding. This provision shall not apply in the event of a settlement of such an action or a judgment in which no one party is identified by the court as prevailing.

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

*<Insert Name of ASC>*

*<Insert Name of Anesthesia Group>*

\_\_\_\_\_  
Administrator

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



# **ANESTHESIOLOGY AGREEMENT**

## **EXHIBIT A**

### **Medical Director's Responsibilities**

**Key responsibilities and duties of the Medical Director are:**

1. Manage the terms of the anesthesia contract including coverage, room assignment, scheduling, and the overall level of teamwork exhibited by the Group's members.
2. Supervise the quality of medical care rendered related to anesthesia services.
3. Work with Surgery Center management on anesthesia equipment needs for budgeting purposes.
4. Work with Surgery Center management to identify cost containment, cost reduction, and productivity enhancement opportunities related to anesthesia, and implement changes and improvements with the Group.
5. Actively participate on quality assurance and planning committees or appoint a designee.
6. Function as the Chairman for the Clinical Review Committee.
7. Participate in anesthesiologist and nursing in-service programs when appropriate.
8. Participate in the development and upgrading of anesthesia policies and procedures on at least an annual basis, and propose changes as necessary to assure that the Surgery Center meets the requirements of state and federal law regarding anesthesia services as well as applicable accreditation standards and licensing requirements.
9. Respond to Surgery Center management to all complaints from patients and surgeons related to anesthesia services.
10. Promote and market the Surgery Center at all times.
11. Assist the Surgery Center in the creation, implementation, and maintenance of credentialing, quality assurance, and utilization management programs.
12. Participate in the ongoing communication required between anesthesia, surgery, nursing, and administration to facilitate and promote harmonious interactions between the parties.

# **ANESTHESIOLOGY AGREEMENT**

## **EXHIBIT B**

### **Service Expectations**

ASC's provide a unique service to physicians and surgeons, patients, and payers. The concept has been successful for many reasons, but superior service provided by a team of professionals is high on the list of success factors. Following are examples of services that will be expected from the selected Group to support the "ASC approach" to providing outpatient surgery:

1. Staff the Surgery Center with a core group of (to be determined) anesthesiologists to provide continuity of coverage, maximize cost containment, and enhance the level of services to patients and surgeons.
2. Rotate coverage so that at least one physician remains at the Surgery Center until the last patient in the ASC (including minor procedures, endoscopy, and/or pain management patients) is formally discharged.
3. Provide support to and cooperate with the Surgery Center staff to turn over operating rooms as quickly as possible.
4. Assign room coverage so that the surgery schedule is maintained; no cases are rejected because of unavailable anesthesia coverage, and surgeries are on time and uninterrupted. Cases should never be late or canceled because of the anesthesiologist's non-performance. Anesthesiologists do have the right and responsibility to cancel cases for clinical and/or patient safety issues.
5. Provide the necessary coordination and oversight services to collect ancillary test results and physical examination reports to prevent last-minute case cancellations. Anesthesia will coordinate patient admissions in an effort to prevent cancellations on the day of surgery.
6. Promote the Surgery Center routinely and assist and facilitate new program development.
7. Support the development of protocols for the Surgery Center to serve Pain Management Programs within the service area, whether the program is administered by the group or by a competitor.
8. Relentlessly pursue cost containment and cost reduction activities to eliminate unnecessary supply and equipment costs related to anesthesia services.
9. Provide adequate redundancy in anesthesia staffing such that daily add on cases are accommodated without delay.

In summary, the Surgery Center will rely heavily on the leadership and participation of the anesthesiologists. The Group must be an active, cooperative member of the Surgery Center team with focused efforts to: 1) be service oriented; 2) grow surgery volume; 3) reduce costs; 4) increase staff and operating room productivity; and, 5) continuously improve quality of care.

**ANESTHESIOLOGY AGREEMENT**

**EXHIBIT C**

**Professional Services Charges**